



General Assembly

Distr.
GENERAL

A/CN.4/618
21 July 2009

ENGLISH
Original: FRENCH

INTERNATIONAL LAW COMMISSION
Sixty-first session
Geneva, 4 May-5 June and 6 July-7 August 2009

EXPULSION OF ALIENS

**New draft workplan presented by the Special Rapporteur, Mr. Maurice Kamto,
with a view to structuring the draft articles**

1. During the plenary debate on the third and fifth reports (A/CN.4/581 and 611) on the expulsion of aliens, although the Special Rapporteur had submitted a workplan in his preliminary report (A/CN.4/554, annex I), it happened on occasion that members' comments anticipated questions that were to be examined by the Special Rapporteur in his future reports, thereby complicating the discussion. No doubt the nature of the topic accentuates the desire to deal with all the issues involved simultaneously.
2. Moreover, any workplan on a topic is necessarily provisional, and adjustments are always necessary as treatment of the topic progresses.
3. For these different reasons, the Special Rapporteur has decided to present to the Commission a new, completely restructured workplan, which nonetheless remains provisional, since the final outline will only take shape once the study of the topic is completed.
4. The purpose of the new workplan is to present all the ramifications of the topic as clearly as possible, not from an analytical standpoint, but with a view to providing a framework for the draft articles already produced or yet to be produced on the topic of the expulsion of aliens.

RESTRUCTURED WORKPLAN

Part 1:

GENERAL RULES

Chapter 1: Introduction

- Draft article 1: Scope
- Draft article 2: Definitions
- Draft article 3: Right of expulsion

Chapter 2: Persons whose expulsion is prohibited

- Draft article 4: Non-expulsion by a State of its nationals
- Draft article 5: Non-expulsion of refugees
- Draft article 6: Non-expulsion of stateless persons

Chapter 3: Expulsion practices prohibited

- Draft article 7: Prohibition of collective expulsion
- Draft article 8: Prohibition of disguised expulsion
- Draft article 9: Prohibition of expulsion on grounds contrary to the rules of international law

Chapter 4: Protection of the human rights of persons who have been or are being expelled

A. General rules

- Draft article 10 [8]:¹ General obligation to respect the human rights of persons who have been or are being expelled
- Draft article 11 [9]: Obligation to respect the dignity of persons who have been or are being expelled
- Draft article 12 [10]: Obligation not to discriminate [Non-discrimination rule]

¹ The number in brackets indicates the current number of the draft article as it appears in document ILC(XLI)/EA/CRD.1.

B. Protection in the expelling State

- Draft article 13 [11]: Obligation to protect the lives and liberty of persons who have been or are being expelled
- Draft article 14 [12]: Obligation to respect the right to family life of persons who have been or are being expelled
- Draft article 15 [13]: Specific case of vulnerable persons
- Draft article (X ...)*: Conditions of detention and treatment of persons who have been or are being expelled
[To be formulated]

C. Protection in relation to the receiving State

- Draft article 16 [14]: Obligation to ensure respect for the right to life and liberty in the receiving State of persons who have been or are being expelled
- Draft article 17 [15]: Obligation to protect persons who have been or are being expelled from torture and inhuman or degrading treatment

D. Protection in the transit State

- Draft article 18 [16]: Application of the provisions of chapter 4 in the transit State to persons who have been or are being expelled

Part 2:

EXPULSION PROCEDURES

Chapter 5: Due process guarantees for persons who have been or are being expelled

Chapter 6: Remedies

Chapter 7: Relations among the expelling, transit and receiving States

Part 3:

LEGAL CONSEQUENCES OF EXPULSION

Chapter 8: Rights of expelled persons

- Protection of the property rights of an expelled person
- Right of return in the case of unlawful expulsion

Chapter 9: Responsibility of the expelling State for unlawful expulsion

- Affirmation of the principle of the responsibility of the expelling State
- Reparation for the injury suffered as a result of an unlawful expulsion