

EXPULSION OF ALIENS

[Agenda item 6]

DOCUMENT A/CN.4/618

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

[Original: French]
[21 July 2009]

1. During the plenary debate on the third (*Yearbook ... 2007*, vol. II (Part One), document A/CN.4/581) and fifth reports (document A/CN.4/611 of the present volume) on the expulsion of aliens, although the Special Rapporteur had submitted a workplan in his preliminary report (*Yearbook ... 2005*, vol. II (Part One), document 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 ONE

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]

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

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

Draft article 14 [12]. Obligation to respect the right to family life of persons who have been or are being expelled

CHAPTER 6

Remedies

Draft article 15 [13]. Specific case of vulnerable persons

CHAPTER 7

Draft article (X ...). Conditions of detention and treatment of persons who have been or are being expelled

Relations among the expelling, transit and receiving States

[To be formulated.]

PART THREE

C. Protection in relation to the receiving State

LEGAL CONSEQUENCES OF EXPULSION

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

CHAPTER 8

Rights of expelled persons

Draft article 17 [15]. Obligation to protect persons who have been or are being expelled from torture and inhuman or degrading treatment

—Protection of the property rights of an expelled person

—Right of return in the case of unlawful expulsion

D. Protection in the transit State

CHAPTER 9

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

Responsibility of the expelling State for unlawful expulsion

PART TWO

EXPULSION PROCEDURES

CHAPTER 5

—Affirmation of the principle of the responsibility of the expelling State

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

—Reparation for the injury suffered as a result of an unlawful expulsion