



**ORGANIZATION OF
AFRICAN UNITY**
Secretariat
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AFRICAIN**
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COUNCIL OF MINISTERS
Thirty-third Ordinary Session
Monrovia, Liberia, July 1979

THE ADMINISTRATIVE SECRETARY-GENERAL'S REPORT
ON THE DRAFT CONVENTION ON FREE MOVEMENT, SETTLEMENT
AND EXPULSION OF PERSONS IN AFRICA



FREE MOVEMENT, SETTLEMENT AND EXPULSION
OF PERSONS IN AFRICA

Introduction:

Owing to various reasons man has moved from his locality to another, and from his country to another. Such movements may be for a short duration as when he is on holidays or for a reasonably long time in order to eke out a living. There are however, instances in which he wants a complete break with his locality or country as when he flees from political or religious persecution. In this case he breaks off his allegiance to his state of origin with the hope of maintaining a new allegiance to his Asylum State. In this event, he is described as a refugee. But the type of movement concerned in cases of Expulsion is that which relates to the nationals of one State moving to another State in quest of means of livelihood. Here he is not fleeing from persecution at home and still retains an ultimate allegiance to his state of origin while he maintains an immediate loyalty to the State in which he moves to, known as his State of domicile. He is loyal to his new state and obeys the laws of the state. In return to this he expects to be protected by the state. In this State, he does not take a new nationality and is best described as migrant worker or migrant businessman. As he works for a living he enhances the economy of the new State, and thus both the migrant and the State in which he migrates derive mutual benefits.

Where migrant workers or businessmen are in a substantial size their presence in their state of domicile take an increasing importance in the relationship between their state of origin and their State of domicile. No doubt their State of origin will welcome as strengthening factor a friendly treatment of its nationals in the territory of another State. In Africa where Unity is the watchword of the day, such cordial relationship is the cornerstone upon which Unity can be developed. Thus it is a key factor in achieving the objectives, independent African States have set for themselves.

In this spirit of brotherhood, the nationals of one African State move gladly with a considerable sense of belonging to another African State. When in this State, they feel they are with their own kits and kins and this generates a sense of security.

However in contemporary Africa the faith of migrant workers or migrant businessman has greatly been shaken as they are frequently threatened in their State of domicile. There have been cases where migrant workers, for no faults of their own are expelled from a State where they have lived for many years and while eking out a living, have contributed immensely to the economic wellbeing of the domicile State. For reasons ranging from mere envy to worsening relationship between their domicile State and State of origin their property have been distrained upon. In some cases they lose their lives or the lives of their families. They have not committed any offence, and in any case have not been brought before justice. Nobody would quarrel where a migrant worker has offended the laws of his domicile State and is found guilty of an existing offence and punished with a sentence of expulsion in accordance with law. Even here, in order to maintain good relationship, it is incumbent on the expelling State to acquaint the migrant worker's State of origin of the circumstances leading to the expulsion.

Expulsions of the nature described in the foregoing paragraph are on the increase and have been the concern of the United Nations as well as OAU Member States. At the Thirtieth Session of the Council of Ministers in Tripoli, Senegal proposed it as a subject for the attention of the Council; and at the Thirty-first Session the Council discussed it. Much concern was expressed and in its Res.645 (XXXI) a body of experts of ten Member States was appointed to draw up the Convention. At its Fourth Session, the OAU Labour Commission at Mogadiscio expressed very serious concern for the worsening position of migrant workers and charged itself with further indepth study of the situation.

In drawing up the Convention, the following points were considered:-

- (i) The fact that a migrant worker or a migrant businessman bears double allegiance. He bears an ultimate allegiance to his State of origin the nationality of which he holds. He also maintains an immediate loyalty to the domicile State. He must obey the laws of his domicile State and must not conduct his activities in ways detrimental to the interest of his domicile State.
- (ii) In return for his immediate loyalty his domicile State gives protection to his life, those of his family and his properties. This obligation of his domicile State stems also from customary international law.
- (iii) The conditions of the migrant worker in part determine and develop the relationship between his State of origin and his State of domicile. Where his conditions are good, the attainment of the principal objective of the OAU will be facilitated.
- (iv) The conditions of the migrant worker need not be fairer than those of the nationals of his domicile State; but it should in no way be inferior.
- (v) Arbitrary Expulsion is by its very nature, an abrogation of human rights.

Annexed to this paper are:

- Annex I - Rapporteurs Report of Committee, of Ten Experts of OAU Member States.
- Annex II - List of delegates to the Experts meeting
- Annex III- Draft Convention on Free Movements, Settlement and Expulsions of Persons in Africa.

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Annex I

REPORT ON THE MEETING OF OAU EXPERTS CHARGED WITH
THE PREPARATION OF A CONVENTION ON THE FREE MOVEMENTION
SETTLEMENT AND EXPULSION OF PEOPLE IN AFRICA

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Annex I

REPORT ON THE MEETING OF OAU EXPERTS CHARGED WITH
THE PREPARATION OF A CONVENTION ON THE FREE MOVEMENTION
SETTLEMENT AND EXPULSION OF PEOPLE IN AFRICA

The OAU Legal Experts charged with the formulation of a convention on the free movement, settlement and expulsion of people in Africa, met at the OAU Headquarters in Addis Ababa from 30 April to 5 May 1979.

Present were representatives of: Congo, Egypt, Libya, Kenya, Nigeria, Senegal, Sudan and Zambia.

The Central African Empire and Mozambique, also members of the Committee appointed in Khartoum, were not in attendance. The OAU Legal Adviser, representing the Assistant Secretary-General, was the chairman of the opening session as the latter was prevented by other duties from attending.

The following officers were elected:

- Chairman: Mr. Ambara RENE - Congo.
- Rapporteur: Mr. Souleymane THIAM - Senegal.

It was decided that all the Experts in attendance be constituted into the Drafting Committee.

- Organization of work.
- Morning: 9 a.m. - 1 p.m.
- Afternoon: 4 p.m. - 7 p.m.

Agenda

- Consideration of the two Draft Conventions on expulsion and settlement of people, respectively submitted to the Committee by the General Secretariat and Senegal.
- Other matters.

Deliberations

- The Committee unanimously decided to consider the Draft of the General Secretariat as background document and that of Senegal as reference document.
- The Draft Convention on Free Movement, Settlement and Expulsions in Africa, annexed to the present report, was adopted after amendment at the Plenary Session.
- The Committee then decided to submit the said Draft to the Session of the Council of Ministers of the Organization of African Unity, to be held in Monrovia in July 1979.

The meeting was declared closed on 5 May 1979 at 11 a.m.

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Annex II

LIST OF DELEGATES TO THE MEETING OF EXPERTS
TO DRAW UP A CONVENTION ON EXPULSION AND CON-
DITIONS OF SETTLEMENT OF PERSONS IN AFRICA

CONGO

(CHAIRMAN)

1. Mr. Ambara René

Directeur de Cabinet du
Ministre de l'Interieur
et de la Sécurité.

EGYPT

1. Brigadier Ahmed Fahmi

Passport Administrator

2. Mr. Sayed Abouzeid

Counsellor, Egyptian Embassy

KENYA

1. Mr. S.B. Bullut

2nd Secretary,
Embassy of Kenya in Addis
Ababa.

LIBYA

1. Mr. Abduraziqu Zughbia

Deputy Director of Immigra-
tion and Nationality Depart-
ment.

2. Mr. Mohamed El-Urfi

First Secretary, Ministry
of Foreign Affairs.

NIGERIA

1. Mr. M.E. Brimah

Senior Counsellor

2. Mr. P.S.O. Eromobor

3rd Secretary

SENEGAL

(RAPPORTEUR)

1. Mr. Saliou Cissé

1st Counsellor, Senegal
Embassy in Ethiopia.

2. Mr. Souleyman Thiam

Chef de la Division Accords
et Conventions et Questions
Consulaires, Ministère des
Affaires Etrangère.

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Annex II

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SUDAN

1. Mr. Abbas Osman Blkhalifa
2. Mr. Kamil Eltayeb Idris

First Secretary, Sudan
Embassy.

Legal Expert, Ministry of
Foreign Affairs, Sudan.

ZAMBIA

1. Mr. D.B. Moombe

Counsellor.

DRAFT CONVENTION ON FREE MOVEMENT,
SETTLEMENT AND EXPULSION OF PERSONS
IN AFRICA

PREAMBLE

We, the Heads of State and Government of Member States of the Organization of African Unity,

Cognizant of the fact that free entry and residence by any African in the territory of any other Member State constitutes an important factor for the realisation of African Unity;

Conscious of the paramount need to preserve the spirit of tolerance, mutual understanding and solidarity among Member States of the OAU pursuant to paragraphs 4 and 8 of the Preamble and subparagraphs 1 and 2 of Article 11 of the OAU Charter;

Considering that arbitrary expulsion of nationals of any Member State of the Organization African Unity from the territory of another Member State constitutes serious threat to inter-African co-operation;

Recalling the Preamble of the OAU Charter which reaffirms the fundamental principles of the Universal Declaration of Human Rights;

Desirous of respecting the fundamental principles of the OAU Charter;

hereby agree as follows:-

DEFINITIONSArticle 1

For the purposes of this Convention, the term:-

Free Movements of Persons shall mean entry and exist of persons from one African State to another, in conformity with the laws and regulations in force in these States.

Settlement shall mean the residing of an African in another African State with the intention of making that State a second home, and engaging in lawful activities in conformity with laws and regulation in force in that State.

Arbitrary Expulsion shall mean the sending away from the territory of a Member State, of a national of another Member State of the OAU, without due process of the law.

A national of another state shall mean any person having the nationality of a Member State of the OAU, other than that of the Receiving state.

The properties of a national of another State include both movable and immovable properties lawfully acquired by the nationals of another member State of the OAU.

Receiving State shall mean the State in which a national of another Member State resides.

GENERAL PROVISIONSArticle II

The parties to this Convention reaffirm their:

- (a) respect for the sovereignty and territorial integrity of each State and for its inalienable rights to independent existence;
- (b) adherence to peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration;
- (c) adherence to the concept of sovereign equality of all Member States and to the principle of non-interference in the internal affairs of other States;
- (d) adherence to the principles enunciated in the Universal Declaration of Human Rights of the United Nations;
- (e) adherence to the principles of International Laws.

Article III

Parties to this Convention shall assume their obligations founded on the principles of International Law, to protect the lives and properties of all persons residing in their respective territories.

Article IV

Subject to laws and regulations in force in the Receiving States the nationals of Member States shall have the right of entry into, and movement within, the territory of other Member States.

Article V

No national of a Member State residing in another Member State shall be expelled from the State without necessary legal steps first being taken for the defence of his rights.

Article VI

Where a Member State decides to expel a national of another Member State of the OAU, the State of origin of that national shall immediately be notified of such decision.

Article VII

Where a national of a Member State dies in circumstances other than from natural causes in the territory of another Member State, it shall be the responsibility of the State in which he dies to institute an enquiry into the causes of death, in cases of foul play to find out and punish the culprits, and to assist and ensure that adequate compensation in accordance with local laws are paid to the dependents or heirs of the deceased. It shall also render full report of the death including the findings of the enquiry to the state of origin of the deceased.

Article VIII

The nationals of Member States shall have the right to engage in lawful business, and the right to own movable and immovable properties in accordance with laws and regulations in force in the territories of other Member States.

Article IX

In the event of disputes between Member States, the rights and properties of their nationals in each others territories shall not be distrained upon.

In the event, of nationalization, expropriation and requisition of the movable or immovable properties the nationals of another Member State, there shall be adequate and prompt compensation.

Article X

Where the national of a Member State has been found guilty of an offence punishable by expulsion, he shall not be deprived of the properties he has lawfully acquired in the territory of another Member State.

Article XI

The national of a Member State who has been charged with criminal offence shall receive all judicial guarantees applicable to the nationals of the State in which he is being tried, and in particular shall be given a fair trial.

FINAL PROVISIONSArticle XII - Amendment

This Convention shall be amended if a party to it proposes an amendment in writing to the Secretary-General of the OAU, who shall promptly circulate it to all parties to the Convention for approval; provided that the amendment shall not come into force until two-thirds of all the parties have signified their approval in writing to the Secretary-General of the OAU.

Article XIII - Renunciation

Any party desirous of renouncing its adherence to this Convention shall forward a written notification to that effect to the Secretary-General of the OAU. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the renouncing party, which shall thereby cease to be a party to the Convention.

Article XIV - Settlement of Disputes

Any dispute regarding the application of the provisions of this Convention shall be settled by the interested parties in accordance with the principle of the Charter of the Organization of African Unity.

Article XV - Signature, Ratification and Entry into Force

This Convention shall be open for signature by the members of the OAU; and shall be ratified. The instrument of ratification shall be deposited with the Administrative Secretary-General of the OAU, at the OAU General Secretariat.

This Convention shall come into force 30 days after the deposit of the tenth instrument of Ratification. A ratification deposited thereafter, shall come into force 30 days after the date of deposit of the instrument of such ratification.

Article XVI - Accession

Any Member State of the OAU may accede to this Convention.

The instrument of accession shall be deposited with the Administrative Secretary-General of the OAU, and shall take effect 30 days after the date of its deposit.

Article XVII - Notification on Ratification and Accession

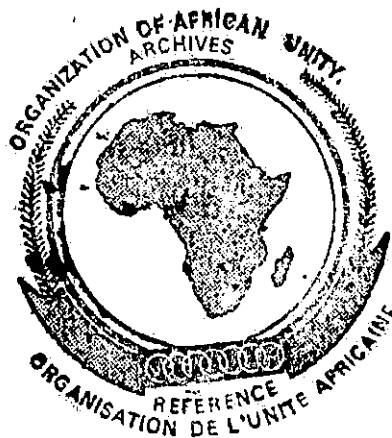
The Administrative Secretary-General of the OAU shall notify the Member States of the OAU of:-

- (a) the deposit of any instrument of ratification or accession;
- (b) the date of entry into force of this Convention.

The Administrative Secretary-General of the OAU shall transmit certified copies of the Convention to all members of the OAU, and as soon as this Convention comes into force, shall register it pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, We, the Heads of State and Government of the Member States of the Organization of African Unity have appended our signatures to this Convention.

DONE at this..... day of 19..... in Arabic, English and French languages, all texts being equally authoritative, in a single original copy deposited in the archives of the OAU.



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The Administrative Secretary-General's Report on the Draft Convention on Free Movement, Settlement and Expulsion of Persons in Africa

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