



# International Service for Human Rights

## The Reports in Short

ISHR's summaries of documents for the Human Rights Council 4<sup>th</sup> Session

### **Report of the Special Rapporteur on the human rights of migrants<sup>1</sup>**

#### **Mandate holder**

Jorge Bustamante

#### **Mandate**

The mandate was established by the Commission on Human Rights in 1999<sup>2</sup> to examine means to overcome obstacles to the protection of the human rights of migrant workers, including problems related to the return of migrants who are undocumented or in an irregular situation. The Special Rapporteur is mandated to study, collect and exchange information on the main causes of violations of the human rights of migrants and promote the effective application of relevant norms and standards. The mandate covers a range of issues such as the rights of migrant domestic workers, migrants deprived of their liberty, discrimination, the situation of women migrants, and irregular migration.

#### **Activities**

- Annual report;
- Submission of a questionnaire to all UN member States addressing questions relating to: border control and measures to reduce/address irregular migration; expulsion; conditions for admission/stay; rights of migrants and the protection of migrants. The Special Rapporteur has received 26 responses;
- Visit to the Republic of Korea, 4 to 12 December 2006;
- Visit to Indonesia, 12 to 20 December 2006.

#### **Annual Report<sup>3</sup>**

##### **Scope:**

The report covers the situation regarding human rights from 30 August to 15 December 2006. It includes the summary of responses of member States to a questionnaire on the “Impact of certain laws and administrative measures on migrants” as formulated by the Special Rapporteur, as well as an update on relevant issues drawn from other communications, missions to the Republic of Korea and Indonesia, and other research.

##### **Summary and key conclusions:**

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<sup>1</sup> Summary prepared by Elodie, Intern, ISHR; edited by Gareth Sweeney, Information Program, ISHR.

<sup>2</sup> Commission on Human Rights resolution 1999/94.

<sup>3</sup> A/HRC/4/24, 14 February 2007.

- Mass media in countries of destination frequently report **human rights violations** of immigrants **by immigration control officers**, but many States did not provide information on this issue.
- **Border control:** in most countries, the use of force by law enforcement officials charged with border control is limited. In some countries such as Canada, they can be held criminally responsible for any force deemed to be unnecessary or excessive.
- **Irregular migration is criminalized** in several States. A new trend recently emerged in certain countries to issue fines or other sanctions against those renting housing or hiring irregular migrants, implying that these persons are criminals.
- **Expulsion:** most of the countries require an individualised expulsion procedure allowing for the identification of vulnerable persons, and allow for expulsion to third countries.
- **Conditions for admission/stay:** The issuing by recipient States of statistical information about sectors where there is a *de facto* demand for irregular migrants could lead to better practices of management of international labour markets involving irregular migrants.
- **Rights of migrants:** in general, non-nationals are treated differently from nationals by the domestic legislation and this could lead to discrimination. Though in most countries access to education or legal assistance is provided, in others (for example Singapore and the Syrian Arab Republic) only nationals or persons granted lawful stay can benefit from social welfare services or participate in unions.
- **Protection of migrants:** national mechanisms have been established by numerous countries to provide protection to migrants in their territory, such as interpretation services or an Ombudsperson handling complaints about immigration administration and access to the judiciary.

#### **Key recommendations:**

- States should adopt all necessary measures to prevent the loss of life of irregular migrants at border controls.
- The United Nations should address the trend of local governments of countries of destination to deal with immigration and prohibit the passing of any laws on this issue, which should be the exclusive jurisdiction of national Governments.
- The recommendation of the Committee on the Protection of the Rights of All Migrants Workers and members of their Families, which declares that “States should establish effective and accessible channels which would allow all migrant workers to lodge complaints of violations of their rights without fear of retaliation on the grounds that they may be in an irregular situation”, should be implemented.

#### **The Global Forum:**

- A large variety of stakeholders should participate, including adequate representation of young migrants to ensure an inclusive process.
- United Nations mechanisms should be invited to participate and share their views, findings and recommendations.
- A voluntary fund should be created to support the participation in the Global Forum of the least developed countries and other stakeholders to have adequate attendance from all sectors.

#### **Country visits:**

##### **Mission to the Republic of Korea**

#### **Scope:**

The Special Rapporteur visited the Republic of Korea from 4 to 12 December 2006. In the course of his mission, he met with Government officials, non-governmental organisations, trade unions, employers, lawyers and migrants. He also had the opportunity to visit shelters for female migrants. The main objective of the visit was to assess the situation of migrants in the Republic of Korea.

### **Summary and key conclusions:**

- The Republic of Korea is both a sending and receiving country. Migrant workers arrived in the Republic of Korea in the 1980s. As of August 2006, they represent 1.5 per cent of the workforce.
- Employment programmes for **unskilled foreign workers** are the Employment Permit System (EPS) and the Industrial Trainee System (ITS). ITS was established in 1992 to respond to labour shortages and reduce the number of undocumented migrants. However, the status of migrant workers is weak, as they do not benefit from basis guarantees. EPS was established in 2003, with bilateral Memoranda of Understanding (MOU) with the Republic of Korea and sending countries. Migrant workers benefit from the same legal status as native workers under domestic labour law. However, most of them are unaware of their rights and there is no judicial accountability for those violating these provisions. Under this programme, migrants are still in a vulnerable situation and it does not allow for family reunification.
- **Irregular migrants** were at least 189,000, more than half of the migrant worker population of the country (as of December 2006). The Special Rapporteur highlighted the increase control of the authorities and the expulsion of irregular migrants. Indeed, under the Immigration Control Act (ICA), immigration officers were authorised to search, detain and issue deportation orders for irregular workers. According to Special Rapporteur, this authorisation to issue detention orders seems to contravene the Constitution, which requires detention orders to be issued by a judge. The National Human Rights Commission has encouraged a revision of this law.
- The Special Rapporteur expressed concern over the deportation of **irregular migrants' children**. Those enrolled in elementary school are required to report their irregular status and some will be given special stay permission.
- **Women** constitute around a third of migrant workers in the Republic of Korea and often face abuses in the workplace. Female migrant workers coming to the country with an entertainment visa<sup>4</sup> also suffer from grave abuses, including arbitrary detention. However, these women hardly report to the police for fear of being arrested and deported. Although a new law has been passed that provides for up to ten years imprisonment for people who forced their employees to sell themselves, the Special Rapporteur regrets that it does not protect those who want to stay in the sex industry or are unable to prove that they have been coerced.
- Another problem is the integration of foreign female spouses in the country. As their legal resident status depends entirely on their Korean husband, they are subject to various forms of domestic abuse. The Special Rapporteur acknowledged the recent establishment of a social integration programme.
- The Government plans to ratify the Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (CMW) but internal discussions on the provisions are still taking place. One of the most contentious issues is family reunification.

### **Key recommendations:**

#### **The Government of the Republic of Korea should:**

- Ratify the CMW;

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<sup>4</sup> The entertainer E-6 visa is available to “foreigners who, for the good of profit-making, wish to be engaged in activities such as music, art, literature, entertainment, performance, plays, sports, advertising, fashion modelling, and other occupations that correspond to those above”.

- Establish incentives for voluntary return, rather than expulsion, to act in accordance with procedural guarantees stated in Article 13 of the International Covenant of Civil and Political Rights;
- Mitigate the requirements to apply for naturalization for the victims of domestic violence;
- Provide a legal system to protect the foreign spouse with access to adequate interpretation facilities in police stations and the courts;
- Regulate marriage agencies and brokers;
- Enable migrant children to enjoy all their human rights, especially education and health, as provided by the Convention on the Rights of the Child.

## **Mission to Indonesia**

### **Scope:**

The Special Rapporteur went to Indonesia from 12 to 20 December 2006. During his mission, the Special Rapporteur met with all relevant authorities and non-governmental organisations (NGOs). He also visited a detention centre for undocumented migrants entering Indonesia illegally and had the opportunity to meet with some detainees.

### **Summary and key conclusions:**

- The three main areas of focus of the report are the following: the situation of female domestic workers leaving Indonesia, the responsibilities of Indonesia as a sending country, and the ratification of the Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (CMW);
- Indonesia is one of the world's major sources of unskilled international migrant labour. There was an increase in the number of migrants, including a marked increase in women, and their destination (mainly Malaysia) in the 1990s;
- The Special Rapporteur met with **female migrants workers** that had returned to Indonesia because they had suffered from severe abuses (confiscation of passport, threats, physical abuse and corporal punishment) by employers of employment agencies in the receiving countries;
- He mentioned the initiative of the city of Pontianak that established crisis centres to rehabilitate women migrant workers that have been sexually abused or tortured;
- The Special Rapporteur welcomed the **steps taken by Indonesia**, including the issuance of several presidential decrees, the establishment of a single company to monitor the labour recruitment business and the developing consular protection overseas, though these domestic measures remain insufficient;
- The Special Rapporteur expressed his concern that the Memorandum of Understanding (MOU) signed with Malaysia on domestic migrant workers does not grant them adequate protection and therefore contravenes Indonesia's obligations under international law;
- He noted that authorities were reluctant to ratify the **CMW** because they believe they would have to comprehensively protect immigrants by providing services such as welfare services, and they find the implementation process costly. According to the Special Rapporteur, the protection of migrant workers would be increased and illegal practices would be treated as a public matter.

### **Key recommendations:**

#### **The Indonesian Government should:**

- Ratify and incorporate the CMW, as well as other international human rights and labour standards, into domestic law;
- Increase the transparency and the monitoring of private recruitment companies;
- Create a framework that improves conditions of employment for migrants workers;

- Establish mechanisms to blacklist abusive employers, employment agencies that break the law, and screen returning migrant workers