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**SPECIFIC GROUPS AND INDIVIDUALS**

**MIGRANT WORKERS**

**Report of the Special Rapporteur on the human rights  
of migrants, Jorge Bustamante**

## Summary

This report is submitted pursuant to Commission resolution 2005/47. It is the first report submitted to the Commission by Jorge Bustamante since his appointment as Special Rapporteur on the human rights of migrants in July 2005.

The report is divided into three sections. They present the activities undertaken by the Special Rapporteur, a description of the mandate, the main situations requiring his attention, and a programme of work.

The Special Rapporteur intends to carry out his work within the framework of international human rights instruments, and considers the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families a major instrument for the promotion and protection of the human rights of migrants. Other international instruments, including those of the International Labour Organization, are also relevant.

The Special Rapporteur will continue to develop the activities undertaken by his predecessor and by other special procedures mandate holders by sending communications, carrying out country visits and undertaking thematic studies. He also wishes to establish and consolidate methods of follow-up to his activities. Dialogue, consultations and networking with all stakeholders will be an essential feature of his work.

Over the years, the mandate of the Special Rapporteur on the human rights of migrants intervened in a number of different situations involving the violation of the human rights of migrants. These are examined individually in the report.

The Special Rapporteur also refers to the fact that reluctance to recognize the demand for the labour of migrant workers, which is a common factor among host countries, acquires heuristic importance when it becomes clear that there is some relationship between that reluctance and the appearance of anti-immigrant ideologies often tinged with xenophobia and racism. Denial of demand is an important issue as it is one of the main factors that leads to irregular migration, a situation at the core of much of the abuse and numerous human rights violations suffered by migrants.

Abuse and human rights violations also occur in the context of legal migration, often in the situations of temporary migration. The practice of subcontracting migrant labour can also be a gateway for the impunity for abuse of and violations against migrant workers. The action of private recruitment agencies, such as the charging of large fees and placing migrants in employments where they are subjected to abusive or hazardous working conditions, has often been the subject of complaints and is a question that deserves closer consideration.

Discrimination and anti-migrant ideology are factors that affect all migrants, whether regular or irregular, temporary or permanent. The Special Rapporteur intends to continue examining multidimensional patterns of discriminatory practices affecting migrants with particular emphasis on the gender dimension of migration. He will also focus on the situation of children involved in migration, both as unaccompanied children and as children of migrants, by highlighting the protection needs of this group and expressing them as rights.

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## **Introduction**

1. This report is submitted pursuant to resolution 2005/47 of the Commission on Human Rights. It is the first annual report submitted to the Commission by Jorge Bustamante since his appointment as Special Rapporteur on the human rights of migrants by the Chairman of the Commission on 29 July 2005. He succeeds Gabriela Rodríguez Pizarro, who had carried out the functions of Special Rapporteur since the establishment of the mandate in 1999.
2. Since the establishment of the mandate by resolution 1999/44, 6 general reports, 3 reports on communications and 10 reports on in situ visits have been submitted to the Commission. Since 2002, four interim reports have also been submitted to the General Assembly.
3. The present report takes into account information received and communications sent in the period from 1 January 2005 to 31 December 2005. A summary of the communications is contained in addendum 1. Moreover, the report on the visit to Burkina Faso carried out by the previous Special Rapporteur in February 2005 is also presented to the Commission in addendum 2.
4. The report is divided into three sections. The first section presents the activities undertaken by the Special Rapporteur. In the following section, the Special Rapporteur provides a description of the mandate and the main situations requiring his attention. The last section contains his conclusions and some of his proposed activities.
5. As he did in his report to the General Assembly (A/60/357), the Special Rapporteur would like to express his gratitude for the major contribution made by his predecessor over the last six years.

## **I. ACTIVITIES OF THE SPECIAL RAPPORTEUR**

### **A. Summary of activities**

6. On 15 and 16 August 2005, the Special Rapporteur visited Geneva where he met and consulted with staff of the Office of the High Commissioner for Human Rights (OHCHR), including staff assisting other mandates, members of the OHCHR Task Force on Migration, and the Secretariat of the Committee on the Protection of All Migrant Workers and Members of Their Families (CMW). He also met with the Inter-Governmental Organizations (IGO) Group on human trafficking and migrant smuggling, which includes representatives from a number of intergovernmental organizations and non-governmental organizations (NGOs); the Chairperson of the Commission on Human Rights; the Secretariat of the Global Commission on International Migration; and the Permanent Representative of Mexico to the United Nations Office at Geneva.
7. From 26 to 28 October 2005, the Special Rapporteur visited New York where he presented his report to the Third Committee of the General Assembly and participated in the dialogue with Member States that followed. On 27 October, he participated in the Fourth Coordination Meeting on International Migration organized by the Department for Economic and Social Affairs of the Secretariat, where he presented his paper entitled "A dialectical understanding of the vulnerability of international migrants".

8. From 11 to 20 December 2005, he again visited Geneva to consult with staff and prepare his annual report to the Commission on Human Rights. During his stay, on 15 December 2005, he participated in the day of general discussion held by CMW on the theme: "Protecting the rights of all migrant workers as a tool to enhance development".

### **B. Communications and press releases**

9. In 2005, 34 communications were sent to 24 countries. Of these, 3 were urgent appeals, the remaining letters of allegation. The Special Rapporteur has continued to cooperate with other mandate holders in his work so that in the course of 2005, 15 of the communications sent were transmitted jointly with other special procedures.

10. Communications were sent to the following countries: Bahrain (2), Bangladesh (1), China (1), China (Hong Kong) (1), Dominican Republic (1), France (1), India (1), Indonesia (2), Israel (3), Italy (1), Japan (1), Jordan (1), Kuwait (1), Libyan Arab Jamahiriya (1), Malaysia (1), Malta (1), Morocco (2), Myanmar (1), Netherlands (1), Pakistan (1), Peru (1), Saudi Arabia (1), Spain (2), Sudan (1), Thailand (3), and United States of America (1).

11. The Special Rapporteur would like to thank all the Governments that have responded to his communications for their collaboration. It is important to recall that communications sent to Governments consist not only in requests for information in situations that raise concern, but also very frequently address situations where information regarding certain facts and actions needs clarification. The establishment of a constructive dialogue with Governments is a crucial element in this process, as Governments have the primary responsibility for the protection of all persons under their jurisdiction and for the implementation of human rights in their countries.

12. The Special Rapporteur would like to reiterate his interest in receiving a reply from those Governments that have not yet responded to requests for information sent in the course of this year, as well as in previous years.

13. In addition to the communications sent, on 12 October 2005, the Special Rapporteur issued a press release regarding the incidents at the border between the Spanish enclaves of Ceuta and Melilla and Morocco that led to the deaths of 11 persons, and reports of collective deportations of migrants from Morocco under conditions that endangered their personal integrity.

14. On 18 December 2005, International Migrants Day, the Special Rapporteur issued a joint press release with the Chair of CMW stressing the importance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and urging all States to ratify that instrument.

### **C. Visits**

15. From 2 to 9 February 2005, the former Special Rapporteur undertook an official visit to Burkina Faso (see E/CN.4/2006/73/Add.2).

16. The newly appointed Special Rapporteur is currently considering a programme of visits. He will give priority to countries where information received indicates the existence of specific problems relating to the rights of migrants, in particular in light of past visits or

communications received, or which he considers representative of the problems and challenges faced by a particular region. Ensuring follow-up of activities will be a central concern in all of his activities, including regarding visits. He would also like to carry out visits to countries in regions that, due to time constraints, were visited less frequently by the previous Special Rapporteur.

## **II. MANDATE OF THE SPECIAL RAPPORTEUR**

### **A. Scope of the mandate**

17. Under Commission resolution 1999/44, further developed in subsequent resolutions, the mandate of the Special Rapporteur on the human rights of migrants is to examine ways and means to overcome obstacles to the full and effective protection of the human rights of migrants, including obstacles and difficulties for the return of migrants who are undocumented or in an irregular situation taking into account bilateral and regional initiatives and arrangements that aim at addressing, inter alia, the return and reinsertion of those migrants. Resolution 1999/44 also required the Special Rapporteur:

- To request and receive information from all relevant sources, including migrants themselves on violations of the human rights of migrants and their families;
- To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur;
- To promote the effective application of relevant international standards on the issue;
- To recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants;
- To take into account a gender perspective when requesting and analysing information, and to give special attention to the occurrence of multiple discrimination and violence against women.

18. In its resolution 2000/85, entitled “Rights of the child”, the Commission requested States to cooperate fully with and assist the Special Rapporteur on the human rights of migrants, in order to address the particular vulnerable conditions of migrant children.

19. The Commission has established a broad mandate of protection and has referred, among other instruments, to the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live. As has been frequently observed, the term “migrant” is a general expression that can cover a number of different situations, including emigrants and immigrants, temporary and permanent migrants, documented and undocumented migrants. The Special Rapporteur believes that it is important to work within the broad framework adopted by the Commission in its resolutions concerning the mandate and to avoid a restrictive interpretation of his mandate.

20. It should be noted that over the years the mandate of the Special Rapporteur on the human rights of migrants has intervened in a number of cases regarding allegations of human rights violations concerning asylum-seekers and persons seeking refuge, provided the persons concerned did not have refugee status. In her 2002 report, the Special Rapporteur highlighted the connection between asylum and migration and declared that she “[found] it increasingly difficult to distinguish between the two” (E/CN.4/2002/94, para. 42). The Special Rapporteur will not take a position on whether a person seeking asylum should or should not be granted refugee status. Where reports refer to one or more persons who have been granted refugee status under the 1951 Convention relating to the Status of Refugees, or to the application of legal procedures carried out in respect of the provisions of that Convention by the Office of the United Nations High Commissioner for Refugees (UNHCR), the Special Rapporteur will, as did his predecessor, continue to use his good offices to transmit such allegations to that agency (see E/CN.4/2005/85, para. 52.)

### **B. Legal framework**

21. As did his predecessor, the Special Rapporteur carries out his work within the framework of the Universal Declaration of Human Rights and all other applicable international instruments, which may include the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>1</sup> The Special Rapporteur considers the last to be of particular importance as it provides a coherent framework regarding many of the very specific issues addressed by the mandate.

22. The definitions given in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime are also relevant.<sup>2</sup>

23. A number of instruments adopted by the ILO can also be relevant to the mandate and provide important guidance on specific issues. In addition to specific instruments such as the Migration for Employment Convention (Revised) 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and accompanying Recommendations Nos. 86 and 151, a number of instruments on subjects of particular concern are also of great importance. These include the seven fundamental human rights Conventions,<sup>3</sup> the Private Employment Agencies Convention, 1997 (No. 181) and the 1998 Declaration on Fundamental Principles and Rights at Work.

24. Moreover, in his work, the Special Rapporteur may take into account other applicable international instruments as well as the decisions and jurisprudence of international courts, bodies and mechanisms which can provide guidance regarding certain themes.

### **C. Methods of work**

25. The Special Rapporteur has continued to develop the working methods applied by his predecessor.<sup>4</sup> These methods of work were based on the mandate established in Commission resolution 1999/44 and subsequent resolutions. A summary of these methods is set forth below. A more detailed description of the mandate's methods of work from its inception can be found in last year's report to the Commission (E/CN.4/2005/85, paras. 49-73).

26. Resolution 1999/44 invites the Special Rapporteur "to request, receive and exchange information on violations of human rights of migrants" (para. 5). In accordance with this, the Special Rapporteur requests and receives information from all relevant sources on violations of the human rights of migrants and their families. To that end, the Special Rapporteur has adopted the letters of allegation procedure and the urgent action procedure, in line with the suggestions and methods of work proposed in 1999 by the sixth meeting of special procedures mandate holders.

27. In examining reports received, the Special Rapporteur considers criteria for their admissibility. These include:

(a) The existence of authoritative reports indicating violations of the human rights of migrants from, for example, national commissions on human rights, United Nations human rights mechanisms and bodies, or NGOs;

(b) The consistency of the information with other situations or individual cases from the country in question previously brought to the Special Rapporteur's attention;

(c) The reliability of the source of the information;

(d) The existence of domestic legislation that is incompatible with international human rights obligations.

28. Governments, intergovernmental organizations, NGOs, alleged victims of human rights violations, victims' families and witnesses, are important sources of information for the Special Rapporteur's work. United Nations agencies also provide the Special Rapporteur with important information.

29. Moreover, in its resolution 2000/48, the Commission requested the Special Rapporteur to include in her work schedule a programme of visits with a view to improving the protection afforded to the human rights of migrants, thus implementing as broadly and fully as possible all aspects of her mandate. The realization of visits is a central aspect of the Special Rapporteur's work.

30. The previous Special Rapporteur carried out 11 on-site visits. The Special Rapporteur hopes to continue this activity and, as stated above, ensure follow-up of past visits and carry out visits to countries where information received indicates the existence of specific problems, to countries that he considers representative of the problems and challenges faced by a particular region, and to countries in regions that, due to time constraints, were visited less frequently by the previous Special Rapporteur.

31. The Special Rapporteur intends to examine ways to expand follow-up activities both as regards communications transmitted and country visits. Regarding country visits, communications were sent by the previous Special Rapporteur to the Governments of countries that she had visited to request information on measures adopted to implement her recommendations. A number of Governments responded, providing valuable information on action taken. Such activities should be strengthened and expanded to include a larger number of partners working with the mandate in order to enhance dialogue with all stakeholders. Ways to increase the possibility of follow-up to communications will also be considered.

32. The Special Rapporteur has continued the practice of cooperating with other special procedures mandate holders by transmitting joint communications to Governments. He has also strived to maintain contact and, where advisable, to consult with other human rights bodies and mechanisms of the United Nations system, as well as with other agencies. As was underscored in his interim report to the General Assembly, coordination and consultation with other international and national bodies working directly or indirectly in the field of migration and the human rights of migrants will be an essential feature of his work (see A/60/357, para. 12).

33. In this context, it should be recalled that CMW decided at its first session, held in 2004, to hold regular meetings with the then Special Rapporteur to allow an exchange of views on specific topics and to coordinate their work. The previous Special Rapporteur and the Committee had agreed to work together in promoting ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (see A/59/48, para. 12).

34. The Special Rapporteur considers a wider ratification of the Convention to be a development of central importance to his mandate and hopes to continue the activities carried out by his predecessor in support of national and international initiatives to urge Governments to ratify the Convention and submit reports on its implementation.

35. This year, on International Migrant's Day, 18 December, the Special Rapporteur issued a joint press release with the Chair of CMW calling for wider ratification of the Convention.

36. Another important activity of the mandate, which the Special Rapporteur intends to continue, is the exchange of information and participation in the various existing consultative processes on migration. Next year, he hopes to participate in discussions at the General Assembly's high-level segment on migration and development.

37. Finally, the Special Rapporteur intends to work closely with relevant intergovernmental organizations and agencies active on issues relevant to the mandate. As requested by the Commission, the Special Rapporteur will continue to submit annual reports to the Commission on his work.

#### **D. Situations in which the mandate intervened through communications**

38. Over the years, the mandate of the Special Rapporteur on the human rights of migrants has intervened in a number of different situations. This part of the report deals only with a few selected issues and is not intended to be an exhaustive review of all the issues in which the mandate has intervened.

39. Border control and problems arising from undocumented migrants seeking to cross borders have on many occasions given rise to complaints. Communications regarding the reported use of excessive force in the context of border control, in some cases amounting to ill-treatment and sometimes resulting in deaths, have been transmitted to several countries.

40. Several communications requesting information in cases of shipwrecks leading to deaths of migrants or deaths during attempted border crossings have also been sent.

41. A number of cases regarding allegations of arbitrary detention, frequently concerning administrative detention of migrants and asylum-seekers in what is often known as immigration detention, have been transmitted. In determining whether reported deprivation of liberty of asylum-seekers and immigrants constitutes arbitrary detention, the Special Rapporteur applies the criteria adopted by the Working Group on Arbitrary Detention in its Deliberation No. 5 on the situation regarding immigrants and asylum-seekers (E/CN.4/2000/4, annex II). The issue of the administrative detention of migrants was examined in greater detail in the report issued in 2003 (E/CN.4/2003/85) where a number of specific recommendations were made.

42. Conditions of detention in such holding centres are also sometimes the subject of complaints. A number of these have referred to detention centres located at airports.

43. Cases of legislation or administrative policies, including anti-terror legislation that specifically restricts or has a negative impact on migrants' rights, have also been transmitted.

44. The Special Rapporteur often receives complaints regarding inadequacies in expulsion procedures and problems in the manner in which expulsion orders are implemented. Cases concerning allegations of collective expulsions of migrants have been transmitted to a number of countries and were the object of several communications. Moreover, in past years, cases regarding the detention and expulsion procedures of unaccompanied children have been sent to several Governments.

45. A number of cases relating to concerns regarding migrants in the criminal justice system, including allegations of torture and ill-treatment of migrants, denial of due process guarantees and lack of access to consular protection, notably in a number of situations where the death penalty is applied, have also been transmitted.

46. Reports of racist attacks by public officials or private individuals against migrants and asylum-seekers have been the subject of a number of communications.

47. Allegations of abuses by private individuals and lack of adequate action by the authorities have also frequently been received by the Special Rapporteur, often regarding situations of legal migration. Complaints have involved the activities of private recruitment agencies, such as the illegal charging of fees, confiscation of identity documents by employers, and abusive working conditions such as extremely long hours without breaks, illegal deductions of wages and refusal to pay wages due, ill-treatment and confinement. Sometimes such treatment may amount to situations of forced labour. In some cases, communications are also sent to the States of the alleged victims to ask what protection those States may have provided to their citizens.

48. Domestic migrant workers, mostly women, are often the reported victims of such violations as well as, in some cases, of sexual abuse by their employers. The situation of domestic migrant workers received an in-depth analysis in the report presented to the Commission in 2004 (E/CN.4/2004/76).

49. The Special Rapporteur also transmits to the Governments concerned information received regarding attacks on, and/or intimidation of members of NGOs or migrants' associations involved in the promotion, protection and defence of the human rights of migrants.

## **E. Issues**

### **1. Issues deserving further consideration**

50. This section of the report is not intended to list all issues relevant under the mandate in an exhaustive manner.

51. In his report to the General Assembly, the Special Rapporteur pointed to the fact that reluctance to recognize the demand for the labour of migrant workers, which is a common factor among host countries, acquires heuristic importance when it becomes clear that there is some relationship between that reluctance and the appearance of anti-immigrant ideologies often tinged with xenophobia and racism (see A/60/357, para. 9).

52. In this context, the Special Rapporteur indicated his intention to consider information regarding the following factors:

- Real demand for migrant workers in Member States
- Data on the number of unionized and non-unionized migrant workers, with a view to ascertaining the level of acceptance of the demand for immigrant labour
- Data on indicators of changes in anti-immigrant ideologies such as statistics on police profiling or hate crimes against aliens
- Statistics on crimes and abuses committed against migrants and sanctions imposed, which should help in assessing the degree of impunity for violations of the human rights of migrants, in particular with regard to their personal integrity and their economic, social and cultural rights (see *ibid.*, para. 11).

53. All these factors are closely connected to concrete violations of the human rights of migrants. Denial of demand is an important issue, as it is one of the main factors leading to irregular migration, a situation at the core of much of the abuse and numerous human rights violations suffered by migrants. The Special Rapporteur thus considers, as did his predecessor, the situation of migrants with irregular administrative status to be a priority issue (see E/CN.4/2001/83, paras. 50-58). This category includes immigrants who entered the host country clandestinely, asylum-seekers who have been denied refugee status, immigrants who find themselves in a situation of *de facto* illegality, and those whose residence permits have expired.

54. Abuses and human rights violations that occur in the context of irregular migration are many and can include:

- Situations of smuggling and trafficking of persons, in many cases involving women and children
- Violations of the right to life and the right to personal integrity that occur in the exercise of border control
- Various forms of abuses of economic, social and cultural rights committed by private individuals with impunity, such as long working hours, payment of salaries well below minimum wages established by law, and harsh and hazardous working conditions, among others; such situations can particularly affect women migrants
- Various inadequacies in expulsion processes such as violations of the right to liberty and security, in particular when migrants are held in administrative detention, violations of the right to a fair hearing, inadequate conditions of detention and lack of protection for vulnerable persons, such as unaccompanied children, and ill-treatment.

55. All of these issues are of central importance and merit further examination.

56. Another issue of serious concern are the many reports received of serious human rights violations committed in the context of legal migration, often in the situations of temporary migration. In this context, complaints regarding abusive conditions of work can have some similarities to those of persons in an irregular situation. However, cases relating to situations of legal migration usually also refer to certain very specific problems, such as the deduction of wages in order to pay mediation fees to private recruitment agencies and changes made in host countries to provisions of contracts previously agreed upon. Common complaints include long working hours without overtime pay, payment of wages well below those agreed upon at the moment of employment, illegally charged fees, the refusal to pay salaries due and the denial of paid vacation leave. In a number of cases, migrant women and men have also complained of mistreatment and restrictions on freedom of movement, including detention by their employers. The situation of women migrants has often presented particular problems, including complaints of sexual abuse. In many cases workers are submitted to hazardous working conditions. For example, migrant workers who have received a visa (H2B) for temporary employment in the United States, such as the so-called pine workers (*pineros*), have complained of many abuses, particularly regarding work accidents and injuries.

57. The actions of private recruitment agencies, such as the charging of large fees and placing migrants in employments where they are subjected to abusive working conditions, have often been the subject of complaints and is a question that deserves closer consideration.

58. Practices of subcontracting work as means of avoiding labour responsibilities by the main employer make it particularly difficult for migrant workers to claim their rights in the face of abuse.

59. In addition, certain particularities of some host countries' immigration policies and practices that can render migrants especially vulnerable to abuse have also been highlighted. Such policies and practices include the confiscation of a migrant's identity documents by employers, sometimes with the apparent complicity of government officials who confiscate such documents at the time of entry and hand them over to employers; the existence of "sponsorship" systems where migrants are not allowed to change employers so that the legality of their stay in a specific country depends entirely on these employers; lack of monitoring of places of work and private recruitment agencies; placing certain categories of migrants such as domestic migrant workers outside the protection of the law; and lack of support for migrants wishing to complain of abuse. Particular difficulties in instantiating and pursuing legal action are faced by migrants who have returned to their home countries.

60. As far as sending countries are concerned, the adoption of comprehensive programmes of protection for their migrant nationals is an important development. Such action is often carried out by various government ministries and agencies and often through a country's consular services. The issue of protection in general and, more specifically, that of consular protection is a theme that also deserves further consideration and examination as such practices can provide important examples and guidance to Governments seeking to protect migrants from violations and abuse.

61. In situations of both regular and irregular migration, legal or practical restrictions on migrants' participation in unions are a key factor in abuses suffered in the labour market. For this reason, this is a fundamental issue that was highlighted by the Special Rapporteur in his report to the General Assembly.

62. Likewise, discrimination and anti-migrant ideology, which can be evidenced by the existence of racist crimes, police profiling, reports in the media and declarations by political figures, is a factor that affects all migrants, whether they be regular or irregular, temporary or permanent. Finally, as with other human rights violations, impunity for abuses is one of the principal elements in the persistence of human rights violations.

## **2. Underlying factors and specific situations**

63. In order to adopt effective action against violations of migrants' human rights, it is essential to consider the different aspects of existing violations, including the underlying factors leading to such violations. Today, many of the problems of migration take place in the private sphere, so that the State is responsible for a failure to act in legislating and enforcing the law. Thus, the actions of smugglers and traffickers, of private employment agencies and of abusive employers are primarily attributable to private individuals or companies, though the State retains responsibility for lack of due diligence in enforcing the rights of migrants. Moreover, in cases concerning particularly vulnerable persons, such as children, the State has additional obligations to ensure protection.

64. Nevertheless, the State is directly responsible for many difficult and sensitive issues linked to migration, such as action taken by State agents in the course of border control, arrest, detention and guaranteeing fair hearings; trial procedures for migrants, whether in administrative

detention with a view to expulsion or within the criminal justice system; the implementation of expulsion proceedings and measures; policies regarding the issuance and cancellation of visas and work permits; and guaranteeing either access to or a measure of protection through consular services.

65. The State is also responsible for guaranteeing the right to freedom of association, the right to join freely and participate in any trade union or association, primary health care, and basic access to education for children.

66. It is also important to consider the underlying factors leading to migration and to human rights violations suffered by migrants. Discrimination is a key factor in many human rights violations affecting migrants. It has thus been, from the start, at the core of the mandate of the Special Rapporteur.

67. Migrants, women and men, experience discrimination in many spheres of their lives. Discrimination affects and curtails the possibilities of migrants to enjoy all sets of human rights. The multiple dimensions of discrimination and the interplay of the different grounds of discrimination, such as gender, race and religion, impact on the intensity and severity of discriminatory practices suffered by migrants. For example, the disadvantages or deprivations that migrant women experience because of gender cannot be separated from the disadvantages stemming from other personal attributes and identities related to their religion, race or national extraction. The interplay of different grounds of discrimination suffered by migrants results in experiences and patterns of exclusion, disadvantage and abuse that tend to accumulate and intensify and that cut across all spheres: the workplace; access to social services, justice, education, housing and health care; and participation in public life and decision-making bodies.

68. The media are another factor that can contribute to exacerbating discriminatory practices against migrants. Media representation of migrants tends all too often to be stereotypical. Language and labelling can be subtle channels to convey subliminal discriminatory messages, which impact on collective imagery. Once a negative discourse misrepresenting migrants is established, it tends to prevail. These negative representations are not adequately compensated for by positive images, such as the cultural contribution of migrants. Conversely, episodes of racism and anti-racism are rarely covered. Little attention is given to more generalized practices of discrimination and xenophobia, and how to overcome them.

69. Given the multidimensional nature of discriminatory practices affecting migrants, both in terms of the interplay of grounds of discrimination and sets of rights affected, the Special Rapporteur intends to continue examining patterns of discrimination suffered by migrants and to give priority to the analysis of the gender dimension of migration.

70. A number of economic, social and developmental issues are at the core of the migration phenomenon. Since its establishment in 1999, the mandate has taken account of developmental, economic and social factors relating to the mandate, both in general reports<sup>5</sup> and in reports on on-site visits.<sup>6</sup> Issues addressed have included: economic and social factors as one of the root causes of migration; economic and social issues leading to the vulnerability of migrants in general or of certain specific groups such as women and children; the effects, both positive and negative, of migration on countries of origin, in particular in regard to remittances, and to the

situation of family members left behind; the promotion of the positive aspects of migration by receiving countries or lack thereof; the promotion of a holistic approach to problems raised by migration that would take into account issues linked to economic and social development.

71. Economic and social issues have a particular impact on children involved in the migration process. Children of migrants who are left behind in countries of origin, leading to the occurrence of what is sometimes known as “broken” families, may suffer many serious problems. Existing limitations on family reunification can lead parents to take desperate measures, such as resorting to smugglers, in order to be reunited with their children. Such action can place children at a high risk of becoming victims of trafficking and other forms of abuse. Socio-economic problems such as poverty and destitution as well as current difficulties encountered by adults seeking to migrate are often at the origin of the phenomenon of unaccompanied child migrants, a particularly vulnerable group that requires special attention. Finally, it is important to recall that children of migrants often face many different types of discrimination and can have great difficulties in integrating in a new society. Children of migrants in an irregular situation are more exposed to marginalization and lack of support.

72. In his analysis of human rights violations suffered by migrants, including women and children, the Special Rapporteur intends to continue to address the developmental, economic and social factors at the core of many existing problems. Next year’s discussion at the high-level segment of the General Assembly will be a unique opportunity to further examine these issues.

### III. CONCLUSIONS

73. The themes outlined above are only a few of the many different and complex issues of concern that can come under the mandate. In consequence, the Special Rapporteur intends to continue to hold consultations regarding issues that require his attention. As indicated above, he hopes to give high priority to violations by both State and non-State actors as well as to practices that can lead to the particular vulnerability of migrants, such as the practice of subcontracting migrant labour.

74. As mentioned in his report to the General Assembly, the Special Rapporteur intends to focus initially on the question of demand through an analysis of real demand for migrant workers in Member States, by sector of the economy, over the past five years.

75. The Special Rapporteur will be guided in his work by the provisions of the relevant resolutions of the Commission on Human Rights and the General Assembly. With this in view, he hopes to continue to actively participate in the ongoing analysis within the United Nations system on migration and development and to be able to make a contribution in next year’s high-level segment of the General Assembly.

76. In his work he intends to cooperate closely and coordinate with all relevant actors.

77. He also hopes to continue to participate in global, regional and subregional consultation processes on migration.

78. Finally, the Special Rapporteur would like to note that in its resolution 2005/47 (para. 30), the Commission on Human Rights requested the Special Rapporteur to include in the annual report a chapter on the impact of the legislation and the measures adopted by some States that restrict the human rights and fundamental freedoms of migrants. Owing to the recent appointment of the new Special Rapporteur, and to the time that has been dedicated to initial consultations regarding the development of the mandate, it was not possible to present such an analysis in this year's report. However, existing and proposed new laws that restrict the rights and freedoms of migrants have long been an issue of grave concern to the Special Rapporteur and he looks forward to examining this issue in next year's reports.

#### Notes

<sup>1</sup> Commission on Human Rights resolutions 1999/44, para. 5 and 2005/47, para. 29.

<sup>2</sup> Commission on Human Rights resolution 2005/47, para. 33.

<sup>3</sup> Convention No. 29 concerning Forced or Compulsory Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, Convention No. 138 concerning Minimum Age for Admission to Employment, Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

<sup>4</sup> See E/CN.4/2001/83, paras. 35-41 and E/CN.4/2005/85, paras. 49-73; see also A/57/292, paras. 17-24.

<sup>5</sup> See, for example, E/CN.4/2000/82, para. 14; E/CN.4/2001/83, paras. 43-47; E/CN.4/2002/94, paras. 24-25 and 37; E/CN.4/2005/85, para. 74.

<sup>6</sup> See, for example, reports on the visits to Ecuador (E/CN.4/2002/94/Add.1, para. 74); Mexico (E/CN.4/2003/85/Add.2, para. 49); Spain (E/CN.4/2004/76/Add.2, para. 78); the Islamic Republic of Iran (E/CN.4/2005/85/Add.2, para. 60); Italy (E/CN.4/2005/85/Add.3, para. 80); and Peru (E/CN.4/2005/85/Add.4, para. 70).

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