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特定群体和个人

移徙工人

移徙者人权问题特别报告员加芙列拉·罗德里格斯·皮萨罗女士
根据人权委员会第 2004/53 号决议提交的报告

* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要附件，将以原文和英文分发。

内 容 提 要

本报告是移徙者人权问题特别报告员加芙列拉·罗德里格斯·皮萨罗女士根据人权委员会第 2004/53 号决议提交的第五份报告。

第一章叙述了特别报告员在报告述期间所开展的活动。第二章说明了特别报告员在给委员会的第一份报告中列为优先任务的调查领域的发展情况：(a) 针对移民的种族主义、种族歧视和仇外心理；(b) 移徙妇女和无人陪伴的未成年人。本章还概述了特别报告员所采用的工作方法。第三章载有特别报告员的最后意见和建议。

本报告增编 1 摘述了特别报告员在 2004 年所发出的信函以及从有关政府收到的答复。其中还载有特别报告员关于提出的申诉中所述情况的意见以及关于 1999 年以来按此特别公开程序发出的信函的统计资料。

在审查所述期间，特别报告员对以下国家进行了正式访问：伊朗伊斯兰共和国(2004 年 2 月 22 日至 29 日)、意大利(6 月 7 日至 18 日)和秘鲁(9 月 20 日至 30 日)。对这些国家的访问报告分别载于增编 2、3 和 4。

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Introduction

1. The present report is the fifth to be submitted to the Commission on Human Rights by the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, pursuant to Commission on Human Rights resolution 2004/53.

2. Chapter I documents the Special Rapporteur's activities during the period under review. Chapter II reports on progress in the areas of investigation identified by the Special Rapporteur, in her first report to the Commission, as priorities for the mandate, namely (a) racism, racial discrimination and xenophobia directed against immigrants; and (b) migrant women and unaccompanied minors. This chapter also summarizes the working methods settled on by the Special Rapporteur. Addendum 1 to this report summarizes the communications sent by the Special Rapporteur in 2004 and the replies received from the Governments concerned. It also includes the Special Rapporteur's comments on the situations described in the allegations transmitted and statistics on the communications sent by this special public mechanism since 1999. During the period under review, the Special Rapporteur undertook official visits to the Islamic Republic of Iran (22-29 February 2004), Italy (7-18 June) and Peru (20-30 September). The reports on these visits are contained in addenda 2, 3 and 4 respectively.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR IN 2004

A. Summary of activities

3. The report submitted by the Special Rapporteur to the General Assembly at its fifty-ninth session contains a summary of her activities from November 2003 to September 2004 (A/59/377, paras. 5-20). During the period not covered by that report, the Special Rapporteur took part in the following events:

(a) From 2 to 5 September, she attended the plenary meeting of the Human Movements and Immigration (HMI) World Congress, organized as part of the Universal Forum of Cultures - Forum Barcelona 2004. The Special Rapporteur also organized a dialogue entitled "Good governance and shared responsibility" and was a member of the science advisory board;

(b) On 9 and 10 September she attended the Berne Initiative regional consultations for the Americas in Santiago, Chile;

(c) On 20-30 September the Special Rapporteur paid an official visit to Peru;

(d) On 7 and 8 October she took part in a discussion in Colombia on gender and rights, organized by the United Nations Development Fund for Women (UNIFEM);

(e) On 18 and 19 October she took part in the Sixth Ibero-American Summit of Ministers and High-level Representatives of Children, held in San José;

(f) From 26 to 29 October she was in New York to introduce her third report to the Third Committee of the General Assembly. In her report the Special Rapporteur noted a continuing deterioration in the human rights situation of migrants, in particular illegal migrants. She also highlighted the scant attention paid to the human rights of this vulnerable group in debates on immigration policy, and the need for those rights to be recognized in practice. She also pointed out that traditional methods of migration management, based on internal security considerations and specific economic interests, had been rendered obsolete by immigration in the context of globalization. The Special Rapporteur was encouraged to see so many consultative processes on migration management and recognized the efforts being made, as part of the various intergovernmental initiatives, to find new ways of managing the problem effectively and to arrive at common positions that would enable agreements to be reached. She therefore advocated a more rights-based migration management, one rooted in States' joint responsibility for meeting their obligations to migrants;

(g) On 29 and 30 November she attended a regional meeting of legislators from Central America, Mexico and Belize on the prevention of the commercial sexual exploitation, trade and trafficking in children, organized by the United Nations Children's Fund (UNICEF) Regional Office for Latin America and the Caribbean in Panama. The aims of the meeting were to deepen the legislators' understanding and awareness of the issue and to examine the ongoing reforms of those countries' criminal codes, with a view to standardizing the definitions of all the various behaviours and forms of participation that the commercial sexual exploitation of children may encompass;

(h) From 1 to 3 December she attended a meeting of the Technical Working Group of the Regional Conference on Migration (Puebla Process) in Panama. The aim was to draft a regional programme of work to combat illicit smuggling of migrants and trafficking in human beings;

(i) On 6 and 7 December she attended an expert workshop in Santiago, Chile, on international migration and processes of regional integration and cooperation in the Americas, organized pursuant to resolutions adopted by the Ad Hoc Committee on Population and Development as part of the work of the Economic Commission for Latin America and the Caribbean (ECLAC) for the biennium 2004-2006. The workshop agenda focused on the relationship between international migration and processes of regional integration and cooperation in the Americas;

(j) On 13 and 14 December she held consultations in Geneva with the staff of the Office of the United Nations High Commissioner for Human Rights;

(k) On 15 and 16 December she attended the Second International Symposium on Migration: migration management through cooperation (Berne II), which included a presentation of the International Agenda for Migration Management, the product of various regional consultations held during 2004 in the framework of the Berne Initiative.

4. Events confirmed for the first half of 2005 are listed below.

5. From 17 to 21 January the Special Rapporteur will attend a working meeting organized by the Mexican National Institute for Migration (INM) to review action taken by INM on the recommendations contained in the Special Rapporteur's report on her visit to Mexico (E/CN.4/2003/85/Add.2).
6. From 2 to 9 February the Special Rapporteur will pay an official visit to Burkina Faso at the invitation of the Government. However, as at 22 December 2004 she had still not received official confirmation of the dates proposed in her letter of 27 November 2004 addressed to the Minister for Foreign Affairs of Burkina Faso.
7. In March she will deliver a lecture at the Osaka University of Economics and Law, in Japan, at the invitation of the University's Centre for Asia Pacific Partnership (CAPP) and the NGO International Movement Against All Forms of Discrimination and Racism (IMADR).
8. From 28 to 30 April she will attend the fifteenth Symposium of Lawyers on Immigration Law, at the invitation of the *Real e Ilustre Colegio de Abogados* (Royal College of Law), Zaragoza, Spain.
9. On 9 June she has been invited by Fairfield University to attend its annual meeting of academics and researchers from Jesuit institutions in the field of migration.
10. During the period under review, the Special Rapporteur has taken part in various intergovernmental consultative processes on migration management, including the Berne Initiative and the Regional Conference on Migration, and has provided information to the Global Commission on International Migration (GCIM).¹

B. Communications

11. Addendum 1 to this report summarizes the communications sent by the Special Rapporteur in 2004 and the replies received from the Governments concerned. Each chapter also includes comments on the situations described in the allegations transmitted, in the light of the information provided by the Governments. Addendum 1 also contains statistics on the communications sent since 1999.
12. During this period, the Special Rapporteur sent 85 letters containing allegations and 45 urgent appeals to 51 Governments. She is grateful for the wholehearted cooperation she received from most Governments, which provided all the information requested and replied promptly to her urgent appeals. In certain cases, the Special Rapporteur has indicated that a Government provided incomplete information, leaving specific points or individual allegations unanswered.
13. During the period under review, the Special Rapporteur sent 36 communications to 24 Governments containing information on individual cases and reports of a more general nature on legislation and administrative practices that allegedly violated the human rights of migrants or made them more vulnerable to abuse. She sent nine urgent appeals, 20 letters containing allegations and 7 letters following up on the recommendations made after her visits. She received 22 replies from the Governments concerned, although some of these contained information relating to communications sent in 2003 and 2004.

14. The following are some of the situations in which violations of the human rights of this group are alleged to have occurred during the period under review, giving rise to intervention by the Special Rapporteur: ill-treatment during detention; harsh detention conditions; failure to provide minimum guarantees of a fair trial; denial of the right to consular protection for detained immigrants, even where sentenced to death; violence during the arrest and deportation of immigrants; forced repatriation of unaccompanied minors to their country of origin or departure; deportation of immigrants and asylum-seekers with no opportunity to appeal to a court to determine the legality of their detention (right to an effective remedy against detention by the police); impunity in cases of homicide, sexual assault and ill-treatment of immigrants; attacks and threats against members of human rights NGOs specializing in migration; and attacks on immigrants at times of social unrest or during riots.

15. The Special Rapporteur also acted on complaints concerning authorities' failure to deal firmly enough with international trafficking in women and minors; imposition by employers of abusive working conditions; abuses by agencies recruiting migrant workers; and situations in which migrant workers were heavily dependent on their employers.

16. The Special Rapporteur has continued to make efforts to cooperate with the Commission's other mandate-holders in order to avoid duplication of work. During the period under review, communications were sent jointly by the Special Rapporteur and the following special public procedures: Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on torture; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on violence against women; Working Group on Arbitrary Detention; Special Representative of the Secretary-General on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the sale of children, child prostitution and child pornography.

C. Visits

17. During the period under review, the Special Rapporteur undertook official visits to the Islamic Republic of Iran (22-29 February 2004), Italy (7-18 June) and Peru (20-30 September). The reports on these visits are contained in addenda 2, 3 and 4 respectively.

18. The Special Rapporteur has tended to concentrate in her visits on "fault lines", that is to say parts of the world where there are glaring contrasts and disparities at all levels (A/59/377, paras. 7-8). The inequalities in the Mediterranean area and the transit of migrants from Central and sub-Saharan Africa through countries such as Morocco and the Libyan Arab Jamahiriya prompted her to prepare a programme of visits in and around Europe and the Mediterranean. Between 2003 and 2004 she visited Spain (E/CN.4/2004/76/Add.2), Morocco (E/CN.4/2004/76/Add.3) and Italy (E/CN.4/2005/85/Add.3), and she plans to round that work off with a visit to Burkina Faso in February 2005. The Government of Burkina Faso has invited the Special Rapporteur to visit the country in the first half of February. The Special Rapporteur has accepted this invitation and suggested 2 to 9 February for a visit; these dates have yet to be confirmed. The Special Rapporteur has expressed to the Government of Senegal a wish to visit

that country immediately after her visit to Burkina Faso. In her view, over the next few years, as North Africa reinforces its borders with the European Union, the coastline from the north of Senegal to the south of Cameroon will become the main departure point for the boats used in smuggling migrants to Europe.

19. In parallel with her research into “fault lines”, the Special Rapporteur examines the issue of mixed migration and its relationship to refugee outflows in addendum 2 to this report, which contains the report on her visit to the Islamic Republic of Iran (E/CN.4/2005/85/Add.2). She has also travelled to Peru to look at Peruvian emigration, Peru’s policy on protection and consular assistance to its nationals abroad and the situation of foreigners deprived of their liberty.

20. The Special Rapporteur has continued to follow up on the recommendations made in the reports on her visits. Between 2003 and 2004, communications were sent to the Governments of Canada, Ecuador, Morocco, Mexico, the Philippines, Spain and the United States, requesting information on implementation of the recommendations made in the reports on her visits to those countries (E/CN.4/2005/85/Add.1).

II. THE WORK OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS, 1999-2004

A. Areas of research

21. In her first report to the Commission, the Special Rapporteur stated that she intended to address two areas of research during her mandate, namely (a) racism, racial discrimination, xenophobia and related intolerance towards immigrants; and (b) migrant women, to which she subsequently added the question of unaccompanied minors. Since then, these subjects have been the focus of much of her work.

22. In this report the Special Rapporteur reviews these areas of research in the light of her work over the last five years and events during that period. For reasons of space and to avoid unnecessary duplication, the reader will be referred, where appropriate, to earlier reports containing more detailed discussion of the issues raised.

B. Racism, xenophobia and discrimination directed against immigrants

23. The increasing incidence of racism, xenophobia, other forms of discrimination and inhuman and degrading treatment directed against migrants in various parts of the world was one of the factors that prompted the Commission to establish the Intergovernmental Working Group of Experts on the Human Rights of Migrants² and subsequently to appoint a Special Rapporteur on the human rights of migrants.³ Later, in the Millennium Declaration, Member States resolved to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies.⁴ All these factors prompted the Special Rapporteur to make this one of her areas of research; she has continued to develop it since taking up her post.

24. The Special Rapporteur made an active contribution to the preparatory work for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance,⁵ attending meetings of the preparatory committees, regional meetings and expert seminars. She pointed out that policies aimed at combating racism, racial discrimination, xenophobia and related forms of intolerance needed to be based on reliable statistics that would make it possible to adopt effective measures (E/CN.4/2001/83, paras. 93-97). At the first session of the Preparatory Committee for the World Conference against Racism, she submitted a report on discrimination against migrants analysing the problem and drawing attention to the urgent need to devise and implement comprehensive strategies addressing the problem from various angles, and paying particular attention to migrant women (A/CONF.189/PC.1/19).

25. The Special Rapporteur endorses some of the guidelines adopted by the international community in the Programme of Action adopted by the World Conference (A/CONF.189/12). The Declaration stresses that “policies towards migration should not be based on racism, racial discrimination, xenophobia and related intolerance” (ibid., Declaration, para. 12) and urges all States “to review and, where necessary, revise any immigration policies which are inconsistent with international human rights instruments, with a view to eliminating all discriminatory policies and practices against migrants” (ibid., para. 38). The Declaration also recognizes “that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism” (ibid., para. 16).

26. The Programme of Action adopted by the Conference explicitly recognizes migrants as victims of racism, racial discrimination and related forms of intolerance. It requests all States “to combat manifestations of a generalized rejection of migrants and actively to discourage all racist demonstrations and acts that generate xenophobic behaviour and negative sentiments towards, or rejection of, migrants” (ibid., Programme of Action, para. 24), in conformity with “the Universal Declaration of Human Rights and their obligations under international human rights instruments, regardless of the migrants’ immigration status” (ibid., para. 26).

27. Since then, some countries, such as Norway and Poland, have adopted national plans of action to combat racism, xenophobia and racial discrimination in accordance with the recommendations of the Durban Programme of Action (see E/CN.4/2003/18, para. 22; A/59/375, para. 11). Other countries have acted on the Programme of Action’s provisions on migrants (E/CN.4/2003/18; A/58/324; A/59/375). Yet, as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance stated recently, despite the commitment made by the international community in Durban, “there continue to be alarming manifestations of those phenomena characterized by two key trends: (1) the resonance and vitality of resurgent traditional forms of discrimination rooted in colour-based racism ...; (2) the appearance of new forms of discrimination targeting non-citizens, refugees and immigrants” (A/59/329, para. 6).

28. A thematic discussion on the rights of non-citizens and racial discrimination, organized by the Committee on the Elimination of Racial Discrimination in Geneva on 1 March 2004, gave the Special Rapporteur an opportunity to present her work on the subject and to make a number of comments for Committee members to take into account in drafting their revised general

recommendation on non-citizens. She recalled the importance of the principle of equality and non-discrimination in the formation of international human rights law relating to migration and the importance of the provisions on non-discrimination established in the main human rights instruments for the correct application of domestic legislation on foreigners (A/59/377, para. 40).

29. The administrative detention of undocumented immigrants, for example, violates the principle of non-discrimination if these individuals are confined in detention centres without being able to challenge the legality of their detention in court. In the Special Rapporteur's view, they are discriminated against in the exercise of their basic right to freedom and legal security and are arbitrarily denied the right to effective recourse against their detention by the police. This situation has become widespread as States have applied special legislation to combat terrorism which restricts or suspends the procedural guarantees that every detainee should enjoy (*ibid.*, para. 37). Many of these measures lead to problems of discrimination against migrants and the Special Rapporteur therefore emphasizes that they must be compatible with international human rights obligations. It is also partly as a result of such measures that the perception of immigration as a matter of security continues to gain ground, eclipsing all other aspects of the issue, including human rights (E/CN.4/2003/85, paras. 25-38; A/58/275, para. 6; A/59/377, para. 55). At the same time, in certain European countries, international terrorism is creating a climate of mistrust and suspicion of foreigners that affects immigrants in particular and, despite the efforts of many Governments, attacks on minorities are on the rise.⁶

30. The Special Rapporteur informed the Committee that in many countries immigrants bear the brunt of racist or xenophobic backlashes and that a great many of the communications she transmits to Governments concern cases of discrimination against migrants in the application of national legislation and international human rights standards.⁷ She expressed concern at the campaigns conducted in some political quarters and the media in several European countries, to criminalize immigration by making a direct link between immigration and high crime rates. In the Special Rapporteur's view, even though the facts frequently give the lie to this image, political rhetoric and information of this kind promote xenophobic stereotypes and racist sentiment. At its sixty-fifth session, in August 2004, the Committee on the Elimination of Racial Discrimination adopted general recommendation XXX, on discrimination against non-citizens, whose significance was highlighted by the Special Rapporteur in her last report to the General Assembly (A/59/377, para. 37).

31. With regard to discrimination in employment and work, the Special Rapporteur would like to point out that a number of trade unions in host countries are adjusting to the labour situation of migrant workers. Trade unions are aware of the changing make-up of the workforce in their countries and many of them have started working more closely with groups of immigrant workers. Unions have first-hand experience of these workers' labour and employment conditions and the risks and hazards they face, and they understand that denying the existence of discrimination or belittling its importance often entrenches abusive practices in the labour market. Trade unions have a major role to play in asserting migrant workers' rights and eliminating discrimination in access to the labour market, by running information and counselling drives on labour rights or by reporting violations or denials of migrant workers' rights, including to international bodies such as the Committee on Freedom of Association of the

Governing Body of the International Labour Organization (ILO). Some unions have joined in national campaigns for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in the realization that it is a key instrument in efforts to combat discrimination against this group.

32. The Special Rapporteur notes that some Governments have found it necessary to protect their emigrants from discrimination not only on the part of the authorities or employers in host countries, but also by officials in their own diplomatic or consular missions. Addendum 4 to this report describes an inter-agency cooperation agreement between the Peruvian Ministry of Foreign Affairs and the Office of the Ombudsman, allowing the latter, at the request of Peru's consular offices and in coordination with the Ombudsman's counterparts in the host country, to cooperate with the Ministry of Foreign Affairs when Peruvian emigrants are in need of humanitarian and/or legal assistance. For its part, the Ministry of Foreign Affairs undertakes to place letter boxes in consular offices to enable complaints and allegations to be addressed directly to the Office of the Ombudsman; in this way the Office obtains first-hand accounts of incidents of discrimination either occurring in Peru's missions or occasioned by the authorities of the host country (E/CN.4/2005/85/Add.4).

33. In her reports, the Special Rapporteur has listed a series of best practices in combating discrimination, racism and xenophobia through consular advisory and protection services. During her visit to the Philippines in May 2002, she learned of a social service package that provides counselling and medical and legal services to Filipinos abroad. The Philippines has signed agreements with Governments and NGOs in host countries with a view to improving support for Filipinos in distress. Also, its embassies in those countries issue advisories on labour and employment conditions there (E/CN.4/2003/85/Add.4). The Special Rapporteur has also gathered information on similar initiatives undertaken in the framework of consultative processes on migration management, most notably the establishment of a Central American consulate in Veracruz, Mexico. The brainchild of the Regional Conference on Migration, this project channels resources for assistance and protection of immigrants from the countries of the region (A/58/275, para. 60). Another example is provided by Mexican consulates in the United States, which have issued nearly 1 million consular identification cards since March 2002 to Mexicans resident in the United States. With these cards, the Mexicans can obtain driving licences and gain access to banking services to send remittances home. The consular identification card is accepted in more than 30 states and 160 banks in the United States.

34. The Special Rapporteur has also collected examples of discrimination against migrants in access to the labour market and in home purchase or rental. She has reported cases of indirect discrimination in education where drop-out rates for immigrants are higher than the rates for the country as a whole (E/CN.4/2005/85/Add.3). Policies on social integration for immigrants should be thoroughly reviewed from a human rights perspective, for there are large numbers of immigrants who would like to obtain permanent residence. The Special Rapporteur advocates the development of multicultural patterns of social integration for immigrant minorities, patterns that mitigate exclusion and can stand as alternatives to those forms of integration that attempt to impose certain behavioural norms and promote an increasingly dubious social homogeneity. Compulsory integration programmes designed for residents wishing to settle permanently in the host country may raise discrimination issues if, for example, the selection criteria are based on immigrants' place of birth.⁸

C. Migrant women and unaccompanied minors

35. Migration is usually represented as a gender-neutral phenomenon, and as a result migrant women tend to remain invisible as a group. The Beijing Platform for Action, adopted by the 1995 Fourth World Conference for Women, recognized that movements of people have profound consequences for family structures and well-being and have unequal consequences for women.⁹ The Special Rapporteur is therefore of the view that account must be taken of the make-up of international migration flows if women are to be better protected against potential danger and abuse during migration. Yet insufficient attention continues to be paid to the make-up of these movements (E/CN.4/2000/82, para. 66). Statistics on international migration are far from providing universal coverage and are often published without a classification by sex or age (see A/59/287 and Add.1). The dearth of data makes it difficult to assess the full consequences of international migration for women.

36. Despite the difficulty of obtaining data of this kind, it can nevertheless be asserted that feminization is a fundamental characteristic of international migration. The already high percentages of women represented in migration flows are steadily rising in some Latin American countries such as Ecuador and Mexico, and in Asian countries such as the Philippines and Sri Lanka, in particular, whose population abroad chiefly comprises women. In accordance with Commission resolution 1999/44 and subsequent resolutions developing her mandate, the Special Rapporteur has always taken into account a gender perspective when requesting and analysing information, and paid special attention to the occurrence of multiple discrimination and violence against migrant women. A gender perspective is fundamental to an understanding of both the causes and the consequences of international migration.

37. Several factors are at work in the feminization of migration: family reunification; inequities in the countries of origin in respect of the employment and income levels women can aspire to; and women's entry into the workforce in host countries, which means that migrant women tend to enter sectors such as domestic service, care of the elderly and other unskilled employment. The Special Rapporteur has also analysed the impact of this phenomenon on the communities of origin, emphasizing the consequences of the break-up of families and the problems that women's families have in tracing them when they emigrate by irregular routes (E/CN.4/2003/85/Add.2, paras. 48-49; E/CN.4/2002/94/Add.1, paras. 41-46).

38. Immigrant women tend to be employed in the shadow economy and in less skilled work than men, even though some are better qualified. They are more dependent on their employers, which puts them at greater risk of abuse and exploitation. The Special Rapporteur has looked particularly closely at the living, working and employment conditions of migrant workers employed in domestic service (E/CN.4/2004/76); in her view, the situation of this group illustrates three of the most important challenges of international migration in modern times: the extent and feminization of migration; the difficulty of obtaining recognition of the human rights of immigrants, particularly those with irregular administrative status; and the need for rights-based migration management (A/59/377, para. 11).

39. The Special Rapporteur has noted that globalization has had the effect of increasing poverty in certain regions, and many women see international migration as the best - or the only - way to improve their social and economic situation. Those who decide to leave contribute

to the economic development of the host country and also, through financial contributions in the form of remittances, to that of their country of origin. The fourth World Survey on the Role of Women in Development, submitted to the General Assembly at its fifty-ninth session in 2004, focuses on labour migration, family formation and reunification, the rights of migrant women, women refugees and displaced persons, and trafficking in women and girls.¹⁰

40. The World Survey on the Role of Women in Development contains recommendations to Governments on strengthening the role of migrant women, promoting and protecting their rights and reducing their vulnerability and the incidence of ill-treatment. The following are some of the recommendations: ratify and actively monitor implementation of all international legal instruments that promote and protect the rights of migrant women and girls; review national emigration and immigration laws and policies in order to identify discriminatory provisions that undermine the rights of migrant women; develop policies that recognize the contributions of migrant women in countries of destination; and ensure that their professional credentials are recognized or that training for recertification, if required, is available. Other recommendations made in the study which the Special Rapporteur would wish to highlight are the following: develop policies that enhance migrant women's employment opportunities, access to safe housing, education, language training, health care and other services in the host country; and develop educational and communications programmes to inform migrant women of their rights and responsibilities under international and national laws, taking into consideration their cultural and linguistic backgrounds.

41. The Special Rapporteur has looked at various kinds of violence against migrant women, including gender-based violence, domestic and family violence, racist and xenophobic acts, sexual assault by employers, female genital mutilation and trafficking in women.¹¹ Ignorance of the language, the fact that they are cut off from their families and environment and in most cases are in a precarious financial situation, and, for those with irregular status, the fear of deportation, all serve to make women more vulnerable to ill-treatment.¹² In her study on the living, working and employment conditions of migrant women in domestic service, the Special Rapporteur reported that, as well as being subjected to abusive clauses in their contracts, changes in the terms of contracts, withholding of papers and enforced indebtedness at the hands of employment agencies, many of these women were also victims of ill-treatment and sexual violence on the part of their employers (see E/CN.4/2004/76).

42. The incidence of circumcision, or female genital mutilation, in host countries is on the rise, chiefly among immigrants from Africa and South-East Asia. The Special Rapporteur considers this a discriminatory, cruel and degrading practice, which violates the right to equal opportunities and to health. Every immigrant woman has the right to protection from harmful traditional practices and to control of her own reproduction. All these rights are enshrined in international law. The Special Rapporteur therefore supports States which pass laws to punish anyone perpetrating such acts against its nationals or immigrants resident on its territory, with extraterritorial effect to cover acts that are carried out or permitted abroad.¹³ States should protect adolescent girls within their territory, whether nationals or immigrants, from harmful traditional practices and facilitate the provision of information from a diversity of sources, and the establishment of centres offering counselling on the harmful effects of female genital mutilation.¹⁴

43. The Special Rapporteur has found that the information available to prospective women migrants is inadequate to protect against the risks of illegal migration, such as trafficking for the purposes of sexual exploitation, forced labour or services, slavery or slavery-like practices, servitude or the removal of organs.¹⁵ The Special Rapporteur has described how many women recruited by agencies end up as victims of labour exploitation, in some cases suffering slavery-like conditions or forced labour (see E/CN.4/2004/76).

44. With regard to trafficking in humans in the context of international migrations, the Special Rapporteur has identified a series of good practices aimed at safeguarding the human rights of victims and preventing them from being treated as criminals.¹⁶ Since the establishment of this special procedure, the international community has developed various instruments to prevent trafficking in persons. Most notably, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, has enabled many States to adopt specific legislation at the national level and encouraged greater intergovernmental cooperation in this area. The Special Rapporteur acknowledges the efforts made in this regard and recalls that the legal framework established to deal with this kind of crime can be supplemented by measures to safeguard victims' rights, such as the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights.¹⁷ Such measures may include providing trafficked persons with legal assistance, protection for witnesses, rehabilitation of victims, the option of rehabilitation or resettlement in the country of destination, and action to combat the root causes of trafficking in the countries of origin, in particular by strengthening women's economic role.

D. Unaccompanied minors

45. In her first report to the General Assembly, the Special Rapporteur drew attention to three situations in which States seem slow to take account of the best interests of unaccompanied minors: detention,¹⁸ repatriation procedures¹⁹ and family reunification (A/57/292, paras. 39-44).

46. 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, and the Special Rapporteur has continued to transmit allegations of violations of the human rights of unaccompanied minors. Of particular note during the reporting period were the cases transmitted to the Spanish Government concerning alleged summary deportations of unaccompanied minors by border guards at Melilla, and alleged ill-treatment of minors in reception centres there.²⁰

47. The Special Rapporteur has also been paying close attention to reports of growing numbers of undocumented Central American children, aged between 10 and 17, who are detained en route to the United States. In her communications, she has expressed her concern to the countries these children pass through with the help of illicit migrant traffickers. Some of them are sent by their parents to find work and send money home. During the period under review the Special Rapporteur transmitted to the Government of Costa Rica cases of unaccompanied minors travelling illegally to join their parents, with the help of migrant-smuggling rings (E/CN.4/2005/85/Add.1).

48. In the Special Rapporteur's view, unaccompanied minors are at great risk of violence, exploitation, child trafficking, discrimination and other abuses. They are also more vulnerable to sexual abuse and being coerced into begging, drug dealing or prostitution by criminals or criminal organizations (see E/CN.4/2005/85/Add.3).

E. Summary of working methods

49. At its fifty-fifth session, the Commission on Human Rights adopted resolution 1999/44, by which it decided to appoint, for a three-year period, a special rapporteur on the human rights of migrants. The mandate of this special public procedure is to examine ways and means to overcome obstacles to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are undocumented or in an irregular situation. The Commission established this special public mechanism at the recommendation of the Working Group of Intergovernmental Experts on the Human Rights of Migrants (E/CN.4/1999/80, paras. 123-124).

50. The Special Rapporteur has continued to apply the working methods described in her second report to the Commission (E/CN.4/2001/83, paras. 35-41; see also A/57/292, paras. 17-24). In response to frequent requests from government and non-government sources for information on her methods of work, the Special Rapporteur felt it was necessary to summarize them in this report.

51. The methods of work developed by the Special Rapporteur since the creation of this special public procedure are based on the mandate first established in Commission on Human Rights resolution 1999/44 and further developed in subsequent resolutions. The legal framework for the mandate was set forth in her third report to the Commission and has developed further since then (E/CN.4/2002/94, paras. 8-22; A/59/377, paras. 29-46).

52. In the Special Rapporteur's view, "migrant" is a generic term covering both emigrants and immigrants, where emigrant is understood to mean a person who leaves one State intending to move to another and settle there; while immigrant means a person who enters another State intending to reside there. This is why, in her work, the Special Rapporteur has also considered the situation of asylum-seekers and foreigners deprived of their liberty. The Special Rapporteur frequently receives allegations of violations of the human rights of asylum-seekers and refugees, and she will intervene in such cases provided the person concerned does not have refugee status. Where such reports refer to one or more people who have been granted refugee status under the Convention relating to the Status of Refugees, the Special Rapporteur will use her good offices to transmit the allegations to the Office of the United Nations High Commissioner for Refugees (UNHCR).

53. The Special Rapporteur refers in her work to the definitions given in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and 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.

54. The Special Rapporteur considers the situation of migrants with irregular administrative status to be a priority issue: she includes in this category 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.

55. The Special Rapporteur takes as a basis and standard reference for her work on this subject the Recommended Principles and Guidelines on Human Rights and Human Trafficking, which she has repeatedly invited States and intergovernmental organizations to apply in their efforts to combat trafficking and safeguard victims' rights. The aim of the Principles and Guidelines is to promote and facilitate the incorporation of a human rights perspective in anti-trafficking legislation, policies and measures at the national, regional and international levels.

56. In accordance with her mandate, 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 she has adopted the letters of allegation procedure and the urgent appeal procedure, in line with the suggestions and methods of work proposed in 1999 by the sixth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme.²¹

57. The Special Rapporteur transmits to the Governments concerned summaries of all credible allegations of violations of the human rights of migrants. In her communications she requests Governments to investigate the allegations and keep her informed. She also urges Governments to take all necessary measures to investigate, try and suitably punish anyone guilty of the alleged violations, whatever their rank or position; and to take effective preventive measures to ensure the full protection of the human rights in question and avoid any recurrence of such incidents.

58. Allegations of irreversible violations of the human rights of migrants are transmitted to States through a letter of allegation, in which the Special Rapporteur asks the State concerned, through its Permanent Representative to the United Nations Office at Geneva, to provide information on the facts of the case, the outcome of the investigation and the decisions taken in open judicial proceedings against the perpetrators. This procedure has also been used to seek information from Governments about their domestic legislation on foreigners, where there is a possibility that such legislation or its application is inconsistent with States' international human rights obligations.

59. The Special Rapporteur may on occasions deem it necessary to issue an urgent appeal where a gross violation of the human rights of one or more migrants is alleged to be imminent or actually taking place. The urgent appeal procedure is not in itself accusatory but essentially preventive in nature and intent. Urgent appeals are sent directly to Ministers for Foreign Affairs and contain a request from the Special Rapporteur for the Government in question to investigate the facts and take steps to safeguard the rights of the migrant affected in accordance with international human rights law.

60. After examining the reports received, the Special Rapporteur takes into account the considerations or admissibility criteria applied during that examination. Each taken individually could be a sufficient condition, but generally speaking several apply. These considerations are:

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

(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 previous reliability of the source of the information;

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

61. The introduction by States into immigration law of differential treatment for nationals and foreigners is not considered by the Special Rapporteur to be discriminatory to the extent that the differences are warranted on reasonable and objective grounds and have a legitimate purpose under the International Covenant on Civil and Political Rights (art. 2.1).

62. 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).

63. The Special Rapporteur also transmits to the Governments concerned any information she receives on attacks on, and/or intimidation of, members of NGOs or migrant associations involved in the promotion, protection and defence of the human rights of migrants.

64. Once the communications have been sent, the Governments concerned have the opportunity to reply with whatever comments they consider pertinent. The contents of the communications sent and the replies received from the Governments concerned are brought to the Commission's attention in the Special Rapporteur's annual reports. The Special Rapporteur also includes in her reports to the Commission comments on the situations described in the allegations transmitted and the replies received.

65. Under Commission resolution 1999/44, the Special Rapporteur is also required to formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur; promote the effective application of relevant international standards on the issue; recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants; take into account a gender perspective when requesting and analysing information; and give special attention to the occurrence of multiple discrimination and violence against women. Accordingly, she arranges visits and conducts research into specific topics relating to the human rights of migrants. She also exchanges information and participates actively in the consultative processes on migration

management, in order to promote, through these intergovernmental forums, the adoption of comprehensive policies on migration and legal instruments on foreigners in which the regulatory measures focus on individuals and individual rights.

66. The Special Rapporteur visits countries upon invitation, but also takes the initiative of approaching Governments herself, with a view to visiting countries about which she has received reports indicating a serious situation as regards migrant's rights. These official visits or missions provide an opportunity to investigate the subject of her mandate on the ground. Prior to a mission, the Special Rapporteur makes known the relevant dates and the people and places she intends to visit. Given the complex nature of migration, the schedule of visits usually includes meetings with central government authorities, regional and local authorities, officials from various ministries, the security forces, etc. In addition, through meetings with civil society, the Special Rapporteur is able to take account in her reports of the input and views of migrants themselves, immigrant associations, humanitarian and human rights NGOs specializing in migration, trade unions, bar associations, etc. She also holds consultations with representatives of international organizations with a presence in the country.

67. Each mission gives rise to a report, which is published as an addendum to the annual report to the Commission. These reports give an account of the issues addressed at the meetings held with the authorities and civil society, and of observations made in the places visited. If necessary, the Special Rapporteur calls a press conference at the end of the visit. After the visits, the Special Rapporteur draws the attention of the Governments concerned to the comments and recommendations made in the reports and requests information on the attention given to them, any measures taken to implement them and any factors that might have impeded such implementation.

68. The Special Rapporteur's programme of visits makes for better protection of the human rights of migrants and for full implementation of all aspects of her mandate, in addition to establishing a dialogue aimed at reviewing migration policies where these are not in line with international human rights obligations. The Special Rapporteur provides information to the Commission on these visits in her annual report and transmits to the Governments concerned the rejoinders received from civil society to the notes verbales on the reports of her visits submitted by those Governments to the Commission.

69. The Special Rapporteur has continued the practice of cooperating with other Commission mandate-holders in order to avoid duplication of work, by transmitting joint communications to Governments and in the planning of her missions. She maintains contact and, where necessary, holds consultations, with other human rights bodies and mechanisms of the United Nations system such as the other special public procedures and the human rights treaty-monitoring bodies. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, decided at its first session to hold regular meetings with the Special Rapporteur to allow an exchange of views on specific topics and to coordinate their work. The Committee agreed to work with the Special Rapporteur in promoting ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (A/59/48, para. 12).

70. Governments, intergovernmental organizations, NGOs, alleged victims of human rights violations, victims' families, and witnesses, are a source of information vital to the Special Rapporteur's work. The Special Rapporteur also maintains regular contact with various international organizations and NGOs over allegations received, preparations for her visits and arrangements for consultations. The topics discussed may at times be highly sensitive, and the Special Rapporteur adheres strictly to the principles of discretion, transparency and impartiality in her work.

71. One of the Special Rapporteur's priorities since her appointment has been to promote ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides a suitable legal framework for the adoption of policies on migration management that respect migrants' human rights and fundamental freedoms. The Special Rapporteur participates in the work of the Steering Committee for the global campaign on the human rights of migrants and supports national campaigns organized by civil society in various countries to urge Governments to ratify the Convention.

72. The Special Rapporteur believes there needs to be a greater exchange of information about efforts by Governments, international organizations and NGOs to ensure respect for the human rights of migrants during the migration process. She therefore includes in her reports information on government and civil society initiatives and projects which promote the recognition of, and respect for, migrants' rights.

73. The Special Rapporteur submits an annual report to the Commission on her work during the period under consideration. Some of her reports contain case studies. The Special Rapporteur provides information to the Commission on her contacts with Governments, her meetings and her missions. Reports on visits are contained in addenda to the main report, as are the summaries of the communications transmitted to Governments during the reporting period. Since 2002, she has also been required to submit an annual report to the General Assembly.

III. FINAL COMMENTS AND RECOMMENDATIONS

74. **The complex phenomenon of international migration obeys a simple principle: migratory flows originate in socio-economic inequality and unequal human rights, and are swelled by the attraction of more developed countries, which offer well-being, opportunities and democratic freedoms. The Special Rapporteur holds that legal migration flows should be managed since they allow the human rights of migrants to be protected effectively.**

75. **The Special Rapporteur has strenuously promoted the idea that the only way to halt the continuing deterioration in immigrants' situation, particularly that of illegal immigrants, is to recognize the human rights of this group and apply the principle of non-discrimination. She also believes that the expulsion, deportation or repatriation of illegal migrants should be carried out with respect and dignity.**

76. Judging from the allegations of human rights violations received, by far the most frequent abuses against this group are discriminatory, xenophobic and racist practices that occur during the administrative detention of undocumented migrants and through various ways that migrant workers are exploited. In the course of her work, the Special Rapporteur has observed that women migrants are at greater risk than men of discrimination and abuse. Women migrants suffer double discrimination, as women and as foreigners, compounded in some cases by their illegal status. A better understanding of the problems of women and international migration requires improvements in the collection, dissemination and analysis of the kind of data that can explain the causes and consequences of those problems and thus provide a firm basis for appropriate policies and programmes.

77. The Special Rapporteur wishes to draw the Commission's attention to the joint statement by participants at the eleventh annual meeting of the special rapporteurs/representatives, independent experts and chairpersons of the working groups of the special procedures of the Commission on Human Rights and of the advisory services programme,²² expressing "their strong concern regarding the continued deterioration in the situation and the denial of human rights of migrants. We recognize the sovereign right of States to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay. Such actions by States must, however, be consistent with their obligations under international humanitarian law and human rights law. In this regard, we wish in particular to express our concern about the current attempts to institutionalize discrimination against and exclusion of migrants as well as the increasing tendency to restrict the human rights of migrants, including the treatment that migrants, especially women and unaccompanied minors, deemed to be irregular receive" (E/CN.4/2005/5, annex I, Section C).

78. The Special Rapporteur considers that abuses and violations of the human rights of migrants will cease to go unpunished only when States are held jointly responsible and those responsible are punished. She therefore urges the Commission on Human Rights to continue its work on the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law" (E/CN.4/2000/62, annex) and the General Assembly to do likewise with regard to the codification of the draft articles on responsibility of States for internationally wrongful acts General Assembly (resolution 56/83 of 12 December 2001) submitted by the International Law Commission.

79. The Special Rapporteur also asks Member States to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the United Nations Convention against Transnational Organized Crime and its protocols, and supplementing them with measures to safeguard the human rights of victims.

80. This report and the corresponding addenda describe legislation on foreigners and immigration that fails to meet modern-day needs and in practice increasingly impairs migrants' rights, even at times creating legally untenable situations.

81. The Special Rapporteur is encouraged to see so many consultative processes on migration management and recognizes the efforts being made as part of the various intergovernmental initiatives. She notes that this work is being carried out in an atmosphere of trust fostered by its informal and non-binding nature, and hopes it will give rise to new forms of management based on common positions. She urges States to encourage NGOs specializing in migration, together with other interested civil society entities, to attend these forums.
82. The Special Rapporteur is confident that the General Assembly's high-level dialogue on international migration and development, scheduled for 2006, will provide a fresh opportunity to consider strategies and mechanisms for addressing the myriad aspects of migration. It will have to be borne in mind that the gap separating recognition of migrants' rights in international human rights law from reality is one of the biggest challenges thrown up by international migration. The dialogue should stimulate cooperation on migration between the various agencies of the United Nations system and play a role in "formulating and promoting mutually acceptable principles for a multilateral framework for managing migration".²³
83. From what the Special Rapporteur has seen throughout her work in the field, the United Nations Development Programme (UNDP) needs to be aware of the migration-development nexus and promote local-level programmes in the countries where migration begins.
84. In the Special Rapporteur's view, the Office of the United Nations High Commissioner for Human Rights should participate more actively in migration- management forums and help to run specific programmes on the human rights of migrants in the framework of "Action 2".
85. The Special Rapporteur recognizes the work being done by immigrant associations, NGOs, churches, trade unions and bar associations, and encourages them to continue with their work of informing, advising, protecting and reporting. She wishes to remind representatives of these organizations that their work is of vital importance for the proper functioning of human rights protection mechanisms such as the new Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Notes

¹ The Special Rapporteur's report to the General Assembly contains her thoughts on the exploration of new forms of migration management by these intergovernmental forums.

² See Commission on Human Rights resolution 1997/15, of 3 April 1997. See also E/CN.4/2000/82, para. 22.

³ Commission on Human Rights resolution 1999/44, of 27 April 1999.

⁴ General Assembly resolution 55/2, of 8 September 2000, para. 25.

⁵ Held in Durban, South Africa, from 31 August to 8 September 2001 (A/CONF.189/12, chap. I).

⁶ In its annual report on racism and xenophobia, the European Monitoring Centre for Racism and Xenophobia reckons in their thousands the number of incidents of racially-motivated attacks and violence during 2003 in EU member States. See *Racism and Xenophobia in the EU Member States: trends, developments and good practice*, EUMC, Annual Report 2003/2004, Part 2, pp. 48-67. The report may be consulted at <http://eumc.eu.int/eumc/material/pub/ar03/AR0304p2-EN.pdf>.

⁷ See the statistical data provided in E/CN.4/2005/85/Add.1.

⁸ For the integration system applied in the Netherlands, see Advisory Committee on Aliens Affairs, “Van Contourennota naar Inburgeringswet. Juridische Mogelijkheden tot een meer verplichtend inburgeringsstelsel” (“Advice on a revision of the Dutch integration structure”). This document may be consulted at www.acvz.com.

⁹ Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II.

¹⁰ The General Assembly, in its resolutions 54/210, of 22 December 1999, and 58/206, of 23 December 2003, requested the Secretary-General to update the World Survey on the Role of Women in Development for consideration at its fifty-ninth session. The survey focuses on selected emerging development issues that have an impact on the role of women in the economy at the national, regional and international levels.

¹¹ E/CN.4/2005/85/Add.1 contains statistics on communications concerning women transmitted by the Special Rapporteur since 1999.

¹² See E/CN.4/2004/76/Add.2, para. 74, on the Special Rapporteur’s visit to Spain.

¹³ See E/CN.4/2005/85/Add.3, on the Special Rapporteur’s visit to Italy.

¹⁴ In this connection, see Committee on the Rights of the Child, general comment No. 4 (2003), on Adolescent health and development in the context of the Convention on the Rights of the Child (CRC/GC/2003/4). Under article 24, paragraph 3, of the Convention, “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

¹⁵ See the chapter on Kosovo in E/CN.4/2005/85/Add.1; and Adds. 3 and 4 to this report, on the visits to Italy and Peru, respectively.

¹⁶ See, for example, A/58/275, section IV, “Good practices observed by the Special Rapporteur: Prevention of irregular migration and combating trafficking” (paras. 53-59). See also E/CN.4/2005/85/Add.3, on the Special Rapporteur’s visit to Italy.

¹⁷ See the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council at its substantive session of 2002 (E/2002/68/Add.1).

¹⁸ See E/CN.4/2005/85/Add.1, sections on Australia and Spain. See also cases in E/CN.4/2004/76/Add.1, paras. 97-103 (Greece); E/CN.4/2002/94, paras. 62 (United States) and 67 (Islamic Republic of Iran).

¹⁹ See E/CN.4/2005/85/Add.1, section on Spain.

²⁰ Ibid.

²¹ See Manual for special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme. See also E/CN.4/2000/5.

²² Held in Geneva from 21 to 25 June 2004.

²³ Conclusions of the Human Movements and Immigration (HMI) World Congress (Barcelona, 2-5 September 2004). The text of the conclusions may be consulted at: http://www.barcelona2004.org/esp/banco_del_conocimiento/docs/CO_44_EN.pdf.
