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SPECIFIC GROUPS AND INDIVIDUALS

MIGRANT WORKERS

**Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted
pursuant to Commission on Human Rights resolution 2003/46**

Executive summary

The present report is submitted in accordance with Commission on Human Rights resolution 2003/46. During the period under review the Special Rapporteur continued to receive information on the human rights of migrants and to exchange communications with Governments. A summary of the communications sent and responses received is contained in annex 1 to this report. The Special Rapporteur visited Spain and Morocco. Reports on those visits are contained in annexes 3 and 4 respectively.

A summary of all the meetings and events attended by the Special Rapporteur since January 2003 is contained in her report to the General Assembly (A/58/275). During the period not covered by that report, the Special Rapporteur participated in other such activities.

On 6 June 2003, the Special Rapporteur requested information on the situation of migrants employed in domestic service (hereinafter “migrant domestic workers”, the term including persons of both sexes) by means of a questionnaire distributed to all the permanent missions in Geneva, non-governmental organizations (NGOs), United Nations and other pertinent agencies and programmes and international experts in this area of work.

The Special Rapporteur has observed that in developed countries migrant domestic workers are becoming indispensable to enable women to advance in employment and in society. The work of migrant domestic workers in caring for the elderly has taken on particular importance as a result of the ageing of the population in many developed countries.

Given growing demand for household help in developed countries, there has been a rise in the number of initiatives and agreements to facilitate female migration for domestic employment, and in spontaneous migration by women. The nature and scope of public and private initiatives to facilitate the migration and recruitment of female domestic workers vary from one country to another, depending on labour agreements and legislation on migration. The Special Rapporteur observes, however, that, by and large, such initiatives cannot guarantee decent conditions of employment and respect for the fundamental rights of female migrant domestic workers.

The Special Rapporteur observes that a number of factors make migrant domestic workers an extremely vulnerable category. Host country legislation and recruitment methods often leave such workers heavily dependent on the employer, particularly when legal residence in the country depends on the work contract. Debts in their countries of origin put heavy pressure on migrant domestic workers, who generally prefer not to report abuses for fear of being dismissed and repatriated. The practice of withholding migrant domestic workers' papers contributes to their dependency and helplessness in the face of abuse and violations. The absence of work contracts and the fact that in many countries domestic employment is not recognized in labour legislation allows employers to impose working conditions unilaterally. Migrant domestic workers' vulnerability is frequently exacerbated by the fact that their immigrant status is not legal.

The lack of watchdog mechanisms, and inadequate monitoring by the Government in the country of destination, the recruiting agencies and even consulates, mean that migrant domestic workers are cut off and abuses remain unseen. Consequently, many migrants' rights are violated and they end up working in abusive or even inhuman and degrading conditions, without protection or the possibility of obtaining an effective remedy.

With particular reference to the information received and reflected in the report, the Special Rapporteur makes a series of recommendations to the States of origin and destination of large-scale flows of migrant domestic workers on steps to ensure the protection of those workers' rights and eliminate the factors which make them vulnerable at all phases of migration, from recruitment to their return home.

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Introduction

1. This report is submitted in accordance with Commission on Human Rights resolution 2003/46.
2. Section I describes the activities carried out by the Special Rapporteur since her last report to the Commission (E/CN.4/2003/85 and Add.1 to 4). Section II is devoted to an analysis of the situation of migrant domestic workers. Section III contains the concluding observations of the Special Rapporteur, and section IV, her recommendations.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

3. The Special Rapporteur has continued to receive information on the human rights of migrants and to exchange communications with Governments in this regard. She receives information from Governments, non-governmental organizations (NGOs), individuals, and other elements of civil society. She has continued to bring information on human rights of migrants to the attention of Governments. A considerable number of communications have been sent jointly with other thematic special procedures of the Commission. A summary of the communications sent to Governments and the responses received during the period under review is contained in document E/CN.4/2004/78/Add.1.

4. The Special Rapporteur seeks to establish cooperative dialogue with Governments, regional and international organizations and civil society on legislation, practices and situations affecting the human rights of migrants. Information received and considered complete according to pre-established criteria is brought to Governments' attention in a genuine spirit of cooperation. In this connection, the Special Rapporteur would like to thank all the Governments that have responded to her communications.

5. In its resolution 2003/43, the Commission requested the Special Rapporteur to continue her programme of visits, which contributed to improving the protection afforded to the human rights of migrants and to the broad implementation of all the aspects of her mandate. During the period under consideration, the Special Rapporteur visited Spain and Morocco. In February 2004 she will visit the Islamic Republic of Iran. The reports on the first two visits can be found in annexes 2 and 3, respectively, to this report. The Special Rapporteur has also received invitations to visit the following countries in 2004: Belgium, Burkina Faso, Côte d'Ivoire, Italy and Peru.

6. The Special Rapporteur's report to the General Assembly (A/58/275) contains a summary of all the meetings and activities in which she participated between November 2002 and July 2003. During the period not covered by the report, the Special Rapporteur took part in a regional consultation organized by CARAM Asia (Coordination of Action Research on AIDS and Mobility in Asia), in cooperation with other Asian NGOs, which took place in Kuala Lumpur from 30 September to 2 October 2003. The objective of the consultation was to develop closer collaboration with the mandate of the Special Rapporteur in order to promote and protect the human rights of migrants in the region. In August 2003 a round of consultations with El Salvador, Nicaragua, Honduras, Guatemala and Costa Rica took place with the participation of government authorities, NGOs, churches, ombudsmen, consulates, academics and

representatives of multilateral organizations. The Special Rapporteur was able to take stock of the bodies which coordinate migration in each of these countries, existing legislation, and human rights problems and achievements. The Central American consultations focused on preventing illicit trafficking in persons and migrants.

7. From 9 to 13 November 2003, the Special Rapporteur travelled to New York to present her report to the Third Committee of the General Assembly and hold consultations with Member States, the International Organization for Migration (OIM), the United Nations Development Fund for Women (UNIFEM) and non-governmental organizations. From 17 to 22 November 2003, the Special Rapporteur took part in the Fifth World Congress for the Pastoral Care of Migrants and Refugees. During the Congress, she spoke about the current migration situation around the world, stressing the challenges for the protection of the human rights of migrants as organized crime becomes global and transnational. From 23 to 25 November 2003, the Special Rapporteur attended the Lisbon Forum on "Migrations and Human Rights: North-South Dialogue", organized by the North-South Centre of the Council of Europe. There she laid stress on the current situation of the sub-Saharan population in the countries of Europe and North Africa.

II. THE HUMAN RIGHTS OF MIGRANT DOMESTIC WORKERS

8. On 6 June 2003, the Special Rapporteur requested information on the situation of migrants employed as domestic workers (hereinafter migrant domestic workers, the term including persons of both sexes) by means of a questionnaire distributed to all permanent missions to the United Nations in Geneva, NGOs, United Nations and other pertinent agencies and programmes, and international experts in this area of work.

9. The questionnaire comprised 10 questions addressed both to migrants' countries of origin and to receiving countries. The questions were grouped in three main areas: registration of migrant domestic workers, both nationals and those working abroad as immigrants; legislation concerning domestic work; and legislative, administrative and political measures for the protection of these workers. The Special Rapporteur wishes to thank all Governments, organizations, experts and private individuals who sent written replies to the questionnaire.¹

10. The following paragraphs discuss the situation of migrant domestic workers in the context of State legislation and practices and in the light of international human rights standards, with a view to recommendations for more efficient protection of their rights. The discussion is based on information given in replies to the questionnaire, information received from various sources, and practices personally observed by the Special Rapporteur.

A. Definition and scope

11. The Special Rapporteur considers it crucial to be clear that domestic work has become an activity necessary to the development process. Many men and women employed as domestic workers in a decent and healthy environment where their rights are respected feel satisfied with the work they do. The Special Rapporteur warns against viewing domestic service as a source of abuse; it is lawful employment which should bring with it appropriate legal protection. In compliance with her mandate, she has focused in this report on describing the innumerable

abuses and violations experienced by migrants performing domestic work. She has also considered it fitting, on the basis of her experience and the information received, to focus principally on the situation of female domestic workers.

12. “Domestic worker” (also “household worker” or “domestic help”) means a person employed part-time or full-time in a household or private residence, in any of the following duties: cook, servant, waiter or waitress, butler, nurse, childminder, carer for elderly or disabled persons, personal servant, barman or barmaid, chauffeur, porter, gardener, washerman or washerwoman, guard.

13. According to the ILO definition,² the work of domestic staff includes: sweeping or vacuuming; cleaning or washing and waxing floors, doors, windows, furniture and various objects; washing, ironing and mending bed and table linen and other household linen for personal use; washing dishes; preparing, cooking and serving meals and drinks; buying food and various articles for domestic use; performing related tasks; supervising other workers. The majority of migrant domestic workers live in their employer’s house and only a minority work independently in more than one household. This report is devoted to analysing the situation of migrant domestic workers living in their employer’s house, because of their particular vulnerability and the increasing number of female migrants in this situation.

14. The Special Rapporteur observes that there is an increasingly pronounced need for domestic help in developed countries owing to demographic and social factors. Native citizens often refuse to do this type of work. In some wealthy countries the demand for migrant domestic workers has grown considerably in recent years, in proportion to economic development.³ During her visits to Spain and Canada, the Special Rapporteur observed that such workers were present in large numbers, and were in increasing demand. Similarly, in her visits to Ecuador, Mexico, the Philippines and Morocco, she received information about the growing numbers of women who emigrate to Europe, the United States, Japan, the Gulf States, Jordan, Lebanon, Chile, Costa Rica and other countries to work as domestic servants. The profiles of these workers are very different; many have husbands and children, while others are very young and see this type of work as the only decent employment option. Some are highly educated, others have a basic education, others still are illiterate. Common to all is the desire and hope to find a decent means of improving their own and their families’ living conditions.

15. The Special Rapporteur notes that one of the principal obstacles to detailed analysis and more effective protection of the rights of migrant domestic workers is the difficulty of quantifying the phenomenon. The under-registration of such workers is due to various factors. The first and most obvious is the illegal immigrant status of many migrant domestic workers. Furthermore, many of the countries of origin of major migratory flows do not keep a register of their nationals employed abroad as domestic workers,⁴ while in the countries of destination the law does not always require people applying for work permits to specify the occupation or economic activity in which they will be employed.⁵ Even in labour agreements domestic workers are sometimes simply included in the category of “temporary workers”. For temporary jobs in some specific occupations, such as domestic work, the legislation of some countries does not require a work permit. All these factors make it difficult to quantify the numbers of foreigners working in the sector.

16. According to the information received by the Special Rapporteur, migrant domestic workers are vulnerable to abuses and violations of their rights.⁶ The Special Rapporteur discusses their situation below in the light of international human rights obligations and the factors that contribute to their vulnerability.

B. The human rights of migrant domestic workers in the light of the principal international human rights instruments

17. The starting point should be the reminder that all individuals enjoy fundamental human rights because they are human beings. The Universal Declaration of Human Rights acknowledges this principle in its article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, *national* or social *origin*, property, birth or other status (author's italics).

18. The same principle is acknowledged in article 2.1 of the International Covenant on Civil and Political Rights. The Human Rights Committee in its general comment No. 15 specifies that the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.

19. Article 4 of the Covenant acknowledges as rights from which no derogation may be made and that States must guarantee to all persons under their jurisdiction, even in time of public emergency: the right to life; the right to humane treatment; freedom from slavery; the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation; the right not to be sentenced for any act or omission which, at the time when it was committed, was not criminal according to national or international law; the right of every human being to recognition as a person before the law; and the right to freedom of thought, conscience and religion. It can accordingly be asserted that migrant domestic workers enjoy these rights irrespective of their migratory situation.⁷

20. In addition to the rights mentioned above from which no derogation may be made, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Declaration on Fundamental Principles and Rights at Work recognize other rights of particular relevance to the situation of migrant domestic workers. Particular examples of these are: the principle of equality before the law, the prohibition on arbitrary interference with privacy, family, home or correspondence, freedom of movement, and freedom of association or trade union freedom. According to the ILO Declaration, the members of the Organization have committed themselves to the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.

21. The International Covenant on Economic, Social and Cultural Rights stipulates in article 2.1 that "The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, *national* or social *origin*, property, birth or other status" (author's italics). Article 2.3, however, stipulates that "Developing countries, with due regard to human rights and their national economy, may

determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.” It must be stressed that this exception may be invoked only by developing countries and only in respect of economic rights.

22. Some rights established in the Covenant that are contained in the Universal Declaration of Human Rights and reiterated in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter “the Convention”), are particularly relevant to the situation of migrant domestic workers. They include: the right of everyone to the enjoyment of just and favourable conditions of work which ensure remuneration which provides as a minimum fair wages and equal remuneration for work of equal value without distinction of any kind; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The right of everyone to form trade unions and join the trade union of his choice and the right to social security, including social insurance, is also recognized. The Covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Of great relevance to the situation of migrant domestic workers is the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.

23. Although to date the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been ratified by only 24 States, the Special Rapporteur considers that it is important for the situation of migrant domestic workers because it incorporates a minimum standard of rights for all migrant workers and their families. For example, the Convention explicitly recognizes that migrants may not be deprived of their fundamental labour rights by reason of any irregularity in their stay or employment. The Convention also provides that it is unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. A very pertinent aspect is the provision that workers in a regular situation shall have the right to be informed, before their departure or at the time of their admission by the State of origin or the State of employment of all conditions applicable to their admission and stay. States must also make every effort to authorize migrant workers to be temporarily absent without effect upon their authorization to stay or to work.

24. Some ILO Conventions⁸ deal with specific issues very relevant to the situation of migrant domestic workers. ILO Convention No. 143 of 1975 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers provides that a migrant who has resided legally in the territory for the purpose of employment shall not be regarded as in an irregular situation by the mere fact of the loss of his employment. The Convention lays down that in case of disputes the migrant shall have the possibility of defending his rights before a competent body. ILO Convention No. 97 of 1949 concerning Migration for Employment (Revised) establishes the obligation to take all appropriate steps against misleading propaganda relating to emigration and immigration. It also establishes the obligation of each member to apply to immigrants lawfully within its territory treatment no less favourable than that which it applies to its own nationals in respect of: remuneration, membership of trade unions, accommodation, social security, taxes and legal proceedings relating to the matters referred to in the Convention. Annexes I and II of the Convention govern the recruitment of workers by private and public bodies and establish the State’s obligation to

oversee the activities of the recruiting bodies. They also establish the obligation to require a written contract between the employer and the migrant worker. The ILO Conventions, however, do not cover the situation of temporary migrants, in which category several countries place migrant domestic workers.

C. Current situation and practices observed

25. The Special Rapporteur has received information on cases of migrant domestic workers who have died or disappeared. These workers are frequently the victims of physical or psychological violence on the part of employers, other family members or the staff of the recruiting agency. Cases of women who have been hit and beaten have been brought to the Special Rapporteur's attention.

26. It frequently happens that migrant domestic workers arriving in the country of destination do not know the language and encounter serious difficulties in communicating with their employers. Sometimes their inability to communicate is taken by their employers as a sign of incompetence and contributes to the arousal of tensions and conflicts. Migrant domestic workers are frequently the victims of racism and xenophobia and of verbal abuse by all members of the family, including the children, who call them insulting names. Psychologically, this has serious consequences for migrant domestic workers.

27. Many female migrant domestic workers end up being sexually abused by the employer, his children or family members, or by other domestic workers living in the same house.⁹ Many are obliged to remain in the rapist's house and are repeatedly sexually violated. Some women have said that they did not dare to speak of the violence even to the rapist's wife or mother for fear of not being believed or in case they might be angry with them. There are also reports of large numbers of suicides among female migrant domestic workers, who frequently suffer from depression.

28. Migrant domestic workers' right to privacy is often violated; their correspondence is opened, their telephone calls are monitored, their rooms are searched. The invasion of their privacy is a form of harassment that violates their dignity and strengthens the perception of inferiority and lack of respect. All these abuses strengthen the dominant/submissive relationship between employer and the migrant domestic worker.

29. The Special Rapporteur has received information about cases where employers have manufactured evidence against female migrant domestic workers, accusing them of theft and other crimes merely so as not to have to pay for their travel home at the end of their contracts. When these women are charged, they are very often not assisted by lawyers or interpreters during the trial and it is very difficult for them to be able to defend themselves, particularly if they have no support from their consulates.¹⁰ The Special Rapporteur has observed many instances in which the consulate offered no assistance to its nationals or collaboration with the migration authorities.

30. Many of these women are living outside their own country for the first time and suffer from strong cultural shock in that they are not familiar with the traditions and culture of the country of destination. Customs are very different and they have great difficulty in adapting to them. The Special Rapporteur has received information about cases of migrant domestic workers who were forbidden to practise their religion.

31. The Special Rapporteur has been informed that in many cases female migrant domestic workers work up to 19 hours per day and must be available round-the-clock, which in practice is tantamount to slavery. Many have to accompany their employer at all times and sometimes end up working for the employer's friends or family for no extra wage. The Special Rapporteur has also been informed of cases of migrant domestic workers who have no days of rest. One of the most frequently reported violations of labour rights concerns the withholding of wages. Since the wages of female migrant domestic workers are basically low, below the minimum established by law, they are forced to work for long periods merely to pay off the debts they incurred on leaving their countries of origin. There are also many cases of unjustified dismissal, lack of paid holidays and rest time or of being forbidden to or prevented from joining a trade union.

32. The Special Rapporteur has received information about cases where employers forbid their migrant domestic workers to see a doctor when they are ill, or require them to work. She has also received information about cases involving accidents with chemical cleaning products and household appliances. Sometimes they are tested, without being informed, to check that they have no contagious diseases such as HIV and are subsequently dismissed.

33. Not all the female migrant domestic workers living in their employer's house have suitable accommodation. Some have their own rooms, but others are forced to share a room with the children, the elderly persons they care for, or with other domestic workers, and sometimes they are forced to sleep in the kitchen or bathroom. Sometimes, to punish them, they are denied food. In other cases, they are forced to eat the leftovers from the meal of their employer and his family.

34. Employers frequently take away the identity and travel documents of migrant domestic workers on arrival.¹¹ The lack of documents is one of the major concerns of the Special Rapporteur, since it places migrant domestic workers in a situation of complete dependence and hampers their movements, including their return to their country of origin without the employer's consent.¹² The Special Rapporteur has received information about cases of women unable to leave the house, because in some countries failure to carry identity documents in the street is illegal. In some countries it is also impossible to obtain medical attention without documents.¹³ Such circumstances sometimes turn domestic work into a form of slavery. The Working Group on Contemporary Forms of Slavery of the Sub-Commission on the Promotion and Protection of Human Rights urges States "to take the necessary measures to prohibit and punish those who confiscate passports belonging to migrant workers, in particular migrant domestic workers".¹⁴

35. The Special Rapporteur has received information about many cases of migrant domestic workers who suffer from depression and loneliness. Sometimes they are not allowed to telephone their families and are not allowed to go out to use a public telephone. When they have no right to holidays they spend long periods without seeing their children and their families.

Sometimes they are given a visa that is only valid for a single entry and, although they have holidays, they cannot return to their countries. Added to this is the fact that they sometimes receive bad news about family members' health or problems with their children.

D. Factors contributing to the vulnerability of migrant domestic workers

1. Recruitment

36. The Special Rapporteur observes that some countries issue residence and work permits to migrant domestic workers only when they are sponsored by a private individual or recruitment agency. Several countries have special visas for migrant domestic workers who work for diplomatic or consular personnel, for the staff of international organizations, for nationals who work abroad and return to the country of destination for a specific period, and for nationals.¹⁵ When migrant domestic workers emigrate through the sponsorship system or with a special visa, the legality of their stay in the country depends on the employment relationship with the sponsor. Sometimes, the sponsor's name may even be put on the migrant domestic worker's visa. In some countries, if the employer-employee relationship is broken off, migrant domestic workers automatically lose their residence permit¹⁶ and may be deported, even if the break was the result of abuse on the part of the sponsor. Sponsoring employers are also responsible for renewing residence and work permits. Sometimes, if the sponsor does not take the necessary steps, migrant domestic workers find themselves in an irregular situation which renders them even more vulnerable and dependent.

37. The Special Rapporteur is concerned by the fact that, whatever the method of recruitment, before their departure migrant domestic workers must pay some of the related expenses. These may include the outward journey, exit taxes, the agency's fee, and others. For many migrant domestic workers this means getting into debt with family members, friends and acquaintances, or mortgaging or selling their property. The existence of debts in the country of origin puts heavy pressure on the worker, who cannot return until sufficient money has been saved to pay them off. In order to avoid indebtedness, State banks and financial institutes in some countries such as Sri Lanka, Peru and Ecuador have begun to provide credit to migrant domestic workers.

38. Sometimes the employer may decide to meet the expenses by withholding a wage or wages. Sometimes employers are obliged to incur expenses in the country of destination, for example, in order to obtain the residence and work permit. The Special Rapporteur has received information that employers who have paid all the recruitment expenses see the worker as an economic investment and, to prevent her from escaping, restrict her freedom of movement by not allowing her to leave the house alone or by shutting her up in the house. This situation is even more common when employers have to pay repatriation costs or the relevant fines if a migrant domestic worker should wish or need to leave his job.

39. Some States monitor the work of private recruitment agencies by means of a licensing system. In order to obtain and renew licences, agencies must comply with minimum requirements and observe specific standards in terms of guarantees. The Special Rapporteur has, however, received information about many agencies operating illegally, or licenced agencies that commit various types of abuses against migrants, such as demanding recruitment expenses although prohibited by law, collecting expenses already met by the employer and collecting

exorbitant fees despite the limits and restrictions established by law. She has also received information about agencies which have continued to operate after being fined for illegal recruiting, and many cases of State officials being bribed by illegal recruitment agents.

40. In order to prevent their citizens' rights being violated, some countries of origin have taken drastic measures, such as prohibiting the recruitment of female nationals for domestic service or establishing a minimum age for domestic service abroad.¹⁷ In others cases, so as to protect the rights of their nationals, governments such as that of the Philippines have negotiated and signed bilateral agreements or memoranda of understanding with countries of destination, and have established mechanisms and programmes to ensure that migrant domestic workers migrate in proper conditions and are aware of their rights and of complaint and protection mechanisms.

2. Illegal recruitment, trafficking, servitude and forced labour

41. The concepts of illegal recruitment, trafficking, servitude and forced labour refer to specific situations in which migrant women become involved in illegal immigration. Many women selected by so-called recruitment agencies end up being the victims of trafficking and, consequently, of servitude or forced labour. Such agencies should be subject to greater supervision both by countries of origin and of destination so that the selection of workers is carried out properly and in accordance with the law.

42. For a variety of reasons, migrant women who migrate as domestic workers run a high risk of being the victims of trafficking. Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, defines trafficking in persons as "the transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

43. The Special Rapporteur considers it important to understand that sex work and trafficking do not always go hand-in-hand. As indicated in the definition given in the Protocol, "trafficking" does not imply only sex work, but can also cover forced or enslaving labour that is not the prostitution of others. Besides, it must be understood that sex work may be a voluntary choice of employment.

44. The Special Rapporteur has received reports that, in many cases, women are trafficked for prostitution purposes under the false pretence of transporting them for other jobs, above all for domestic work. She has been informed that, at times, the agencies select their targets by offering working conditions that subsequently change, or do not provide the migrants with accurate information about the jobs they will be doing in the country of employment. Many migrant women who end up being employed as domestic workers left their countries with the promise of a different job that matched their qualifications, while others who emigrated to work as domestic workers end up being exploited in other forms of forced labour. Very often, the

migrants are not familiar with the migration procedures and requirements imposed by the country of destination and rely on the agencies or private agents who transport them illegally without any real knowledge of their situation and conditions. The illegal nature of the operation further increases the migrant domestic worker's dependency and vulnerability.

45. The Special Rapporteur has become aware that some legislation allows for migrant domestic workers to be transferred from one sponsor to another on payment of a sum of money. Under these laws there have been cases where agencies or private agents, in agreement with fictitious sponsors, have "imported" a number of women and found them jobs upon their arrival according to demand. Many of the women were unaware that they would not be working for their initial sponsors and ended up doing totally different jobs from those agreed upon, sometimes in conditions of forced labour or exploitation.

46. The Special Rapporteur has been informed that the criminal legislation in many countries covers the crime of trafficking in human beings. However, the definition of trafficking is often interpreted restrictively and is considered as being confined to the trafficking of persons for sexual exploitation. Such an interpretation is wrong and excludes other equally important and serious forms of trafficking in human beings. The Special Rapporteur considers it important that all who are directly involved with the victims of trafficking, such as the police and immigration officers, should be clearly aware of relevant national and international legislation.

47. Migrant domestic workers who end up being trafficked are not only bereft of protection but are often treated as criminals. As mentioned above, the legislation in some countries provides for migrant domestic workers to be sent home if the employment relationship with their employers comes to an end, even if it is because of the exploitation, even slavery, in which they have been kept. In other cases migrant workers are punished for being in the country illegally, even when it is the result of deception and exploitation.

48. Legislation in many countries prohibits slavery, servitude and forced labour, abduction and deprivation of liberty. Many migrant domestic workers work in servitude or semi-slavery, given that they are exploited economically by, are totally dependent on and cannot find a way out of the working relationship.

49. According to the definition contained in ILO Convention No. 29 concerning Forced or Compulsory Labour (1930), two elements characterize forced labour: the menace of penalties or adverse consequences, and the involuntary nature of the labour. Many migrant domestic workers work under the explicit or psychological threat of deportation or violence. The exploitative working conditions and psychological violence, the control and domination of migrant domestic workers by their employers, and restrictions on their freedom of movement increase the workers' sense of isolation and powerlessness to such an extent that they are often afraid to leave their jobs. As already mentioned, many women are deceived and are unaware of the type and terms of their employment. Owing to the very nature of the violation, and, in the absence of watchdog mechanisms, it is very difficult for migrant domestic workers to report the abuses they suffer.

50. To prevent illegal migration and the risk of trafficking, some countries of destination, including Germany, Switzerland and Mexico, conduct awareness-raising campaigns through their diplomatic and consular offices in the countries of origin and cooperate with local NGOs so as to provide information about legal channels of migration and employment. Some countries of

origin and of destination, have taken steps to prevent illegal recruitment and abuses by recruitment agencies. Some countries, such as Pakistan, have a system for monitoring the work of recruitment agencies, which can only recruit subject to the authorization of the Ministry of Employment after an embassy check on the employer's credibility. Employers who have been reported for not abiding by contracts or for committing abuses are put on a list, and are prohibited from recruiting people from the country again.

3. Contract of employment and legal recognition of domestic work

51. One of the factors contributing to the vulnerability of migrant domestic workers, to their trafficking and to violations of their human rights is the absence of a written contract of employment. Some women migrate without having signed any contract.¹⁸ Sometimes there is just a verbal agreement between the employer and the recruitment agency. Even when the country of destination requires a contract of employment in order to grant a visa, the workers do not always receive a copy. Women migrating under such conditions often discover upon arrival that they have been recruited for a different job from that agreed upon.

52. Another situation that concerns the Special Rapporteur is the signing of contracts in the country of employment in languages which the migrant domestic workers do not understand. Through these contracts, some workers accept conditions which are detrimental to them. The Special Rapporteur received information on cases of women who signed contracts stipulating that they would not have the right to leave their employer's house. Others signed contracts which provided for fines in the event of their returning to their countries of origin before a given period of time had elapsed.

53. In many countries, domestic work is not governed by labour law or is explicitly excluded from legislation on wages, working conditions, sexual harassment, etc.¹⁹ In some, migrant domestic workers are regarded as temporary workers under the protection of their employers. In both cases, even where there is a contract, it does not establish obligations for the parties.

54. When there is no contract and/or the domestic work is not covered by some legislation on labour rights, there is no legal basis for claiming rights and obtaining fair compensation in the event of violations of working conditions, fair remuneration, pension, social security and health insurance coverage and compensation in the event of unfair dismissal or sexual harassment. Moreover, in the event of an accident at work or of illness, there is nothing to protect the migrant against dismissal.

55. Thus, many female migrant domestic workers tend to work in precarious and exploitative conditions. When they are illegally within the country or their legal right to be there depends on their employment relationship with their sponsors, these precarious conditions are compounded by their vulnerability and defencelessness in the face of exploitative and unfair practices by employers.²⁰

56. Unless the State keeps an eye on their circumstances, migrant domestic workers are completely isolated and unprotected, and this increases their vulnerability to abuse and violations.

57. The Special Rapporteur has observed that migrant domestic workers rarely report their employers and seek protection. There are various reasons for the absence of complaints: a fear of being arrested and deported for illegal residence; the fact that their situation depends entirely on the employment relationship with their employers; the lack of identity documents; the lack of access to protection mechanisms; ignorance of the language; and debts in their countries of origin. Migrant domestic workers are not always entitled to remain in the country while their cases are being dealt with; when they are, they are not always entitled to work, which means that without assistance from the State they do not have the means to live. The Special Rapporteur was informed that the competent authorities do not pursue those responsible for abuses, such as withholding passports or wages, despite the complaints submitted by migrant domestic workers.

58. Furthermore, when migrant domestic workers are explicitly excluded from the labour legislation of the host country they cannot claim any rights. In situations where domestic work is considered informal, the only means of settling disputes is through amicable settlements.

59. In the case of women working for diplomatic staff or staff in international organizations, the employers enjoy total immunity from the host country's criminal legislation and partial immunity from its civil and administrative legislation. In such cases it is virtually impossible for women to claim their rights.²¹

60. Consulates are supposed to furnish assistance to nationals in the territory of the host State; the protection provided, however, is not always effective. There are several reasons for that: the migrant domestic worker's country of origin does not always have a consulate in the country of destination; consulates are unaware of the presence of illegal workers until they seek protection or the host State authorities inform them of their presence; for a variety of reasons, the workers cannot or do not wish to apply to the consulate.²²

61. Some countries make an effort to provide greater protection through programmes targeted especially at female migrant domestic workers. Very often women who flee their employer's home to escape abuse and violence do not know where to turn. In Bahrain, the embassies of the Philippines and India provide shelter to female migrant domestic workers who have had problems with their employers. The embassy of the Philippines covers legal costs if the case is taken to court; the embassy of India has funds available to repatriate female migrant domestic workers who wish to escape from a situation of abuse or have had disputes with their employers.

62. The Special Rapporteur believes that a reliable and detailed register of migrant domestic workers would enable the country of destination to take this occupational category into account when formulating and planning its policies. It would also enable the consulates of the countries of origin, besides the relevant services in the country of destination, private recruitment agencies and NGOs, to monitor migrant domestic workers' working conditions and to offer protection when necessary.

63. Some countries have legislation requiring agencies to exercise some control over employers and check that the terms of the contract or verbal agreement regarding working hours, wages, board, lodging, etc. are observed. Nevertheless, according to information received, the agencies tend to favour the employer in the event of disputes and do not always intervene when migrant domestic workers' rights are violated.

64. Some countries of destination have established protection mechanisms for migrant domestic workers, facilitating their access to mechanisms for reporting complaints or settling disputes, or providing assistance during legal proceedings.²³ In some countries, the Ministry of Employment organizes inspections to check on working conditions and runs training programmes for migrant domestic workers on their rights and on complaint mechanisms.²⁴

65. In other countries there are centres run by NGOs or religious associations which also offer accommodation and shelter to female migrant domestic workers who escape from the homes of violent or abusive employers. Sometimes these organizations try to find other employers for the worker or meet the costs of hospital treatment or repatriation. They also provide legal assistance and monitor the status of female migrant domestic workers held in detention pending deportation. Likewise, the trade unions in some countries provide advice on social matters and legal support to women with work-related problems, arrange temporary accommodation for women who have been dismissed, and run training workshops on labour rights and the duties of migrant domestic workers, reproductive health and other topics.

III. CONCLUSIONS

66. **The Special Rapporteur has observed that in developed countries migrant domestic workers are becoming indispensable to enable women to advance in employment and in society. Among the tasks they perform, caring for the elderly is of special importance, owing to the ageing of the population in many developed countries. The Special Rapporteur also considers it important to reiterate that domestic work is a worthy occupation and a source of personal and social development.**

67. **Given growing demand for household help in developed countries, there has been a rise in the number of initiatives and agreements to facilitate female migration for domestic work, and in spontaneous migration by women. The nature and scope of public and private initiatives to facilitate the migration and recruitment of female domestic employees vary from one country to another, depending on labour agreements and legislation on migration. Nonetheless, the Special Rapporteur observes that, by and large, such initiatives cannot guarantee decent conditions of employment and respect for the fundamental rights of female migrant domestic employees.**

68. **The Special Rapporteur observes that a number of factors make migrant domestic workers an extremely vulnerable category. Host country legislation and recruitment methods often leave such workers heavily dependent on the employer, particularly when legal residence in the country depends on the work contract. Debts in their countries of origin put heavy pressure on the workers, who generally prefer not to report abuses for fear of being dismissed and repatriated. Furthermore, the practice of withholding migrant domestic workers' papers contributes to their dependency and helplessness in the face of abuse and violations. The absence of work contracts and the fact that in many countries domestic employment is not recognized by labour legislation allows employers to impose working conditions unilaterally. Migrant domestic workers' vulnerability is often exacerbated by the fact that they do not have identity documents or they are in the country illegally.**

69. The absence of watchdog mechanisms and inadequate monitoring by the Government in the country of destination, the recruiting agencies and even consulates mean that migrant domestic workers are cut off and abuses remain unseen. As a result, many migrants end up working in abusive, even inhuman and degrading conditions, without any protection or possibility of obtaining an effective remedy.

IV. RECOMMENDATIONS

70. The Special Rapporteur urges States of origin and destination of large-scale flows of migrant domestic workers to take all necessary steps to ensure the protection of such workers' rights and eliminate the factors which make them vulnerable at all phases of migration, from recruitment to their return home.

71. The Special Rapporteur urges States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

72. The Special Rapporteur recommends that the countries of origin should launch campaigns against illegal migration by domestic employees, warning of the risks and providing information about legal migration channels. The Special Rapporteur regards the involvement of embassies and consulates from countries of destination in such campaigns as good practice.

73. The Special Rapporteur recommends ratification of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, and urges States to amend their national legislation so as to ensure that the definition of trafficking is compatible with that given in article 3 of the Protocol.

74. The Special Rapporteur recommends that efforts be made to deal with traffickers, and that the traffickers' crimes should not remain unpunished. She recommends that the victims of illegal practices should not be punished, and that protection programmes should be established which, under certain circumstances, will allow them to remain in the country of employment and prevent other possible abuses. In that respect the Special Rapporteur underlines the conclusions and recommendations contained in her report to the General Assembly on trafficking in human beings.²⁵

75. The Special Rapporteur urges States to take initiatives so as to avoid the indebtedness of migrant domestic workers, including agreements which provide that their recruitment costs be covered by the employer and/or recruitment agencies and State credit programmes for migrant women.

76. The Special Rapporteur views as good practice the organization of training programmes for migrant domestic workers prior to their departure. Such programmes, depending on the circumstances, should include basic lessons in the language of the country of employment and practical tips on communication technologies and how to transfer remittances.

77. The Special Rapporteur urges States which admit migrant domestic workers under a sponsorship and special visa system to review their legislation and ensure that workers' immigrant status does not depend directly on the employment relationship with a given employer and that, under certain circumstances and conditions, workers may change employers. She also urges States to ensure that their legislation does not create adverse consequences for migrant domestic workers who report their employers for violating their labour and other rights, but allows them to remain in the country and provides them with the necessary assistance to take part in the trials of their employers and to obtain justice.

78. The Special Rapporteur recommends that the legislation and policies of countries of origin and of destination should provide for mechanisms to monitor the work of recruitment agencies, with a view to ensuring that they respect the rights and interests of migrant domestic workers. In that connection, she recommends the establishment of specific rules governing fees, whose enforcement should be monitored.

79. The Special Rapporteur recommends that recruiting agencies should have to renew their licences periodically and that watchdog arrangements should be established to ensure that only those agencies which observe specific criteria relating to migrant domestic workers' rights can continue to operate. Likewise the Special Rapporteur recommends that agencies should be legally required to monitor employers and, in the event of disputes, ensure migrant domestic workers and employers are afforded equal protection based on the terms of the contract of employment, including working hours, wages, board and lodging.

80. The Special Rapporteur recommends that legislation on the recruitment of migrant domestic workers should require a written contract, giving particulars of the employer and employee and details of the employee's monthly wages, duties and working hours, free time and vacations, board, lodging, medical insurance, transport to the country of destination, conditions for terminating the contract, complaint procedures and provision for the eventuality of the employee's death or illness. When the contract is signed in the language of the country of employment, the Special Rapporteur recommends that a translation should be required.

81. The Special Rapporteur views as good practice the drawing up by States of destination of model contracts for domestic workers which also apply to illegal migrants, stipulating working hours and minimum wages. Such contracts should give migrant domestic workers the possibility of claiming their rights in court.

82. The Special Rapporteur recommends States to ensure that legislation prohibits the withholding of passports, and that complaints by migrants of such withholding are investigated seriously.

83. The Special Rapporteur recommends that legislation in the countries of destination should not allow migrant domestic workers to be dismissed in the event of illness without fair compensation. She also recommends that legislation should prohibit such workers from being subjected to certain medical examinations without their explicit consent.

84. The Special Rapporteur wishes to stress the importance of ensuring that every migrant domestic worker has the possibility and the right to visit his or her family. To that end, she recommends that contracts should provide for the right to vacations and that agreements regulating workers' entry and stay in the country of destination should allow them to leave the country and return to it through the issuance of multiple-entry visas. The Special Rapporteur views as good practice the existence of public and private programmes to facilitate communication by migrant domestic workers with their families by means including the Internet and special telephone tariffs.

85. The Special Rapporteur underlines the need to ensure that reliable registers are kept of migrant domestic workers. To that end, she urges States of origin and of destination to develop computerized systems for the registration of such workers. The registers should include details such as employers' names and addresses.

86. The Special Rapporteur recommends that, in the event of administrative or judicial proceedings against migrant domestic workers, legislation should ensure that all rights and due process are respected. In that connection, she refers to the recommendations made in her report to the Commission on Human Rights at its fifty-ninth session.²⁶

87. The Special Rapporteur recommends that consulates and embassies should play an active role in protecting the rights of migrant domestic workers, by means including regular checks on their circumstances. The Special Rapporteur considers that it is good practice for consulates to provide shelter to women fleeing from abusive employers and provide them with assistance in proceedings against the former. When migrant domestic workers cannot claim their rights in court, the Special Rapporteur considers it good practice for consulates to help mediate between the parties through contacts with the ministries and departments concerned.

88. The Special Rapporteur considers it good practice for countries of destination to set up free telephone lines or services where migrant domestic workers can seek advice and guidance or submit complaints, and to organize training courses for them.

89. The Special Rapporteur recommends that countries of destination run campaigns to create awareness of the important contribution made by migrant domestic workers, encourage respect for their rights and combat discrimination. She also recommends public policies that foster respect for such workers and their rights.

90. The Special Rapporteur recommends that the international organizations, embassies and consulates should adopt codes of conduct on the recruitment of migrant domestic workers and require their staff to abide by the code, taking disciplinary action in the event of violations.

91. The Special Rapporteur recommends international cooperation to enable States with scarce resources to implement the recommendations above.

92. **The Special Rapporteur invites male and female domestic workers to organize themselves and reminds them that they must be proud of their work. Through their work they contribute to the development and well-being of their families, communities, countries of origin and host countries.**

Notes

¹ The following countries replied to the questionnaire: Costa Rica, Croatia, Germany, Guatemala, Mauritius, Mexico, Mozambique, Nicaragua, Panama, Poland, Slovakia, Thailand. Several NGOs and trade unions also sent replies to the questionnaire and collaborated closely with the Special Rapporteur in providing information on the situation of migrant domestic workers. The International Labour Organization (ILO) and the Organization of American States (OAS) also provided very useful information for this report.

² International Standard Classification of Occupations, Group 9131, ISCO-88, ILO, Geneva.

³ According to an ILO study, the United Arab Emirates issues an average of 300 visas per day for migrant domestic workers. See ILO, Gender Promotion Programme - Series on Women and Migration, No. 10, *Migrant Women in the United Arab Emirates, the case of female domestic workers*, Rima Sabban, 2002.

⁴ Others, such as Sri Lanka, register migrant domestic workers before they leave. The register includes, inter alia, the country of destination and the name and address of the employer.

⁵ Some countries of destination issue special visas for domestic workers, thus enabling the number of migrant domestic workers in an administratively regular situation to be identified. In Thailand, the Ministry of Labour keeps a register of regular immigrants employed as domestic workers. The Special Rapporteur was informed that there were 65,361 migrant domestic workers in Thailand in 2002. The Government of Germany reported that on 31 December 2002 according to the Federal Employment Service 23,032 foreigners were registered as employed in domestic services and 4,128 foreigners were employed marginally. In Lebanon an effort is also being made to register all migrant domestic workers entering the country and their employers.

⁶ For a fuller view of some of the cases received by the Special Rapporteur, see E/CN.4/2003/85/Add.1 and E/CN.4/2004/78/Add.1.

⁷ See the report of the Special Rapporteur on the rights of non-citizens of the Sub-Commission on the Promotion and Protection of Human Rights, Mr. Weissebrodt (E/CN.4/Sub.2/2003/25).

⁸ ILO Conventions Nos. 97 and 143 should also be taken into account.

⁹ See the case sent to the Government of Thailand on 7 November 2002 (E/CN.4/2003/85/Add.1).

¹⁰ See the case sent by the Special Rapporteur to the Government of Saudi Arabia on 7 July 2003 (E/CN.4/2004/78/Add.1).

¹¹ See the letter sent by the Special Rapporteur to the Government of Israel on 26 June 2003 (E/CN.4/2004/78/Add.1).

¹² See the allegation sent by the Special Rapporteur to the Government of Saudi Arabia on 3 September 2002 (E/CN.4/2003/85/Add.1).

¹³ Ibid.

¹⁴ E/CN.4/Sub.2/2003/31.

¹⁵ During a visit to Canada, for example, the Special Rapporteur received information on the possibility of obtaining a work permit as a migrant domestic worker under the national domestic workers' programme. See E/CN.4/2001/83/Add.1.

¹⁶ See the allegation sent by the Special Rapporteur to the Government of Israel on 19 September 2002 (E/CN.4/2003/85/Add.1). See also the allegation sent by the Special Rapporteur to the Governor of Hong Kong on 4 June 2003 (E/CN.4/2004/78/Add.1).

¹⁷ For example, in 1999, Bangladesh went as far as prohibiting its nationals from working abroad as domestic staff. Indonesia has prohibited work as domestic staff in some of the Gulf States. Pakistan has established 35 as the minimum age for applying for a job as a domestic worker.

¹⁸ Some countries, such as Sri Lanka, require all female migrant domestic workers to have a written contract before they leave the country. The contract between the worker and the employer must be ratified by the Sri Lankan Embassy in the country of destination. The contract is a basis for negotiations between the recruitment agency and the Sri Lankan diplomatic staff in the country of destination in the event of disputes.

¹⁹ See the reply from the Government of Singapore, dated 20 January 2003 (E/CN.4/2003/85/Add.1).

²⁰ The canton of Zurich, Switzerland, has a model contract which also applies to illegal female workers, stipulating working hours and the minimum wage. In theory, this contract enables all female migrant domestic workers, irrespective of their migrant status, to claim their rights in court.

²¹ In order to protect the rights of migrant domestic staff working in the homes of foreign diplomats, some Governments, including that of Germany, have circulated a note urging employers to observe the minimum labour and social standards applied to nationals. Some international organizations have adopted codes of conduct on the recruitment of migrant domestic workers.

²² In most cases consulates confine the assistance provided to migrant domestic workers who report, or are reported by, their employers, to providing interpreters and assisting and being present during the legal proceedings, or by helping migrant domestic workers to return home and issuing passports or travel documents.

²³ For example, the Government of Singapore informed the Special Rapporteur that there is a telephone number which migrant domestic workers can call free of charge to obtain information on their rights and on the procedure for changing employer. See the Government's reply to the Special Rapporteur's communication (E/CN.4/2003/85/Add.1). In Bahrain, the Ministry of Employment endeavours to resolve disputes between female migrant domestic workers and their employers amicably. If a case cannot be resolved and is taken to court, a lawyer is appointed by the court to defend the migrant domestic worker.

²⁴ In Costa Rica, the Ministry of Employment carries out inspections and can receive complaints from female migrant domestic workers. The National Institute of Women has a telephone line for reporting abuses and has set up training programmes for female migrant domestic workers working in the country.

²⁵ A/58/275.

²⁶ E/CN.4/2003/85.
