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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of migrants

Report of the Secretary-General

Summary

The present report, submitted in accordance with General Assembly resolution 63/184, contains a summary of communications received from Governments in response to a note verbale dated 11 June 2009 from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on behalf of the Secretary-General requesting information on the implementation of that resolution. The report also contains a summary of communications received from Governments in response to a note verbale sent on 4 July 2008 by the Office of the High Commissioner on behalf of the Secretary-General requesting information on the implementation of resolution 62/156. Moreover, the report provides information on the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and on the activities of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families of the Special Rapporteur on the human rights of migrants, of the universal periodic review of the Human Rights Council and of OHCHR.

* A/64/150.



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I. Introduction

1. In paragraph 26 of its resolution 63/184, the General Assembly requested the Secretary-General to submit a report on the implementation of that resolution at its sixty-fourth session, including an analysis of ways and means to promote the human rights of migrants, taking into account the views of the Special Rapporteur on the human rights of migrants.

2. Parts II and III of the present report summarize responses received from Member States concerning the implementation of General Assembly resolutions 62/156 and 63/184, respectively.¹ The remainder of the report provides information on the activities of the Special Rapporteur on the human rights of migrants (part IV), the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (part V), the activities of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (part VI), the universal periodic review of the Human Rights Council (part VII) and the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) (part VIII). Part IX provides conclusions and recommendations.

II. Information from Governments with regard to the implementation of General Assembly resolution 62/156

3. As at 22 July 2009, replies concerning the implementation of General Assembly resolution 62/156, in addition to those included in the previous report (A/63/287), had been received from: Algeria, Belarus, Costa Rica, Egypt, Finland, Greece, Guatemala, Iraq, Kazakhstan, Mauritius, Mexico, Qatar, Serbia, Slovenia, Ukraine and Uruguay. Summaries of the responses are provided below. The full texts of the responses are available from OHCHR upon request.

Algeria

[Original: French]
[1 September 2008]

The Government reported that Algeria was a party to the main international human rights instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and that those instruments, in accordance with article 132 of the national constitution, were superior to laws.

Article 63 of the Constitution provided that “Any foreigner being legally on the national territory enjoys the protection of his person and his properties by the law”. Provisions of the Criminal Code protected victims without any distinction. Algerian law also provided for freedom of conscience and religion, both for nationals and foreigners. An amendment to the Code of Penal Procedure (Law No. 01-08, dated 26 June 2001) provided for the right to reparation in the case of

¹ Part II includes responses to resolution 62/156 that were not included in the previous report (A/63/287) owing to their late submission.

unjustified temporary detention. A draft law addressing the phenomenon of human trafficking and irregular migration was due to be submitted to Parliament for approval. National laws, as well as the Vienna Convention on Consular Relations, provided protection to foreigners who were detained.

Algeria had bilateral agreements of cooperation with neighbouring countries to fight irregular migration. The National Office for the Fight Against Irregular Immigration addressed problems related to irregular migration. In regional and international forums, Algeria supported a global, integrated, concerted and balanced approach to international migration.

Belarus

[Original: Russian]

[18 August 2008]

The Government reported that, under the Refugee Act, refugees were entitled to send their children to preschool and general secondary educational institutions, and their minor children were entitled to receive health-care services on the same footing as children who were Belarusian citizens. Refugees and aliens who were permanent residents enjoyed all the social and economic rights accorded to nationals. Assistance for the integration and adaptation of migrants was a priority aim of the State migration programme for 2006-2010.

The Legal Status of Aliens and Stateless Persons Act set forth the fundamental rights, freedoms and obligations of aliens and stateless persons, including the right to move freely and choose their place of residence, except in areas where such entry was subject to special permission; the right to join trade unions and other civil society organizations; and the right to preserve and develop their national language and culture. The Act established three forms of immigration status: temporary stay (up to 90 days per year), temporary residence (up to one year) and permanent residence (residence permit). Aliens temporarily staying in Belarus were allowed to take up employment provided that they received special permission. Belarusian law guaranteed that all were equal before the law and were entitled without any discrimination to equal protection of their rights and legitimate interests.

Costa Rica

[Original: Spanish]

[11 August 2008]

The Government indicated that the provisions of the Migration Law (Law No. 8487) provided for the protection of the human rights of foreigners with a legal status and for measures to promote their social integration. The law (Penal Code, art. 172, and Migration Law, art. 245) imposed criminal sanctions on offences related to human trafficking. The General Directorate of Migration and Foreign Affairs had proposed amending the Migration Law to emphasize the integration of migrants. The importance of the integration of migrants was also underlined in the 2006-2010 National Plan for Development.

The Government reported that migrants were able to obtain information about their rights and duties from various organizations and networks. A directory of

services for migrants was being developed within the framework of the “Codesarrollo Costa Rica-Nicaragua” project supported by the International Organization for Migration (IOM). The Media Observatory for Migrants and Refugees was established in 2006 to improve media images of migrants and refugees. It was composed of the General Directorate of Migration and Foreign Affairs, the national ombudsman institution (Defensoría de los Habitantes), the Bar Association, the International Center for the Human Rights of Migrants, IOM and OHCHR.

The Costa Rica Consensus included strategies and policies aimed at increasing the contribution of migration to development. Moreover, the Government reported that it provided access to public services without discrimination to all migrants, irrespective of their regular or irregular situation.

Egypt

[Original: Arabic]
[7 August 2008]

The Government indicated that Egypt was mainly a sending and a transit country for migrants. Under the Labour Code, foreign workers were subject to the same working conditions as nationals. The competent minister had the power to determine the conditions and procedures for obtaining a work permit. Foreigners were prohibited from only a few specific jobs. There was a 10 per cent ceiling on the number of foreigners in any one enterprise. Among the criteria for issuing labour permits, the law stipulated that the foreigner must not be competing with Egyptian workers and that the condition of reciprocity with the State of which the foreigner was a national must be met.

The Government highlighted that migrants must not be treated as mere instruments of production but must be guaranteed human rights and provided with opportunities to integrate into their host communities, that the rights of child migrants must be guaranteed and that women migrants must be protected from all forms of violence.

The Government stressed that all parties involved in sending and receiving migrants and all transit countries must ensure that migrant workers had proper contracts stipulating their entitlement to health care and social security, the right to return to their countries periodically and the right to remit savings through legitimate banking institutions. With a view to improving opportunities for and facilitating integration, the Government organized language and cultural education programmes for migrants and maintained contacts with migrants while they were abroad.

Finland

[Original: English]
[15 August 2008]

The Government indicated that the rights and freedoms contained in the Constitution applied to everyone within its jurisdiction, including migrants. Finnish legislation guaranteed the rights and duties of all workers. The Penal Code

addressed issues such as labour exploitation, work discrimination, work permit offences and violation by employers of the Aliens Act. The act on the obligations and liability of contractors when work is contracted out sought to prevent labour exploitation and the grey economy. An ombudsman monitored and promoted the rights of foreigners in Finland.

The Government reported that it was implementing the integrated border management model, which involved international, regional and bilateral cooperation. National working groups had been established to address the prevention of illegal entry and immigration issues in general. Under Finnish law, illegal border crossings were not punishable in cases of asylum-seekers or victims of human trafficking.

The Government indicated that the Government migration policy programme, adopted in 2006, focused on promoting work-related immigration. The Government was preparing a framework programme for 2008-2011 on integration and ethnic relations.

Greece

[Original: English]
[17 October 2008]

The Government reported that the Constitution conferred certain rights, such as the full protection of freedom and the right to work, without discrimination on all persons within Greek territory.

The General Directorate of Migration Policy and Social Integration promoted socially fair migration policy and social integration. Greece had instituted regulations for the social integration of migrants (Law 3386/2005) and had established a National Committee for Social Integration (Law 3536/2007). Third-country nationals legally residing in Greece were granted social protection (Law 57/1973).

An integrated action programme had been created for the integration of third-country nationals who legally resided in Greece (Law 3386/2005). Social integration aimed at granting rights to third-country nationals that ensured both their equal participation in the economic, social and cultural life of Greece and respect for the fundamental principles and values of Greek society. National migration policy aspired to establish the employment of migrant workers and to ensure their rights (Law 3386/2005, as amended by Law 3536/2007).

Greece indicated that it would host the third Global Forum on Migration and Development in autumn 2009.

Guatemala

[Original: Spanish]
[15 August 2008]

The Government indicated that in 2007 an estimated 1,482,247 persons, out of the total population of Guatemala of 13,895,124, lived outside the country, mainly in the United States of America. National migration policy sought to protect the

human rights of both migrants living abroad and their families in Guatemala. Through its consulates, the Government had strengthened protection and assistance for migrants abroad. A Government fund provided assistance to Guatemalans who were deported from the United States. The Centro de Atención al Migrante was established in 2006, within the Ministry of Foreign Affairs, to protect and provide assistance to Guatemalan migrants abroad.

The Government referred to various efforts and initiatives to fight against trafficking in persons, including the establishment in 2007 of the Inter-Institutional Commission to Combat Trafficking in Persons, public information campaigns and the establishment of a free telephone service to raise awareness about the problem and provide support and advice to victims and the elaboration of the Public Policy against Trafficking in Persons and for the Integral Protection of Victims. The guiding principles of the policy included ensuring respect for human rights, the best interests of children, non-discrimination and medical and psychological assistance.

Through the National Committee for Migration, civil society organizations promoted a human rights perspective in the coverage of migration issues by the media, including through an annual analysis and status report.

Iraq

[Original: Arabic]
[3 September 2008]

The Government indicated that the protection of émigrés was guaranteed under Iraqi laws, including the Iraqi Nationality Act No. 26 of 2006. The Act, inter alia, allowed Iraqis who had relinquished their nationality to apply for its restoration. The Iraqi Constitution, inter alia, guaranteed the rights to freedom of movement, travel and residence; prohibited all forms of torture as well as forced labour, slavery and the trafficking of women and children; and provided that no one could be held in custody except pursuant to a judicial decision. Most Iraqi laws also protected the rights of foreigners.

The 2008 Ministry of Migration bill provided for services and facilities for émigrés who returned to Iraq. The Government encouraged the return, reintegration and resettlement of Iraqi émigrés and sought to provide the means to facilitate returns, including through bilateral agreements with other countries.

Kazakhstan

[Original: Russian]
[20 August 2008]

Kazakhstan reported on its policy to allow Kazakhs who were forced to leave the country in times of repression, forced collectivization and starvation an opportunity to return to their homeland.

The Constitution of Kazakhstan was the basis for juridical regulation and stated that anyone living in the territory of Kazakhstan or arriving from another country could lodge a complaint before the courts if their rights were violated.

Refugees were not subjected to penalties for illegal entrance into the country, and they could only be sent out of the country by a decision of the court. Kazakh law on the rights of child refugees provided special protection for refugee children.

Under Kazakh law, residents who had arrived from abroad had the right to pursue employment activities. In the regulation of labour migration, priority was given to the protection of the domestic labour market. Kazakhstan established a quota each year for migrant workers in line with labour market needs. An agreement with Kyrgyzstan simplified procedures for migrant workers in the border areas.

Mauritius

[Original: English]
[25 September 2008]

The Government stated that under Mauritian law migrant workers have the same rights as local workers.

Contracts of employment were vetted by officers of the Ministry of Labour, Industrial Relations and Employment before they were signed. The Ministry conducted regular inspections of workplaces and ensured that migrant workers received contracts of employment in a language that they could read and understand and that they were informed of their rights and obligations under the contract. According to the Labour Act, migrant workers could avail themselves of the courts if there was an alleged unjustified termination of employment.

The Government reported that it was working with IOM regarding the overseas deployment of Mauritian workers. The Recruitment Workers Act oversaw private recruiters.

The Government indicated that the Government of China and the Government of Mauritius had signed a bilateral labour cooperation agreement that addressed aspects of labour migration and conditions of work.

Mexico

[Original: Spanish]
[1 September 2008]

The Government reported that provisions of the General Law on Population had been reformed and repealed in 2008 to decriminalize undocumented migration.

Since 2003 the National Migration Institute had operated a programme to ensure that conditions in migration centres respected the dignity and human rights of migrants. So-called beta groups provided orientation and assistance to migrants in the border zones.

The 2007 Federal Law to Prevent and Sanction Trafficking in Persons addressed trafficking in an integral manner, providing for the protection of and assistance to victims. The Intersectoral Commission oversaw the implementation of the national programme to prevent and sanction trafficking in persons. The national programme on human rights for 2008-2010 also covered issues related to trafficking in persons.

The National Commission on Human Rights had a programme to protect the human rights of migrants and initiated official complaints on the basis of the testimony of migrants.

The Government indicated various initiatives to protect migrant children and adolescents, including an inter-institutional programme for border-area children aimed at protecting migrant children and reuniting them with their families.

In 2007 the National Migration Institute set in motion the Human Repatriation Programme to guarantee a humanitarian and dignified treatment of the half a million Mexicans who were deported from other countries each year. Efforts were made to ensure the dignified return of deported migrants from Central America in their transit through Mexico.

The Government reported that on 5 June 2008 Mexico made a request for interpretation by the International Court of Justice with regard to the case concerning Avena and other Mexican nationals sentenced to death in the United States. On 5 August, José Ernesto, a Mexican national, was executed in Texas, in spite of the Order of 16 July 2008 by the International Court of Justice indicating provisional measures.

In March 2008, the National Commission on Human Rights proposed to the Senate a revision of the Federal Labour Law that would grant migrants, including undocumented migrants, the same labour rights as nationals.

Qatar

[Original: Arabic]
[1 September 2008]

The Government reported that there were no irregular migrant workers in Qatar. Under the Labour Code, a labour contract must be drawn up setting out the norms governing the employment relationship between the worker and the employer. Employers must protect employees against injury or illness at work and provide them with social services.

The State police were responsible for protecting and safeguarding the person, property and honour of everyone living in the country (nationals and foreign residents) on an equal footing and without discrimination. The Human Rights Department received and considered complaints submitted by individuals or through the National Committee for Human Rights. Most of those complaints concerned employment relations between sponsors and the persons whom they sponsored. The Department advised migrants on the legal procedures for asserting their rights. The Ministry of Labour had set up departments for the protection of migrants. Various other bodies, including the criminal justice bodies, the National Committee for Human Rights and the National Office to Combat Human Trafficking, provided nationwide human rights protection for all citizens and foreign residents, without distinction.

Serbia

[Original: English]

[19 August 2008]

The Government reported that it had implemented certain measures and activities to ensure the basic human rights of victims of human trafficking, especially the protection of women and children, and the protection of migrants, especially aged foreigners. All measures were in accordance with the Universal Declaration of Human Rights and numerous international conventions with respect to the above-mentioned areas.

The Government indicated that, in pursuance of the harmonization of the national legislation of Serbia with the legislation of the European Union, a range of additional activities would be implemented with respect to the protection of the rights of migrants as soon as proper national legislation was adopted.

Slovenia

[Original: English]

[20 October 2008]

The Government reported that it had participated in the implementation of the European Council conclusions on the Global Approach to Migration. Regarding research and analysis on migration, Slovenia had joined the European Migration Network in autumn 2005.

The Government had signed the Mobility Partnership pilot project with the Republic of Moldova in an effort to satisfy the labour needs of the two countries and facilitate the readmission of nationals as a means to prevent trafficking and irregular migration.

The Slovenian International Protection Act (OG RS No. 111/07), adopted in December 2007, addressed, inter alia, the protection of third-country nationals, vulnerable groups of asylum-seekers and refugees, and unaccompanied minors as well as the rights of refugees and persons granted subsidiary protection.

The human rights of migrants and the equal treatment of all foreigners were guaranteed under the Aliens Act (OG RS No. 71/08). Slovenia indicated that special focus was given to the facilitation of family reunification and the protection of victims of trafficking and minors. Even though Slovenia was not a signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Government reported that a majority of the provisions of that Convention were covered in the Aliens Act. National legislation prevented any form of discrimination against workers. The act amending the Free Legal Aid Act (OG RS No. 96/04 and No. 23/08) guaranteed migrants free legal aid.

Ukraine

[Original: Russian]

[21 August 2008]

The Government reported that matters relating to migrants were governed by the Constitution of Ukraine, the Refugee Act, the Foreigners and Stateless Persons Act, the Immigration Act, international agreements and other laws and regulations.

The Government indicated that foreigners and stateless persons lawfully present in Ukraine enjoyed the same Constitutional rights and freedoms as citizens. Foreigners and stateless persons could receive a permanent residence permit in accordance with Decision No. 1074 of the Cabinet of Ministers of 29 December 1995, could be granted asylum under the Constitution and were entitled to the same judicial protection as citizens under the Judicature Act. The trafficking and illegal movement of persons across the borders of Ukraine were criminal offences under the Criminal Code.

The Government reported that it had acceded without reservations to the Convention relating to the Status of Refugees and its Protocol and the United Nations Convention against Transnational Organized Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants by Land, Sea and Air.

Uruguay

[Original: Spanish]

[8 August 2008]

The Government reported that a new department within the Ministry of Foreign Affairs facilitated coordination among official entities that provided services to Uruguayans living abroad, sought to optimize consular services and implemented measures to facilitate the return of nationals from abroad and the arrival of non-nationals.

The new Law on Migration (Law No. 18.250), adopted in 2007, abandoned the repressive character of previous legislation and was directly linked to the human rights of migrants. Under the law, migrants had the same rights and obligations as nationals. The State was obliged to ensure that migrant workers were not deprived of their labour rights because of irregularities of their stay or their employment. The Government could suspend benefits to migrants originating in States that imposed restrictions on the rights enjoyed by Uruguayans living in their territory, in accordance with the principle of reciprocity. The new Law on Migration also codified the crime of trafficking in persons.

The Office of Planning and Budget, inter alia, promoted the establishment of a database that contained statistical data on migration and facilitated investments in the country by Uruguayans living abroad.

The Government highlighted commitments undertaken at the 2006 Ibero-American Summit in the Montevideo Commitment on migration and development and at the 2008 Ibero-American Forum on Migration and

Development, which underlined a focus on gender and human rights as a central component of the Ibero-American agenda on migration.

III. Information from Governments with regard to the implementation of General Assembly resolution 63/184

As at 22 July 2009, the Governments of the following Member States had replied to the note verbale sent on 11 June 2009: Germany, Iraq, Japan, Mauritius, Mexico, Montenegro, Morocco, Qatar and Switzerland. Summaries of the responses are provided below. The full texts of the responses are available upon request from OHCHR.

Germany

[Original: English]
[21 July 2009]

The Government reported that a 2007 amendment to the German Residence Act sought to improve the prospects of permanent residence and integration into the labour market for people with a secure residence status. As at September 2008, the Federal Ministry of Labour and Social Affairs was supporting 43 regional networks to improve the employment opportunities of recognized refugees or persons recognized as allowed to remain under the Residence Act.

The Government indicated that in 2007 the Federal Government made the issue of integration a focus of its policy and adopted a national integration plan. The plan sought to provide migrants with greater opportunities in education and employment. Education was considered an important foundation for successful integration, especially for children and youth. The integration gap remained a challenge, including for second- and third-generation immigrants.

The Government offered integration courses that consisted of 600 hours of language teaching, a 45-hour orientation course on the legal system, history and culture of Germany, vocational language courses and counselling for new immigrants.

The Government reported that it placed importance on the integration of Muslims through dialogue and that the German Islam Conference launched in 2006 established a nationwide action framework for such dialogue.

Iraq

[Original: Arabic]
[16 July 2009]

The Government indicated that it was not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and that there were very few migrant workers in the country. Iraq had ratified the Protocols against the Smuggling of Migrants by Land, Sea and Air and to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational

Organized Crime. It was also a party to the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Ministry of Human Rights worked to protect the human rights of migrants in accordance with the Universal Declaration of Human Rights.

Japan

[Original: English]

[15 July 2009]

The Government indicated that the Diet (the legislative organ) of Japan had approved the conclusion of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Accordingly, Japan would conclude that protocol as soon as it became a party to the Convention.

The Government provided information on the number of persons who were granted stay in Japan in 2008 under the refugee recognition system: permission for provisional stays (57), recognized as refugees (57), and permitted to stay for humanitarian reasons (360).

Regarding the detention of violators of immigration law, the Government indicated that, when deportees were unable to be deported over a long period of time, careful consideration was given to their individual circumstances, and a flexible operation of provisional release was applied not only to pregnant women and children but also to other deportees, depending on their individual cases, as part of efforts to avoid prolonged detention.

Mauritius

[Original: English]

[17 July 2009]

The Government reported that the Constitution provided human rights and fundamental freedoms to migrants, protection from slavery and forced labour and protection against discrimination.

On 23 September 2008, Mauritius signed a bilateral agreement with France. The Agreement provided a framework for cooperation to develop a sustainable circular migration programme. Other countries had been approached for the conclusion of similar agreements.

On 24 September 2003, Mauritius acceded to the Protocols against the Smuggling of Migrants by Land, Sea and Air, and to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. On 21 April 2009, the Combating of Trafficking in Persons Act was enacted.

Mexico

[Original: Spanish]

[21 July 2009]

The Government reported that, in order to improve the conditions of detention in migrant holding centres, since March 2008 administrative procedures were completed quickly to reduce overcrowding in those centres. In view of deficiencies in medical services in migrant holding centres, the National Migration Institute in 2008 took measures to integrate a medical file into the migrant holding centre securing and transfer system.

Under the programme “Programa Fronteral Sur”, the Migration Form for Border Workers facilitated the entry of temporary migrant workers into the area bordering Belize and Guatemala.

Rules regulating the Law to Prevent and Sanction Trafficking in Persons, published in the official gazette of the federal Government on 27 February 2009, set out guidelines for the protection of the human rights of victims of trafficking.

The National Migration Institute was preparing a proposal for legal reform to improve the legal protection of undocumented foreigners who were victims of or witnesses to kidnappings or other crimes.

A network of shelters provided services and personalized assistance for children and adolescents who travelled alone. In 2009, the third phase of the Human Repatriation Programme was being implemented to support the repatriation of Mexican migrants. The Government had designed and initiated a strategy for integral services for agricultural day workers.

Montenegro

[Original: English]

[17 July 2009]

The Government reported that its legislative framework had made significant advances in relation to foreign nationals, including the Law on Foreigners of 8 January 2009, which regulated requirements for entering, movement and residence or sojourn of foreigners, and the Law on Employment and Work of Aliens, which came into force in April 2008.

The Government indicated that the agreement between Montenegro and Croatia on the return and reception of people whose entry or residence was illegal was ready for signature.

Montenegro reported that the asylum law that entered into force on 25 July 2006 stipulated the main principles to be followed in procedures with respect to asylum-seekers. It also addressed issues such as accommodation, information on their rights and obligations, access to legal aid and health care. Subsidiary protection was granted to persons who did not meet the requirements for obtaining refugee status but who still needed protection.

Morocco

Original: French]
[17 July 2009]

The Government indicated that the rights of migrants were of central concern in its internal judicial system. Law 02-03 of 11 November 2003 respected international conventions, with certain reservations. Morocco guaranteed the rights of migrants, in particular vulnerable groups, notably women and minors. The Criminal Code criminalized discrimination based on race, ethnicity, language or religion. For irregular migrants, Morocco respected regulatory procedures and legal precedents. In July 2006 Morocco hosted the first Euro-African Conference on Migration and Development.

The Government reported that it had a national strategy for the fight against trafficking in people. The protection of victims was of particular concern, such as rehabilitation, protection against exploitation and the facilitation of the voluntary return of irregular migrants. Morocco had ratified the United Nations Convention against Transnational Organized Crime and adhered to its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The Government indicated that it was active in other regional and subregional forums that dealt with migratory issues. The Government reported that it gave priority to a global approach, with a focus on addressing issues regarding migrants' country of origin and communication. Morocco considered civil society a means through which to facilitate awareness.

Qatar

[Original: Arabic]
[16 July 2009]

The Government indicated that the two main reasons for foreigners to come to Qatar were work and tourism. Immigration law regulated the entry and stay of migrant workers, visitors and tourists. Everyone was allowed to enter the country, including migrant workers who did not speak Arabic. Visitors and migrant workers enjoyed the same human rights as nationals, and the Minister of Labour ensured that the labour rights of migrant workers were upheld.

Switzerland

[Original: French]
[22 July 2009]

Switzerland reported that important changes had been made in the area of the rights of migrants, based on the new Law on Foreigners of 1 January 2008. Under that law, measures had been implemented that were aimed at limiting the admission of migrants from non-European Union member States, improving the legal status of those migrants, facilitating their integration and strengthening the fight against abuse. Access to the labour market by persons who did not originate in European Union member States was limited to specialists and qualified workers. Special

conditions for admission applied in cases of family reunification, professional training and humanitarian reasons.

The Law on Foreigners, the Ordinance on the Admission, Residence and Exercise of a Gainful Activity and the Ordinance on the Integration of Foreigners regulated work conditions for migrants and matters of integration. The programme for 2008 to 2011 on the promotion of integration focused, inter alia, on language skills and professional training.

The Coordination Service against the Trafficking of Persons and Migrants, established in 2003, and other bodies sought to make improvements in the areas of protection of victims and the punishment of those responsible for trafficking in persons.

Switzerland was not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and indicated that the 2008 Law on Foreigners was not compatible with the Convention, notably with regard to irregular migrants.

Switzerland reported that preparatory phase detention (pending a decision on return or expulsion) could not exceed 6 months, detention pending return or expulsion could not exceed 18 months (15 months for minors aged 15 to 18 years) and detention for disobedience (that served to incite a foreigner who had not complied with an injunction to leave the country to do so) could not exceed 18 months (9 months for minors aged 15 to 18 years). All forms of detention could not exceed a total of 24 months (12 months for minors aged 15 to 18 years). The legality of detention should be examined by a judicial body within 96 hours.

IV. Activities of the Special Rapporteur on the human rights of migrants

4. The activities of the Special Rapporteur are carried out in accordance with Human Rights Council resolution 8/10, which extended the mandate of the Special Rapporteur on the human rights of migrants for a period of three years. Further thematic guidance on the activities of the Special Rapporteur was provided by the Human Rights Council in its resolutions 9/5 and S-10/1 (adopted at its tenth special session, entitled “The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights”).

5. During the reporting period, the Special Rapporteur, Jorge Bustamante, underlined the obligation of States to protect the human rights of all individuals under their jurisdiction, regardless of immigration status. In the context of the Durban Review Conference, held in Geneva from 20 to 24 April 2009, the Special Rapporteur drew attention to a number of human rights concerns that indicated that xenophobic outbreaks were on the rise and emphasized the need for an in-depth approach to combating racism, racial discrimination, xenophobia and related intolerance, which were negatively affecting the enjoyment of human rights by migrants.

6. At the eleventh session of the Human Rights Council, the Special Rapporteur submitted a report with a thematic section that highlighted the protection of children in the context of migration, recalling the obligation of States to ensure the protection

of all children in all stages of the migration process (A/HRC/11/7), a report on the communications sent to Governments and the replies received (A/HRC/11/7/Add.1) and a report on his country missions to Mexico (A/HRC/11/7/Add.2) and Guatemala (A/HRC/11/7/Add.3). The Special Rapporteur also held an interactive dialogue with the Human Rights Council and participated in a number of parallel events on the protection of children and migrant domestic workers in the context of migration and on the realization of the economic, social and cultural rights of migrants. He also participated in a number of events devoted to the interrelation between the human rights of migrants, the financial crisis and the achievement of sustainable peace.

7. The Special Rapporteur visited Romania from 15 to 20 June 2009 and the United Kingdom of Great Britain and Northern Ireland from 22 to 26 June 2009, at the invitation of their respective Governments. The Special Rapporteur plans to undertake a country visit to Senegal in August 2009, at the invitation of that Government. The Special Rapporteur will present the reports on his country missions to Romania, the United Kingdom and Senegal at a future session of the Human Rights Council in 2010. A comprehensive report on the activities of the Special Rapporteur between January 2008 and June 2009 will be submitted to the sixty-fourth session of the General Assembly, pursuant to paragraph 23 of Assembly resolution 63/184.

V. Status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

8. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force on 1 July 2003. As at 1 July 2009, 41 States had ratified the Convention: Albania, Algeria, Argentina, Azerbaijan, Belize, Bolivia (Plurinational State of), Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Jamaica, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Mali, Mauritania, Mexico, Morocco, Nicaragua, Niger, Paraguay, Peru, Philippines, Rwanda, Senegal, Seychelles, Sri Lanka, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Uganda and Uruguay. The entry into force of the Convention assists in securing a protective mechanism for the human rights of migrants, including those in irregular situations. All Member States that have not yet become parties to the Convention are urged to consider acceding to that instrument promptly.

VI. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

9. The Committee, composed of independent experts, monitors the implementation of the Convention by its States parties. Now that the Convention has entered into force for the forty-first State party, on 1 July 2009, the membership of the Committee will be expanded to 14, in conformity with article 72, paragraph 1 (b) of the Convention. Since its first session, held in March 2004, the Committee has considered the initial reports submitted by 11 States parties.

10. At its ninth session, held from 24 to 28 November 2008, the Committee considered the initial report of El Salvador (CMW/C/SLV/1). At its tenth session, held from 20 April to 1 May 2009, the Committee considered the initial reports of Azerbaijan (CMW/C/AZE/1), Bosnia and Herzegovina (CMW/C/BIH/1), Colombia (CMW/C/COL/1) and the Philippines (CMW/C/PHL/1). Common issues raised by the Committee were the need for measures to bring legislation into line with the provisions of the Convention; the importance of data collection to assist in the development of sound migration policies; the need to strengthen and expand training programmes for all officials working in the area of migration on the rights enshrined in the Convention; the importance of ensuring that in practice all migrant workers and members of their families, including those in undocumented situations, had access to an effective remedy for the violation of their rights; the need for effective coordination among the different agencies dealing with migration issues; the need to supervise recruitment agencies; and the importance of continuing measures aimed at preventing and combating smuggling and trafficking in human beings.²

11. In addition to the consideration of the reports of States parties, the Committee met at its ninth session with members of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe. At its tenth session, on 1 May 2009, the Committee held a round table to mark International Labour Day, which focused on the rights of migrant workers to freedom of association, in particular the right to join and establish trade unions.

VII. Universal periodic review of the Human Rights Council

12. In 2006, the General Assembly, in its resolution 60/251, decided that the Human Rights Council should undertake a universal periodic review of the fulfilment by each United Nations Member State of its human rights obligations and commitments. During the reviews of 80 States held during the first five sessions of the Human Rights Council working group on the universal periodic review in 2008 and 2009, recommendations were directed at a number of States concerning the protection of migrants.³ Recommendations included to: review and ensure that national legislation and policies on migrants complied with international human rights law;⁴ take treaty action, including with regard to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;⁵ cooperate with the special procedures, including the Special Rapporteur

² See the concluding observations of the Committee contained in documents CMW/C/AZE/CO/1, CMW/C/BIH/CO/1, CMW/C/COL/CO/1 and CMW/C/PHL/CO/1.

³ The background documentation for the reviews also included information on the human rights of migrants, including information prepared by the State concerned, which could take the form of a national report, and two reports prepared by OHCHR: a compilation of United Nations information and a summary of input from stakeholders. All documentation regarding the universal periodic review can be accessed at <http://www.ohchr.org/EN/HRBodies/UPR>.

⁴ See, for example, A/HRC/8/22, para. 77.6, and A/HRC/8/30, para. 54.24.

⁵ See A/HRC/8/34, para. 64.3, A/HRC/10/70, para. 52.2, A/HRC/10/73, para. 77.1, A/HRC/10/69, para. 91.1, A/HRC/8/33, para. 44.7, A/HRC/8/24, para. 50.4, A/HRC/8/47, para. 60.2, A/HRC/8/35, para. 60.4, A/HRC/10/77, para. 65.2, A/HRC/10/72, para. 53.1, A/HRC/8/31, para. 78.7, A/HRC/8/30, para. 54.24, A/HRC/8/40, para. 64.7, A/HRC/8/49, para. 58.1, A/HRC/10/78, para. 57.1, A/HRC/8/41, paras. 10, 15, 25 and 39, A/HRC/10/75, para. 67b, A/HRC/8/25, para. 56.21, A/HRC/8/45, para. 58.1, and A/HRC/11/21, para. 76.2.

on the human rights of migrants;⁶ and implement the recommendations of United Nations human rights mechanisms.⁷ Other recommendations concerned non-discrimination and equality in access to education and health services,⁸ with particular reference to children and migrant women;⁹ elimination of criminal sanctions against undocumented migrants;¹⁰ enabling access to justice and legal aid for migrant workers;¹¹ and ensuring that the rights of migrants were respected, particularly by law enforcement officials.¹²

VIII. Activities of the Office of the United Nations High Commissioner for Human Rights

13. OHCHR continues its efforts to strengthen the protection of the human rights of migrants and to ensure that the perspective of the human rights of migrants is included among the priority issues in ongoing discussions on international migration and development. OHCHR will further focus its work in the area of human rights and migration during the next biennium (2010-2011). Advocating for a human rights approach to migration, OHCHR seeks to place human rights standards at the centre of migration considerations and to make use of existing human rights mechanisms to protect the human rights of migrants. In doing so, OHCHR underlines how the effective protection of the human rights of migrants is critical to ensuring that migration is a choice and an opportunity rather than a survival strategy and to facilitating the integration of migrants in countries of destination, enabling them to become fully active members of their new communities.

14. The High Commissioner has noted with concern that in some countries laws and regulations continue to exist or be adopted that deter migrants and their families who are in irregular situations from accessing basic human rights, such as health care and education, or deny their children from being registered at birth. The High Commissioner will continue to advocate for the repeal of such laws in order to ensure the protection of the human rights of migrants and their families.

15. In particular, OHCHR has raised awareness about violations of the human rights of migrants related to (a) discrimination, xenophobia and racism; (b) access to economic, social and cultural rights; (c) administrative detention of irregular migrants and the criminalization of their actions; and (d) the impact of the global financial and economic crisis on migrants.

16. These concerns have also been addressed by special procedures of the Human Rights Council. For example, the Working Group on Arbitrary Detention, in its latest annual report (A/HRC/10/21), noted a trend towards the tightening of restrictions applied to asylum-seekers, refugees and immigrants in irregular situations, even to the extent of making the irregular entry into a State a criminal offence or qualifying the irregular stay in the country as an aggravating

⁶ See A/HRC/11/27, para. 93.80 and A/HRC/11/17, para. 86.18.

⁷ See A/HRC/10/70, para. 53.7, and A/HRC/11/27, para. 93.80.

⁸ See A/HRC/10/77, para. 65.17, A/HRC/8/31, para. 78.23 and A/HRC/8/41, para. 57.16.

⁹ See A/HRC/8/19, para. 40, A/HRC/8/47, para. 60.13, A/HRC/10/72, para. 53.16, A/HRC/8/40, paras. 64.8 and 64.15 and A/HRC/10/75, paras. 91.18, and 91.21.

¹⁰ See A/HRC/8/44, para. 60.23, and A/HRC/11/15, para. 81.38.

¹¹ See A/HRC/8/44, para. 60.20, A/HRC/8/40, para. 64.32 and A/HRC/11/23, para. 87.43.

¹² See A/HRC/8/32, para. 67.9.

circumstance for any criminal offence. The Working Group concluded that immigrants in irregular situations should not be qualified or treated as criminals and recalled a number of human rights standards and principles that should be adhered to by Member States with respect to deprivation of liberty in the context of irregular migration.

17. Through the Global Migration Group, OHCHR has actively sought to promote and mainstream a human rights approach to migration within the United Nations system. In 2008, OHCHR contributed to a Global Migration Group publication on migration and human rights.¹³

18. In addition to the support of the Office for the migration-related activities of the special procedures and the human rights treaty bodies, examples of activities undertaken by OHCHR at the global level include:

(a) A panel discussion on migration, discrimination and economic, social and cultural rights, co-hosted with the International Labour Organization (ILO), IOM and the Office of the United Nations High Commissioner for Refugees (UNHCR), held on 24 April 2009 in Geneva on the margins of the Durban Review Conference;

(b) A public information campaign highlighting human rights concerns related to immigration detention as part of “Dignity and justice for detainees week” from 6 to 12 October 2008;¹⁴

(c) The International Meeting on the Protection of the Rights of Children in the Context of International Migration, organized in cooperation with the Government of Mexico, held on 30 September and 1 October 2008;

(d) Support for the activities of national human rights institutions in the area of migration, including in follow-up to the Santa Cruz Declaration on the rights of migrants, which was adopted by the International Coordinating Committee of National Human Rights Institutions in 2006.

19. At the global level, OHCHR also supports efforts to promote the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, including through the International Steering Committee of the Global Campaign for Ratification of the Convention on the Rights of Migrants, which is coordinated by OHCHR. In April 2009, the Steering Committee published a guide on ratification of the Convention.¹⁵

20. Through its field presences, OHCHR has also increasingly engaged in migration-related human rights work through the promotion of the Convention and

¹³ Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights* (New York, October 2008), available at http://www.globalmigrationgroup.org/pdf/Int_Migration_Human_Rights.pdf.

¹⁴ See “Migration, asylum and trafficking-related detention”, Information note No. 7, available at: http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_7.pdf.

¹⁵ See International Steering Committee of the Global Campaign for Ratification of the Convention on the Rights of Migrants, *Guide on Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, April 2009, available at <http://www.migrantsrights.org/documents/SCRatificationGuide4-2009Final.pdf>.

other relevant instruments, training activities, advocacy, technical advice and other initiatives, including:

(a) The OHCHR office in Guatemala provided technical support for the reform of national legislation and regulations on migration issues and for the preparation of the initial report of Guatemala to the Committee on Migrant Workers, including through a series of workshops in collaboration with the national human rights institution and non-governmental organizations to facilitate civil society participation in this process;

(b) The OHCHR office in Mexico provided technical support to Government bodies and civil society organizations on international human rights standards in the area of migration and contributed to the preparation of a handbook on the human rights of migrants;

(c) The OHCHR Middle East regional office in Lebanon, together with the ILO, contributed to the development by a Lebanese steering committee of a unified contract to protect the human rights of women migrant domestic workers;

(d) The OHCHR South-East Asia regional office in Bangkok worked in partnership with member States of the Association of Southeast Asian Nations, United Nations agencies and civil society organizations on several programmes and activities related to the protection of migrant workers and building the capacity of non-governmental organizations in monitoring and reporting on the human rights situation of migrants;

(e) The OHCHR East Africa regional office, together with UNHCR, IOM and the Economic Community of West African States, organized a regional conference on refugee protection and international migration in West Africa, held in Dakar on 13 and 14 November 2008, focusing on the protection response to mixed migration in West Africa, including regional responses to human trafficking.

21. Within the Global Forum on Migration and Development there has been an increasing interest in the human rights dimensions of international migration, with specific discussions dedicated to this issue at the second meeting of the Global Forum, held in Manila in October 2008, and at the upcoming third meeting of the Global Forum to be held in Athens from 4 to 5 November 2009. OHCHR has been providing technical advice and support to a round table to be held at the third meeting of the Global Forum that will focus on the issue of “Inclusion, protection and acceptance of migrants in society — linking human rights and migrant empowerment for development”.

IX. Conclusions and recommendations

22. The Secretary-General welcomes the information received from Member States concerning legislation, regulations and policies to strengthen the protection of the human rights of migrants.

23. The Secretary-General underlines that, while States have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation under the core international human rights instruments to protect the human rights of all individuals under their jurisdiction, regardless of their nationality, origin or migratory status.

24. The Secretary-General encourages States to continue and strengthen efforts to assess and address the obstacles faced by migrants that inhibit their enjoyment of human rights, giving particular attention to the problems faced by immigrants in irregular situations. In this regard, the Secretary-General calls on Member States to repeal or revise laws and regulations that may deter migrants and their families who are in irregular situations from accessing basic human rights, such as health care and education, or deny their children from being registered at birth.

25. The Secretary-General recalls the importance of measures to inform migrants of their human rights according to international standards and to raise awareness among the broader population about the positive economic, social and cultural contributions of migrants to society.

26. The Secretary-General underlines that the effective protection of the human rights of all migrants is critical to their inclusion and integration into society, which enables migrants to become fully active members of their new communities.

27. The Secretary-General encourages the Special Rapporteur on the human rights of migrants to continue to promote the protection of the human rights of migrants through his dialogue with Member States.

28. The Secretary-General encourages the adoption of comprehensive national plans of action, informed by international human rights standards, to strengthen the protection of migrants.

29. The Secretary-General encourages States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Secretary-General further encourages States parties to make declarations under articles 76 and 77 of the Convention recognizing the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to receive and consider inter-State and individual complaints.

30. The Secretary-General also encourages Member States to ratify the United Nations Convention against Transnational Organized Crime and its Protocols against the Smuggling of Migrants by Land, Sea and Air and to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and to implement them fully.

31. The Secretary-General encourages States to include in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to protect the human rights of migrants.

32. The Secretary-General encourages States to take into account the Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1).