

## TABLE OF CONTENTS

<b>Introduction</b> .....	<b>1</b>
Amnesty International's campaign for migrants' rights .....	3
Definitions .....	5
Who is a migrant? .....	5
Who is a migrant worker? .....	5
Who is an irregular migrant? .....	5
Is a refugee or an asylum-seeker a migrant? .....	5
What is the Migrant Workers' Convention? .....	6
<b>Chapter 1: Ignored, marginalized and abused</b> .....	<b>7</b>
Discrimination, racism and xenophobia.....	7
Exploitation.....	8
Invisibility .....	9
Groups at heightened risk of human rights abuses .....	10
Irregular migrants .....	10
'Survival migrants' .....	10
'Stranded migrants', including rejected asylum-seekers .....	11
Women .....	11
Children .....	12
Stateless migrants .....	13
<b>Chapter 2: Migration Management</b> .....	<b>14</b>
State sovereignty and its limits .....	14
'Migration management' policies .....	14
'Migration management' and human rights .....	16
<b>Chapter 3: Migrants' rights under international law</b> .....	<b>18</b>
The principle of non-discrimination .....	18
Other international human rights standards.....	20
<b>Chapter 4: How are the rights of migrants being violated?</b> .....	<b>24</b>
Controlling the entry and return of migrants .....	24
The right to leave and return to one's country .....	24
The right to freedom of movement and place of residence .....	25
The right to life and to physical and mental integrity .....	25
Interception .....	26
The right to privacy and use of biometric data .....	27
Detention .....	28
Deportation and expulsion .....	29
Mass Expulsion .....	31
Smuggling .....	32
Trafficking .....	33
Violations in countries of transit and destination .....	36
Lack of procedural fairness.....	36
Arbitrary confiscation of documents.....	36

Denial of equal access to education .....	37
Lack of adequate housing.....	38
Lack of an adequate standard of living and access to health care .....	39
Abuses of the right to work and rights at work.....	41
Denial of freedom of association.....	43
Undue restrictions on freedom of expression .....	43
Denial of the right to freedom of religion .....	44
Abuses of the right to family life or unity .....	44
<b>Chapter 5: How can we protect migrants' rights?.....</b>	<b>46</b>
Al's eight key priority areas.....	46
1. Focus on those most at risk.....	46
2. Call for ratification and implementation of core human rights and labour rights instruments .....	47
3. Demand greater accountability.....	50
4. Call for migration policies that protect human rights .....	57
5. Call for more research and better data .....	58
6. Place migrants at the centre of debates on migration .....	59
7. Protect human rights defenders .....	59
8. Increase public awareness of migrants' rights and contributions to society .....	60

## Glossary

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AI	Amnesty International
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women (1979)
CRC	Convention on the Rights of the Child (1989)
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African State
EU	European Union
GCIM	Global Commission for International Migration
ICCPR	International Covenant on Civil and Political Rights (1966)
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination (1965)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
ILO	International Labour Organization
IOM	International Organization for Migration
MERCOSUR	Common market of the southern cone of South America
Migrant Workers' Convention	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
OSCE	Organization for Security and Co-operation in Europe
Puebla Process	North and Central American Regional Conference on Migration
Refugee Convention (1951) 1967 Protocol	Convention relating to the Status of Refugees (1951) Protocol relating to the Status of Refugees (1967)
SADC	Southern African Development Community
SAARC	South Asian Association for Regional Cooperation
Smuggling Protocol	UN Protocol against the Smuggling of Migrants by Land, Sea and Air (2000)
Statelessness Convention (1954)	Convention relating to the Status of Stateless Persons (1954)
Statelessness Convention (1961) Trafficking Protocol	Convention on the Reduction of Statelessness (1961) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)
UDHR	Universal Declaration of Human Rights (1948)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	UN High Commissioner for Human Rights

UNICEF  
WGAD

United Nations Children's Fund  
UN Working Group on Arbitrary Detention

# Living in the Shadows

## A primer on the human rights of migrants

### Introduction

M., a young woman studying business administration in Nigeria, was approached by a group of people and persuaded to travel to Spain. She was promised a good job that would allow her to send money back to her family. After a difficult journey lasting around six months travelling by lorry or on foot, she arrived in Spain together with around 48 other people. She crossed the Straits in a small boat, a journey she told AI she would never forget. When she arrived in Madrid, the people who had promised her work were waiting for her. They told her that she would have to work as a prostitute in order to pay the debt of 50,000 Euros that had been incurred for the journey and that, until that was paid, she would not be free. M. asked if they would let her pay her debt working in any other job, but they refused and kept her locked up for three months without seeing anyone until she agreed.

*Spain: The Southern Border - The State turns its back on the human rights of refugees and immigrants* (AI Index: EUR 41/008/2005)

Throughout human history, migration has been a fact of life. The reasons that give rise to migration are varied and often complex. Some people move to new countries to improve their economic situation or to pursue their education. Others leave their countries to escape violations of their human rights, such as torture, persecution, armed conflict, or extreme poverty. Many move for a combination of reasons.

Migration does not always involve moving from one country to another. It also takes place within national borders, for example when people migrate from rural to urban areas in search of employment or a better future.<sup>1</sup>

Migration is often portrayed as a modern phenomenon. In fact people have always moved around the world. Between 1815 and 1914 about 60 million people, mostly from Europe, migrated to the Americas, Oceania, and south and east Africa. A further 10 million people migrated from Russia to Siberia and Central Asia. Some 12 million Chinese and 6 million Japanese people moved to eastern and southern Asia and 1.5 million people emigrated from India to southeast Asia and south and east Africa.<sup>2</sup> The global population for the same period is estimated to have ranged from around 980 million to 1,750 million.<sup>3</sup>

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<sup>1</sup> This primer focuses on migration that involves crossing an international border.

<sup>2</sup> Cholewinski, Ryszard, *Migrant Workers in International Human Rights Law, Their Protection in Countries of Employment*, 1997, p17.

<sup>3</sup> Historical Estimates of World Population: <http://www.census.gov/ipc/www/worldhis.html>

Today, the numbers of people who move across international borders are very small in comparison to people who stay put.<sup>4</sup> Nearly 200 million<sup>5</sup> people out of a global population of 6.4 billion<sup>6</sup> live outside the country in which they were born.<sup>7</sup> This is one person in every 35, or roughly 3 per cent of the world's population.

### **90 million migrant workers live outside their country of origin**

Nevertheless, migration is growing and increasingly visible. According to the International Labour Organization (ILO), an estimated 90 million migrant workers live and work outside their country of origin. Women now constitute almost half of the migrant population, working predominantly in the service industry and as low-skilled labour; in some regions this percentage is even higher.

Migration takes place between and within every region of the world. While much attention has been paid to the movement of people from the developing to the developed world, it is important also to recognize the large numbers of people who move between countries of the global South.<sup>8</sup>

Migration can be forced or voluntary. It may be prompted by the need to flee a perilous situation or by the promise of a better life elsewhere. Factors pushing people to leave their homes include human rights abuses, poverty and lack of human security, lack of economic development and employment prospects, inequalities between and within countries, population growth, environmental degradation and natural disasters. Factors pulling migrants towards new countries include labour shortages and demographic decline, which hold out the promise of work and a better life; faster, cheaper and, in some cases, safer communications and transport systems; existing migration networks and diasporas; and the possibility of sending money back to the country of origin to support immediate and extended family.

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<sup>4</sup> There are a number of current efforts to collect accurate data on the scale and scope of migratory movements, but the available statistical data is limited. In particular, "the analysis of irregular migration is ... hampered by a serious lack of accurate data." Global Commission on International Migration, *Migration in an Interconnected World: New Directions for Action*, Report of the Global Commission on International Migration, October 2005.

<sup>5</sup> This includes asylum-seekers, refugees recognised by UNHCR (9.2 million) and the members of migrant workers' families. See Global Commission on International Migration, *Migration at a Glance*.

<sup>6</sup> Historical Estimates of World Population: <http://www.census.gov/ipc/www/worldhis.html>

<sup>7</sup> The global population of internal migrants is less well enumerated, but estimates suggest that their numbers are far larger than migrants who cross international borders. In China alone, in 2003 an estimated 120 million migrants had moved from rural to urban areas of the country. See International Organization for Migration, *World Migration 2005: Costs and Benefits of International Migration* (2005).

<sup>8</sup> According to the Global Commission on International Migration, 40 per cent of all recorded migrants have moved between developing countries.

In the context of a globalizing economy, there has been an increase in transnational trade and in the movement of capital across borders. Advances in technology mean that it has become easier for many people to leave their country. However, restrictions on people's movement and the regulation of migration have increased. It is becoming harder for many migrants to enter destination countries. This means that more and more migrants are stranded in transit countries which they originally intended to travel through. Many of those who manage to reach their destination countries will have incurred high personal and financial costs. A large number are employed in the informal sector of the economy where they work for low wages with little or no protection of their human and labour rights. This is particularly true for those with few skills. Migrants who live and work in an irregular situation – people without legal permission to enter or remain in a country – are often at particular risk of human rights abuses.

A fact sheet produced by the ILO notes that many migrants “are not looking simply for better work. Propelled by poverty and insecurity, they are looking for *any* work.”<sup>9</sup> Poverty, lack of security - including food security - and gross inequalities within and between countries are still the main reasons why many individuals make the decision to embark on dangerous migration journeys.

The complex and varied causes which lie behind migration suggest that it is perhaps best viewed as a continuum ranging from forced to voluntary movement. Between these two extremes, there are varying degrees of free choice or coercion involved in migrants' decisions to move to another country.

### ***Amnesty International's campaign for migrants' rights***

Amnesty International (AI) is concerned about the human rights of all migrants. AI looks at the “life-cycle” of migration: the decision to leave the country of origin; the migratory journey, including time spent in countries of transit; arrival and stay in the country of destination; possible return back to the country of origin. Through this life-cycle, AI focuses on the situations during which migrants are most vulnerable to abuse, and on those individuals or groups of individuals most at risk – including irregular migrants, migrant children and migrant women.

AI celebrates the contributions made by migrants to their new communities, in terms of skills, resources and diversity. It recognizes the benefits that migration brings to countries of origin in terms not only of remittances but also new or improved skills and knowledge for those returning home.

This primer on migrants' human rights considers the responsibilities and obligations of governments and other actors regarding migration. It focuses on how government policies and practices should protect the human rights of all migrants. Looking at the situation of

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<sup>9</sup> ILO, *Facts on Migrant Labour*, March 2004.

migrants in the world today, it is clear that many governments are failing to fulfil their obligations towards them. The result is that every year thousands of people die while attempting to gain access to other countries. Many of those who survive the often harrowing ordeal of travelling to a new country face further abuse and exploitation at the hands of traffickers, unscrupulous employers and state officials. Those who lack official status and the protection of the law are often denied the right to education, health and housing services and are condemned to live and work in appalling and degrading conditions.

This primer highlights some of the violations that migrants face and sets out a campaigning agenda for migrants' rights. Such a campaign needs to focus on putting migrants and their rights at the centre of any debate about migration, on increasing accountability for human rights abuses against migrants, and on ensuring that national and regional legislation and policies on migration are in line with international human rights standards.

At the heart of AI's proposed agenda for campaigning for migrants' rights is a call to treat all migrants with full respect for their human rights and human dignity. Strategies are needed to counter the misinformation, prejudice and fear which all too often characterize discussion of migration issues amongst decision-makers and the general public. Raising public awareness on the basis of well-informed and balanced arguments is a vital part of the human rights agenda on migrants' rights. A successful campaign also requires coalitions to be built with migrants and their communities, non-governmental organizations (NGOs), and others working to protect and promote migrants' rights.

The primer seeks to articulate AI's key message to the public, policy-makers and other actors: **migrants' rights are human rights**. Accordingly, AI calls on campaigners, advocates and other activists to concentrate on eight key priority areas when promoting migrants' rights:

1. focus on those migrants most at risk – irregular migrants, migrant women and migrant children
2. call for ratification and implementation of core human rights and labour rights treaties, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (the Migrant Workers' Convention)
3. demand greater accountability of state and non-state actors at international, regional and national levels
4. call for migration policies that protect human rights
5. call for more research and better data
6. place migrants and their communities at the centre of debates on migration; recognize and ensure their role in formulating and implementing strategies to protect their rights
7. protect human rights defenders working to protect and promote the human rights of migrants
8. increase public awareness of migrants' rights and their positive contributions to society.

## ***Definitions***

### **Who is a migrant?**

A migrant is a person who moves from one place to another to live, and usually to work, either temporarily or permanently.<sup>10</sup> Migrants may move within their country of origin or to another country. They may be forced to leave because they do not have access to adequate food, water or shelter, or in order to ensure the safety and security of themselves and their families. They may move to take up employment, or to be reunited with family members. Many leave for a combination of reasons.

### **Who is a migrant worker?**

A migrant worker is defined in the Migrant Workers' Convention as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" (Article 2(1)).

### **Who is an irregular migrant?**

An irregular migrant<sup>11</sup> is someone who does not have legal permission to remain in a host country. Not all irregular migrants enter or stay in a country without authorization or lack documents. For instance migrants who are trafficked into a country to work will often have been provided with false documents by the traffickers. The status of a migrant may become irregular in a number of ways. Sometimes this may occur inadvertently; sometimes the reasons for the change of status may be arbitrary and unfair. During the course of a single journey, a migrant may slip in and out of irregularity according to government policies and visa regulations. An undocumented migrant is someone who lacks the documentation to lawfully enter or stay in a country.

### **Is a refugee or an asylum-seeker a migrant?**

The term "refugee" has acquired a particular meaning in international law. It refers to any person who is outside their country of origin and who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"<sup>12</sup> and is therefore unable or unwilling to return to that country. The legal

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<sup>10</sup> It has proved difficult to develop a comprehensive and universal definition of the term "migrant". "The term migrant can be understood as 'any person who lives temporarily or permanently in a country where he or she was not born, and has acquired some significant social ties to this country.' However, this may be too narrow a definition when considering that, according to some states' policies, a person can be considered as a migrant even when s/he is born in the country." UNESCO, *Glossary: Migrants and Migration*.

<sup>11</sup> The ILO has noted that "[P]eople who enter or work in countries without legal authorisation have been labelled illegal, clandestine, undocumented or irregular. 'Illegal migrants' has a normative connotation and conveys the idea of criminality." ILO, *Towards a Fair Deal for Migrant Workers in the Global Economy*, 2004. For this reason, AI does not use the term "illegal migrant".

<sup>12</sup> 1951 Convention relating to the Status of Refugees (The Refugee Convention), Article 1.

regime that applies to such people includes the 1951 Convention relating to the Status of Refugees (The Refugee Convention) and its 1967 Protocol, in addition to a number of human rights treaties and regional refugee instruments. The legal framework for refugees recognizes that they have special international protection needs due to the fact that they do not have the protection of their country of origin. While refugees are, therefore, seen as distinct from migrants, they often travel alongside migrants, using the same travel routes or smuggling channels, and often face similar violations of their human rights in transit or destination countries.

An asylum-seeker is a person who is seeking protection as a refugee even though he or she may not have been formally recognized as one. The term normally applies to a person waiting for the government or the United Nations High Commissioner for Refugees (UNHCR) to decide on their claim for refugee status. The lack of formal recognition does not reduce his or her entitlement to the protection of international refugee law.

### **What is the Migrant Workers' Convention?**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families – the Migrant Workers' Convention – is one of the seven core international human rights treaties.<sup>13</sup> It came into force on 1 July 2003. It explicitly recognizes the human rights of all migrant workers and their families, drawing together fundamental human rights standards that are also reflected in the other six core treaties.

One of the most important principles set out in the Migrant Workers' Convention is that all migrant workers and members of their families are entitled to respect for their fundamental human rights, regardless of their legal status in the host country. It sets out the rights to which all migrant workers and their families are entitled, including the rights to life (Article 9), to liberty (Article 16), to protection from collective expulsion (Article 22) and to adequate conditions of work (Article 25).

In addition, the Migrant Workers' Convention provides for certain rights for migrant workers and their families who are lawfully present in a host country. These include the right to freedom of movement and residence within the territory of the host country (Article 39) and the right to equal treatment with nationals in respect of protection against dismissal from employment (Article 54).

By September 2006, the Migrant Workers' Convention had been ratified by 34 states. Around the world, NGOs are campaigning for increased ratification and implementation of this important international human rights treaty.

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<sup>13</sup> The others are: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

## **Chapter 1: Ignored, marginalized and abused**

### ***Discrimination, racism and xenophobia***

The way migration issues are presented by politicians, public officials and the media has a significant impact on public perceptions of migrants and their rights. The exploitation of popular fears and the use of migrants as scapegoats for diverse social problems fuels discrimination, racism and xenophobia.

Discrimination of any kind on racial or other grounds is prohibited in all core international human rights instruments (see below). The human rights of migrants are often compromised when public statements arouse racial or xenophobic prejudice and incite attacks on migrant populations.

**“xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism”**

Paragraph 16, Durban Declaration and Programme of Action, adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001

Since the 11 September 2001 attacks in the USA, measures to enhance security which have focused on controlling people’s movements have been introduced in a number of countries. Some of these measures have disproportionately affected migrants and other non-nationals.<sup>14</sup> In some countries migrants, in particular irregular migrants, have been labelled as security threats or as suspected or potential terrorists.

The scapegoating of migrants, the deliberate fuelling of fear and the nurturing of discriminatory, racist and xenophobic sentiments by some politicians and parts of the media have been accompanied by measures that have trampled on some of the most basic human rights of migrants, including the right to liberty and security of the person.

Much of the public debate about migration is couched in terminology which is loaded and derogatory. People trying to enter another country are vilified as “illegal immigrants”, “gate-crashers”, “queue-jumpers”, and even as “invaders” seeking to breach the defences of a country with malicious intent. The clear implication is that they are abusing the system and exploiting the generosity of states. Such descriptions create the impression not only that migrants have no right to enter, but that they have no rights at all.

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<sup>14</sup> The UN Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live refers to “any individual who is not a national of a State in which he or she is present.” The Declaration uses the term “alien” (in common with the ICCPR for instance), the Convention on the Elimination of Racial Discrimination refers to “non-citizens”, and other standards such as the Durban Declaration refer to “non nationals”. AI generally uses the term “non-national”.

In some countries, anti-terrorist legislation restricting the fundamental rights of non-nationals has been found by the courts to be in breach of international human rights obligations.

**“The real threat to the life of the nation, in the sense of people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve. It is for Parliament to decide whether to give the terrorists such a victory.”**

Lord Hoffmann, House of Lords, United Kingdom<sup>15</sup>

### ***Exploitation***

Migrants, especially irregular migrants, are at particular risk of exploitation by employers, traffickers and smugglers. Their lack of legal status means that they are often unable or unwilling to assert their labour or other human rights. Children are extremely vulnerable to exploitation; human rights abuses against migrant children are often well hidden from the public eye, which allows horrific violations to go unchecked and unpunished. Women and girls are particularly at risk of sexual exploitation by employers or state officials, or if they fall into the hands of traffickers.

N.R., a 28-year-old Indian national, told AI that she had worked as a domestic worker in Kuwait for three years during which time her Kuwaiti employer had not allowed her out of the house. N.R. said that she had been asked to work for a relative of her employer for three days. The relative raped her and she became pregnant. After she gave birth she was taken to the deportation section of the women’s prison where she was detained with her baby daughter. Her employer gave her passport and airline ticket to the police, but the police said that she could not leave the country with her baby daughter without the consent of the baby’s father. N.R. told AI that she had not been able to tell the police where the man lived because she had never been allowed out of her employer’s house and so did not know the location of the house where she had been raped. When AI interviewed her in July 2004, she and her daughter had been detained in the deportation centre since December 2003 and her status remained unclear.<sup>16</sup>

The exploitation of migrants is prohibited under a range of international instruments. These include:

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<sup>15</sup> In December 2004, the United Kingdom House of Lords found the indefinite detention of non-UK nationals considered to be “suspected terrorists” to be discriminatory. See, *A and others v Secretary of State for the Home Department, X and another v Secretary of State for the Home Department* [2004] UKHL 56, para. 97. Indefinite detention of non-citizens was authorized by the Anti-Terrorism Crimes and Security Act 2001.

<sup>16</sup> Amnesty International, Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect (AI Index: MDE 04/004/2005).

- ILO Convention No. 29 concerning Forced or Compulsory Labour (1930)
- ILO Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)
- International Covenant on Civil and Political Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000)

### ***Invisibility***

Irregular migrants – especially people who have been trafficked, indentured or bonded labourers, and domestic workers employed in private homes – rarely appear in official statistics. Often stripped of identity documents and fearful of contact with the authorities, irregular migrants are difficult to identify or trace. Sometimes migrants themselves seek invisibility to escape official attention or threats to themselves or their families.

These “invisible” migrants are at heightened risk of exploitation and abuse. Their lack of legal status or documentation makes it extremely difficult for many to claim their rights. Unscrupulous employers are aware of this and often take advantage.

A paycheck stub, a phone record, a money transfer receipt – all they needed was some piece of paper to prove their loved ones existed. Yet for families of Mexican migrants killed in the 11 September 2001 attacks in the USA and seeking compensation or just a death certificate, even those small requirements have been impossible to meet, especially if the victims were in the USA illegally.

Without Social Security numbers, tax records – and in some cases without a birth certificate – grieving family members have been unable to confirm their relatives were at the scene of the 2001 attacks, or provide the documents necessary to receive a share of a fund that has awarded on average a little more than US\$2 million per victim.

“When you're undocumented in any country, it's like you're in a shadow,” said Norberto Terrazas, counsel for Mexican citizens' legal protection at the Mexican consulate in New York. “No one sees you. No one notices. They can see your work, that you're contributing to the economy and consuming goods, but you really don't exist.”

Sixteen Mexican nationals -- all irregular migrants – are believed to have perished in the September 2001 attacks. However, the families of only five were able to prove the deaths of their loved ones in the attacks and so qualify for compensation.

“No Answers for Kin of Mexican 9/11 Victims”, Associated Press, 10 September 2004

Migrants often find themselves isolated from family or social networks in countries of destination. Social isolation can put them at particular risk of exploitation and abuse. When they are in an irregular situation, migrants often fear that seeking out social and community services or networks that could help to overcome their isolation will bring them to the attention of the authorities and so put them at risk of arrest or expulsion.

### ***Groups at heightened risk of human rights abuses***

Certain migrants or groups of migrants are particularly vulnerable to abuses of their human rights because of their legal status, sex, age, income or social status, language, race, ethnicity, religion, or other circumstance. Individual migrants often fall into more than one of these categories, increasing their risk of abuse.

### **Irregular migrants**

Migrants who do not have proper documentation or find themselves in an irregular situation are at increased risk of having their human rights abused.

**Given their precarious legal position in the host country, irregular migrant workers easily fall prey to extortion and are highly vulnerable to abuse and exploitation by employers, migration agents, corrupt bureaucrats and criminal gangs.**

*ILO, Towards a fair deal for migrant workers in the global economy, 2004.*

The problems that irregular migrants encounter arise principally from a lack of legal status and the fact that most are employed in the informal sector or the shadow economy. Without legal status or protection, they are at risk of exploitation and abuse by both unscrupulous employers and government officials. Those committing such abuses know that they are unlikely to be held accountable because irregular migrants are often reluctant to turn to the authorities to enforce respect for their rights. They are generally fearful of drawing official attention to themselves, thereby risking arrest or deportation.

### **‘Survival migrants’**

All over the world, grave abuses of civil and political as well as economic, social and cultural rights compel many migrants to leave their homes, and often also their families, in search of safety, security and a sustainable livelihood. They move as part of a survival strategy. People escaping extreme deprivation and violations of economic or social rights have the least choice in life and in migration. Most are desperately poor. Many are women. They often take high-risk migration decisions in search of basic human security for themselves and their families. Legal avenues of migration for people offering unskilled or low skilled labour are scarce. They are therefore most likely to be affected by immigration restrictions and to fall prey to trafficking or smuggling networks.

**In too many parts of the world, migration has become a survival strategy...Disadvantaged groups in society, such as women, ethnic minorities,**

**indigenous and stateless people, are often the most desperate to leave and are at most risk of finding themselves in the hands of smugglers and traffickers.**

*Migration in an Interconnected World: New Directions for Action*, Report of the Global Commission on International Migration, October 2005

People taking the decision to migrate as part of a survival strategy are rarely able to put in place alternative plans (an “exit strategy”) in the event that their migration experience is abusive. They are therefore left with little or no option but to endure exploitative conditions when they move, live and work away from their homes. Migration under such circumstances is no longer a free choice.

### **‘Stranded migrants’, including rejected asylum-seekers**

Many migrants are stranded in countries of transit or destination: they have been denied the right to enter and remain legally, but are unable to return to their countries of origin.

Some migrants cannot return to their countries of origin due to continuing insecurity, because there is no legal means to get there, or because it is impossible in practice for them to return. Many are not granted any form of legal status, even where return proves impossible.

Many stranded migrants are individuals whose applications for refugee status have been turned down. People whose asylum claims have been rejected under a fair and satisfactory procedure are no longer protected under international refugee law. However, they should continue to enjoy the protection of international human rights law.

**Section 9 of the [United Kingdom] 2004 Asylum and Immigration Act removed the welfare benefits and housing help of asylum families whose claims have been rejected and who have "failed to take reasonable steps" to leave Britain.**

**Families have been made homeless, had their support removed and are living in fear of having their children taken into care.**

“Asylum scheme drives families underground”, *The Guardian*, 31 January 2006

Many stranded migrants who cannot be returned to their countries of origin are held in prolonged and sometimes indefinite detention. Many are denied the right to work, or access to social security or other assistance. As a consequence they are destitute or dependent on charity: effectively abandoned by the state in which they live.

### **Women**

Conflict, poverty and human rights violations compel women to leave their countries in search of work or security. There is a growing trend in many regions, particularly Europe and Asia, for women to move as autonomous economic migrants, rather than as dependents of male relatives. Many have to leave their families behind.

Discrimination against women in some regular migration programmes pushes women into irregular migration, as legal avenues are not available to them. Large numbers of women who are unable to cover their travel costs are drawn, often unwittingly, into trafficking networks. The promise of a better standard of living for their families is all too often followed by exploitation and abuse, including indentured or bonded labour, or slavery or slave-like conditions.

**‘The majority of the 1.5 billion people living on 1 dollar a day or less are women’**  
UN Department of Public Information, Fact Sheet 1, *The Feminization of Poverty*<sup>17</sup>

Migrant women are particularly at risk of discrimination, exploitation and abuse because of their status as women, as migrants or non-nationals, and often as workers in gender-segregated labour markets – for example, as domestic workers, in sweatshops or in the sex industry.<sup>18</sup> They are often the most invisible in society and they can also face further gender-based barriers to human rights such as equal pay, or access to justice or redress.

## **Children**

Children are especially vulnerable to deception and exploitation, due to their age, immaturity or lack of education. Many are unlawfully recruited to carry out the worst forms of labour, which are likely to harm the mental and physical health of the child. The kinds of labour migrant children are forced to undertake include begging, pornography, forced prostitution, drug trafficking, recruitment into armed forces, or domestic labour under slave-like conditions.<sup>19</sup> Children often fall victim to traffickers and unscrupulous employers without any possibility of escape.

**“Without proper documents, [children] can experience problems in access to basic services, and problems with the law. Children may be separated from their parent(s) in the event of arrest and detention; in some cases, children have been repatriated without adults.”**

‘A Child’s Rights Approach on International Migration and Trafficking: a UNICEF Perspective’, Paper presented at the Third Coordination Meeting on International Migration, New York, 27-28 October 2004

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<sup>17</sup> “In addition, the gap between women and men caught in the cycle of poverty has continued to widen in the past decade, a phenomenon commonly referred to as ‘the feminization of poverty’. Worldwide, women earn on average slightly more than 50 per cent of what men earn.” UN Department of Public Information, Fact Sheet 1, *The Feminization of Poverty*.

<http://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm>

<sup>18</sup> ILO, South-East Asia and the Pacific Multidisciplinary Advisory Team, OnLine Gender Learning and Information Module.

<sup>19</sup> ILO Convention No.182 on Worst Forms of Child Labour, 1999.

Poor record-keeping of births in a child's country of origin increases the risk of trafficking for sexual or labour exploitation. If the legal existence of a child is not accurately and adequately recorded, the possibilities for tracing such a child are dramatically diminished.

Children born abroad, particularly to undocumented migrants, may not have access to birth registration. Consequently, many children of migrant workers are not registered and may be stateless. Children of irregular migrants are also less likely to attend school or to receive the health care they need during childhood.

### **Stateless migrants**

The Convention relating to the Status of Stateless Persons (The 1954 Statelessness Convention) defines a stateless person as "a person who is not considered as a national by any State under the operation of its law." Not all stateless persons are migrants. Yet the failure to recognize the human rights of migrants over years, decades, and even centuries represents a significant cause of statelessness in various parts of the world. Migrants, in particular irregular migrants, are often unable or too afraid to register the births of their children in their country of destination, and these children can therefore be made stateless. Immigration laws in some countries deny citizenship rights to children born of non-national parents even if the consequence is that the child is stateless. Many trafficked people, particularly women and children, are rendered effectively stateless through the confiscation of their identity documents by their traffickers.

**Individuals who are stateless and are outside of their country of origin or country of former residence can be detained for long periods if those countries refuse to grant them re-entry to their territories. Often, even the most basic of rights – the rights to education, medical care and employment – are denied to individuals who cannot prove a legal connection with a country.**

*Nationality and Statelessness – A Handbook for Parliamentarians*, UNHCR and the Inter-Parliamentary Union, 2005.

Stateless individuals have received special recognition in international law. The United Nations High Commissioner for Refugees (UNHCR), the UN agency responsible for protecting refugees and working towards the resolution of refugee problems, also has a specific global mandate to prevent and reduce statelessness and protect all stateless persons. This mandate includes promoting ratification of two Conventions dealing with statelessness: the 1954 Statelessness Convention, and the Convention on the Reduction of Statelessness (The 1961 Statelessness Convention).<sup>20</sup>

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<sup>20</sup> While these Conventions have thus far only been ratified by 59 and 31 states respectively, they remain a vital tool for the protection and promotion of the human rights of stateless persons, and states should be urged to ratify these Conventions and implement their provisions.

## Chapter 2: ‘Migration management’

AI’s primary concern is to ensure that the human rights of migrants are respected, protected and promoted. While the design of policies on migration is fundamentally a matter for individual governments, any such policies must be compatible with international human rights law and standards.

### *State sovereignty and its limits*

Whether in rich or poor countries, people cross borders every day, sometimes as a result of bilateral agreements between states, as a result of global or regional economic processes, and often in uncontrolled and unregulated movements of people. At a time when state sovereignty is perceived to be under threat, migration control measures, such as visa requirements or border checkpoints, are a visible means of asserting state sovereignty.

States have the sovereign right to exercise authority over their borders. This means that they exercise exclusive jurisdiction on their territory. There are few areas where this claim is made more forcefully by governments than in the sphere of migration.

Sovereignty is not, however, absolute.

**Sovereignty means that a state can exercise exclusive jurisdiction over its territory ...but sovereignty is not absolute**

Sovereign power is not without limits. Although states have the right to exercise authority over their borders, they also have the obligation to respect their voluntarily assumed international legal obligations, including protecting the human rights of all migrants. Sovereignty cannot be used as a defence for acts that are unlawful under international law.<sup>21</sup> A state cannot pick and choose which rights it will apply. It must exercise its legitimate powers responsibly and in accordance with international law.

### *‘Migration management’ policies*

Most government policies of “migration management” encourage some selected migration while officially discouraging other types of migration. Many governments that publicly state the absolute necessity of excluding irregular migrants from their territory are prepared to tolerate the existence and even the growth of informal labour markets which rely largely on the labour of irregular migrants. While governments have traditionally held that migration is strictly a sovereign and internal matter, most have now recognised its cross-border implications and are engaged in bilateral, regional or international processes to manage migration.

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<sup>21</sup> See UN Human Rights Committee, General Comment No. 31[80], Nature of the General Legal Obligations Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004.

Some governments favour migration, because of the economic value of remittances to the sending country, as well as the social and economic benefits of a migrant worker population to the receiving country. Some tolerate migration because they recognize the economic value of the informal market sector where most migrants are employed. Others encourage migrants to work in industries which face labour shortages. Ageing populations and dramatically reduced fertility rates in the developed world are also influencing governments in favour of migration, not least to maintain their pensions and social security systems and to find sufficient caregivers. Countries that send migrants abroad are keen to obtain the benefit of migrant remittances to their economies.<sup>22</sup> Such states also seek to benefit from the advantages of the “brain gain” when their nationals return home having learned new skills in their country of employment.

However, many politicians and other policy-makers are heavily influenced by a perception that a hard line on migration will boost their popularity with the electorate. Fear, manifested in racist and xenophobic responses, can be readily generated amongst the public, and migrants make an easy target. Restrictive migration policies can also be driven by nationalistic sentiments and preoccupations about the perceived threat that migrants, especially irregular migrants, pose to the national identity or security of the country. There are many **bilateral agreements** between states to control migration. These include labour agreements and agreements to address concerns such as smuggling and trafficking. Some countries of origin enter into agreements with countries of destination to protect their migrant workers or to secure access for them to the labour markets of destination countries. Countries of destination are often eager to obtain return and readmission agreements with countries of origin and transit. Such agreements take the form of operational or framework agreements or memoranda of understanding.

Many governments are also engaged in **regional processes** which provide for varying degrees of mobility for citizens of member states. For example, agreements of the Economic Community of West African States (ECOWAS) give citizens of those states the right to “enter, reside, and establish” in any member state. In the European Union (EU), full mobility is permitted to citizens of EU countries, including for employment purposes. Mobility within the common market of the southern cone of South America (MERCOSUR) focuses solely on the movement of professionals. In Asia, where binding agreements on migration issues have been rare, states that comprise the Association of South East Asian Nations (ASEAN) have agreed in principle to open up certain sectors to workers from other ASEAN countries. In addition, under the 2004 Vientiane Action Programme, member states of ASEAN have committed to elaborating an instrument for the promotion and protection of the rights of migrant workers. The Middle East region has similarly been characterized by a lack of binding agreements on migration. A series of meetings of the 5+5 Dialogue on Migration in the Western

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<sup>22</sup> The World Bank estimates that US \$216 billion were sent as remittances in 2004, with \$150 billion going to developing countries. Remittances surpass foreign aid and are the largest source of foreign capital for dozens of countries. See World Bank, *International Migration, Remittances and the Brain Drain* (2006).

Mediterranean, hosted by the International Organization for Migration (IOM) between 2002 and 2004 aimed to enhance coordination and identify relevant responses to the complexity of migration pattern in this region.

At the **international level**, governments have sought consensus on broad principles underlying an international regime of “migration management”. One recent example is the Berne Initiative, an inter-governmental consultative process aimed at “achieving a better management of migration at regional and global level through enhanced inter-state cooperation.”<sup>23</sup> Another example is the intergovernmental consultative process within the ILO. The 92<sup>nd</sup> session of the International Labour Conference called on the ILO to carry out a plan of action on migrant workers designed to ensure that migrant workers are covered by the provisions of international labour standards and benefit from applicable national labour and social laws. To bring this about, a non-binding Multilateral Framework on Labour Migration has been adopted by the Governing Body of the ILO.

The IOM is an inter-governmental organization which has taken a leading role in discussions on migration management in the international sphere and plays an increasingly important role in the development of international migration policy. This is most evident in its “International Dialogue on Migration”<sup>24</sup>, which is aimed at strengthening cooperative mechanisms between governments in such areas as migration and trade, labour, health and development. The IOM has no formal protection mandate or any responsibility to supervise an international treaty to protect migrants.

### ***‘Migration management’ and human rights***

If a regime of “migration management” is to be effective, not only must it be credible to states, but it must also be credible to migrants. To achieve this, it must respect the fundamental human rights of migrants, and indeed must actively seek to respect, protect and promote the rights of all migrants. States must therefore ensure that their policies and practices do not in any way compromise the rights of any migrants, regardless of factors such as their status or mode of travel and arrival on the territory of the state. In particular, such policies and practices should not put migrants at increased risk of abuse at any stage of their migratory journey. AI believes that any regime of “migration management”, be it national or bilateral, regional or international, must be drawn up within a human rights framework.

#### **States must ensure that their migration management policies and practices do not put migrants at risk of abuse**

The right of states to manage migration means that a government is entitled to:

- know who is crossing its borders

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<sup>23</sup> See The Berne Initiative: <http://www.bfm.admin.ch/index.php?id=226&L=3>

<sup>24</sup> On its website, IOM notes that “[t]his initiative is designed ultimately to enhance the capacity of government to ensure the orderly management of migration, promote the positive aspects of migration, and reduce irregular migration.” See <http://www.iom.int/en/know/idm/index.shtml>

- determine its immigration programmes and policies
- take steps to minimize unauthorized migration.

At the same time, governments are obliged to:

- respect the principle of *non-refoulement* which stipulates that no person is to be returned in any manner whatsoever to a country where she or he is at risk of torture or other serious human rights violations; this principle includes not rejecting at the frontier people seeking international protection, including asylum-seekers and refugees
- ensure that the laws, policies and practices relevant to the entry, stay and return of all migrants on their territory are consistent with the principles of international human rights law (and international refugee and humanitarian law as applicable)
- ensure that entry and removal/deportation procedures (whether legislative or administrative) are implemented in conformity with human rights standards
- ensure the protection of the human rights of all migrants in their territory or under their effective control, in particular the right of all migrant workers, regardless of their status, to just and favourable conditions of work.

## Chapter 3: Migrants' rights under international law

The migrant experience intersects with a number of areas of international law. Principal sources of law are human rights law (which includes the Migrant Workers' Convention), labour law (including ILO standards), refugee law (which may apply directly or assist, by analogy, in guiding interpretation of other branches of law),<sup>25</sup> international humanitarian law and international criminal law.

There is no discrete body of international migration law. Nevertheless, there is a nascent “international migration regime” comprising international standards, mechanisms and institutions. **Advocates and campaigners for the human rights of migrants should seek to ensure that the primary starting point of the international migration regime is the rights of migrants rather than the interests of states.**

Responsibility for the protection of the human rights of migrants also falls to a range of bodies, in particular:

- the Office of the High Commissioner for Human Rights (OHCHR)
- the UN human rights treaty bodies, in particular the Committee on Migrant Workers
- the special procedures of the UN human rights institutions, in particular the Special Rapporteur on the Human Rights of Migrants
- the UNHCR, where the Refugee Convention applies, and which has responsibility for promoting the Statelessness Conventions
- the ILO where relevant ILO Conventions apply.

At a regional level, the African Union, the European Union, the Council of Europe and the Organization of American States all carry responsibility for supervising the implementation of regional instruments relevant to the protection of the rights of migrants.

### *The principle of non-discrimination*

The principle of non-discrimination is central to protection of the human rights of all migrants. This principle features in all of the key international human rights instruments.<sup>26</sup>

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<sup>25</sup> AI treats refugee and asylum issues as a separate area of law to migration law, although it recognizes the intersection between these bodies of law, especially in the context of mixed flows of refugees and migrants.

<sup>26</sup> In an advisory opinion on Juridical Condition and Rights of the Undocumented Migrants, the Inter-American Court of Human Rights found that “the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens* [i.e. the most fundamental and preemptory of rights], because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws.” Advisory Opinion OC-18/03 of September 17, 2003,

Migrants can assert their right to freedom from discrimination on various grounds under:

- the International Covenant on Civil and Political Rights (ICCPR), Article 2(1), which guarantees the rights recognized in the Covenant 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; and Article 26, which guarantees equal protection of the law without any discrimination;
- the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2(3), which guarantees the rights in the Covenant without *discrimination* of any kind;
- the Convention on the Rights of the Child (CRC), Article 2(1), which guarantees the rights in the Convention without *discrimination* of any kind;
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), (Article 1(1)), which prohibits *discrimination* based on race, colour, descent, or national or ethnic origin;
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 1, which prohibits *discrimination* on the basis of sex ; and
- the Migrant Workers' Convention, which expands the prohibited grounds for *discrimination* with respect to rights of migrant workers to include conviction, nationality, age, economic position and marital status.

The principle of non-discrimination does not mean that migrants have exactly the same entitlements as nationals. For example, in some national jurisdictions, migrants are not entitled to receive social security benefits on the same basis as nationals. However, the principle of non-discrimination means that any differences in the treatment meted out to migrants must conform to international law – they must not breach the migrants' internationally recognized human rights. The ICERD specifically allows governments to make “distinctions, exclusions, restrictions or preferences” between citizens and non-citizens (Article 1(2)). Article 2(3) of the ICESCR qualifies the general principle that the Covenant applies equally to nationals and non-nationals by according developing countries power to determine “to what extent they would guarantee the *economic* rights recognized in the present Covenant to non-nationals”.<sup>27</sup> The Migrant Workers' Convention permits certain distinctions to be made between documented and undocumented migrant workers.<sup>28</sup>

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<sup>27</sup> The language and intention of the provision suggest that its purpose was to end the domination of certain economic groups of non-nationals in developing states during colonial times. It should therefore be interpreted narrowly, also keeping in mind the qualifier in Article 2(3) that such limitations may only be imposed “with due regard to human rights”. Article 4 of the ICESCR provides that any restrictions or limitations on rights imposed by a state party should be extraordinary and must be justified on the basis of the general welfare in a democratic society. This distinction, by implication, is not available to developed countries. See Amnesty International, Human rights for human dignity – a primer on economic, social and cultural rights (AI Index: POL 34/009/2005).

<sup>28</sup> For example, migrant workers and members of their family who are documented or in a regular situation enjoy the right to participate in the public affairs of their State and to participate fully and freely in elections, including the right to stand for election, in accordance with its legislation (Article

In evaluating whether a particular measure taken in relation to a group of migrants constitutes discrimination as opposed to a legitimate distinction, where should we draw the line?

Exceptional distinctions must serve a legitimate objective and must be proportional to the achievement of that objective.<sup>29</sup> Crucially, they must not interfere with the right of the individual, regardless of his or her status, to respect for his or her fundamental human rights.<sup>30</sup>

### ***Other international human rights standards***

**“The architecture of international human rights law is built on the premise that all persons, by virtue of their essential humanity, should enjoy all human rights...”**

David Weissbrodt, UN Special Rapporteur on Non-Citizens, Final report on the rights of non-citizens (2003)<sup>31</sup>

The rights of migrants are best protected by drawing on the various strands of international human rights law. As mentioned above, legitimate distinctions can sometimes be made between citizens and non-nationals, and between groups of migrants. However, states and other actors, in their treatment of all migrants, must not breach the fundamental principle of non-discrimination.

Human rights violations can be both a cause and a consequence of migratory movements. Abject poverty may have prompted migrants to leave their country of origin in the hope of realizing their economic and social rights. Yet in the country of destination, migrants and their families may experience arbitrary arrest and detention, denial of labour rights, inadequate or abusive work practices, and denial of equal access to education and health services. They may be denied the right to equal protection of the courts, and may be subject to arbitrary expulsion.

The interdependence and indivisibility of human rights means that the denial of one right to migrants can often lead to or accompany other violations of their rights. So, for example, inadequate and abusive conditions of detention may seriously compromise a migrant’s right to health; forced eviction from housing may expose a migrant to exploitation and abuse on the streets or to arbitrary detention. Further, the denial of a migrant’s rights at work, such as to regulated hours of work and to weekly rest, is often accompanied by severe restrictions on his or her right to liberty and security of the person.

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41). They also enjoy the right, subject to certain exceptional restrictions, to liberty of movement in the territory of the State of employment and freedom to choose their residence there (Article 39).

<sup>29</sup> See for example, Human Rights Committee General Comments No. 15, *The position of aliens under the Covenant*, and No. 18, *Non-discrimination*.

<sup>30</sup> See Committee on the Elimination of Racial Discrimination, General Comment XIV, para. 2 and Human Rights Committee, General Comment No. 18, para. 13.

<sup>31</sup> U.N. Doc. E/CN.4/Sub.2/2003/23

**All migrants without exception of any kind have the right to:**

- **life** (ICCPR Article 6; Migrant Workers' Convention Article 9)
- **freedom from torture and from cruel, inhuman or degrading treatment or punishment** (ICCPR Article 7; Migrant Workers' Convention Article 10)
- **freedom from slavery and servitude** (ICCPR Article 8,(1) & (2); Migrant Workers' Convention Article 11 (1))
- **freedom from imprisonment for inability to fulfil a contractual obligation** (ICCPR Article 11; Migrant Workers' Convention Article 20(1))
- **recognition as a person before the law** (ICCPR Article 16; Migrant Workers' Convention Article 24)
- **freedom of thought, conscience and religion** (ICCPR Article 18; Migrant Workers' Convention Article 12(1))

Economic, social and cultural rights are broadly reflected in the Migrant Workers' Convention. Furthermore, even in countries which have not ratified the Migrant Workers' Convention, the ICESCR protects the economic, social and cultural rights of all migrant workers and their families (including those who are in an irregular situation).<sup>32</sup> The Committee on Economic, Social and Cultural Rights has recognized the economic, social and cultural rights of migrants in its General Recommendations on the rights to education, health and water. In its General Comment No. 30, the Committee on the Elimination of Racial Discrimination urges states to “[r]emove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health”.<sup>33</sup>

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<sup>32</sup> See Amnesty International, *Human rights for human dignity – a primer on economic, social and cultural rights* (AI Index: POL 34/009/2005).

<sup>33</sup> See Committee on the Elimination of Racial Discrimination: <http://www.ohchr.org/english/bodies/cerd/comments.htm>

**All migrants, regardless of their status, have the right to:**

- **health** (ICESCR Article 12; CERD Article 5(e)(iv); CEDAW Articles 12 and 14(b); CRC Articles 24 and 25; Migrant Workers' Convention Article 28)
- **education** (ICESCR Articles 13 and 14; CRC Articles 28 and 29; ICERD Article 5(e)(v); Migrant Workers' Convention Article 30)
- **adequate housing** (ICESCR Article 11; CEDAW Article 14(2); CRC Articles 16(1) and 27(3); ICERD Article 5(e)(iii))
- **adequate food and water** (ICESCR Article 11; CRC Article 24(2)(c); CEDAW Article 14(2))
- **work and rights at work** (ICESCR Articles 6 to 8; ICERD Article 5(e)(i); CEDAW Articles 11 and 14; Migrant Workers' Convention Articles 25 and 26).

In exceptional circumstances, such as war or a public emergency threatening the life of the nation, international law allows states to temporarily restrict the scope of application of specific human rights: this process is known as derogation.<sup>34</sup> Particularly in the aftermath of the September 11 2001 attacks in the USA and in the context of the “war on terror”, governments have sought to divest themselves, either through a formal process of derogation or simply by trying to circumvent the law, from certain human rights obligations in relation to their treatment of migrants.<sup>35</sup> Governments have introduced indefinite detention of non-nationals without charge or trial, have raised the possibility of admitting evidence obtained by torture in judicial proceedings against non-nationals, and have returned non-nationals to situations of serious human rights violations through the acceptance of diplomatic assurances.<sup>36</sup>

As a matter of principle, however, derogation from specific human rights obligations may only occur in strictly prescribed circumstances. That is:

- in time of public emergency which threatens the life of the nation; and
- the existence of which is officially proclaimed; and
- only to the extent strictly required by the exigencies of the situation; and provided that such measures are:
- not inconsistent with other obligations under international law; and

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<sup>34</sup> See Human Rights Committee, General Comment No. 29, States of Emergency (Article 4), which provides guidance on the principle of derogation.

<sup>35</sup> In the context of counter-terrorism measures, the Committee on the Elimination of Racial Discrimination has asserted that State Parties should ‘Ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping’. Committee on the Elimination of Racial Discrimination, General Comment No. 30.

<sup>36</sup> Diplomatic assurances are guarantees made by the country of origin to the host country that it will not subject to ill-treatment the person whose return it is seeking. AI is of the view that states which violate international law and systematically torture or ill-treat detainees also systematically deny the fact and take steps to hide it. Therefore, any assurances made by those states that a person will not be tortured or ill-treated upon return cannot be treated as reliable.

- do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.<sup>37</sup>

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<sup>37</sup> Article 4, ICCPR.

## **Chapter 4: How are the rights of migrants being violated?**

Abuses of the human rights of migrants sometimes result from restrictive migration control measures or the denial of fundamental human rights in the country of destination. Sometimes human rights violations are committed in the course of removing a migrant from the host country. Discrimination, racism, xenophobia, arbitrary detention, ill-treatment, and exploitation are the most common and pressing human rights concerns affecting migrants.

### ***Controlling the entry and return of migrants***

#### **The right to leave and return to one's country**

All migrants have the right to leave any country including their own and to return to their country of origin. On the other hand, there is no corresponding right to enter another country. However, the right to enter a territory to escape persecution is implicit in the 1951 Refugee Convention.<sup>38</sup>

Article 13(2) of the Universal Declaration of Human Rights (UDHR) establishes that “Everyone has the right to leave any country, including his own, and to return to his country.” This is reflected in the ICCPR Article 12(2) and (4), the Migrant Workers’ Convention Article 8(1) and (2) and the CRC Article 10(2). Under the Migrant Workers’ Convention, migrant workers are free to leave any state subject to certain restrictions provided by law<sup>39</sup> and to “enter and remain” in their state of origin (Article 8). Temporary absences should not affect their authorization to stay and work in their country of destination (Article 38).

#### **The right to return to one's own country should include the right to return to one's country of origin, one's country of nationality, or one's country of habitual residence**

International travel is not usually possible without a passport or similar form of identification. The Human Rights Committee has asserted that “Since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents.”<sup>40</sup>

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<sup>38</sup> Article 33, 1951 Refugee Convention.

<sup>39</sup> Under Article 8, restrictions must be provided by law, be necessary to protect national security, public order, public health or morals or the rights and freedoms of others and be consistent with the other rights recognized in the Migrant Workers’ Convention.

<sup>40</sup> Human Rights Committee, General Comment No. 27, Freedom of Movement, 1999.

This is of particular importance to migrants who become stranded in countries of transit or destination. Having been denied the right to enter and remain legally in these countries, many are often unable in practice to return to their countries of origin as they lack the necessary documentation to return. They may effectively be rendered stateless. Many “stranded migrants” end up in prolonged or even indefinite detention as a consequence. Some migrants who are unable to return to their country of origin are pushed back and forth from one country to another over a considerable period of time, denied the right to remain and without being able to regularize their status in any country. The Human Rights Committee has recognized the right of an expelled alien to choose the country of destination, subject to the agreement of that country.

States do not have an unqualified right to refuse entry into their territory, especially where to do so would infringe other human rights.<sup>41</sup> Yet states rarely take responsibility for the human rights implications of their border control measures; whether denying entry at a land or sea border or in a foreign airport.

Denying entry can result in violation of the principle of *non-refoulement*; it can leave people trapped in countries of transit where they are exposed to human rights abuses; it can expose irregular migrants to sexual abuse and exploitation; it can leave them stranded with no way forward and no way back.

### **The right to freedom of movement and place of residence**

Once a migrant is lawfully<sup>42</sup> within a country, he or she has the right to freedom of movement within that state and also the right to choose his or her residence (Article 13 of the UDHR, Article 12 of the ICCPR, Article 39 of the Migrant Workers’ Convention). The Human Rights Committee has stated that any difference in treatment between nationals and non-nationals in relation to restrictions on movement must be justified and conform to the principle of proportionality.<sup>43</sup>

### **The right to life and to physical and mental integrity**

Migration and border control policies include a range of measures designed to control the movement of people into a state or to prevent migrants from travelling onward and seeking to

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<sup>41</sup> In this context, the Human Rights Committee, the expert body that monitors compliance with the ICCPR, has noted that “in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.” General Comment No. 15, *The Position of Aliens under the Covenant*.

<sup>42</sup> The Human Rights Committee has observed that, while a State is able to restrict the entry of non-nationals in to its territory, such restrictions must be in compliance with the State’s obligations under international law. In addition, the Committee has held that a non-national “who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory”. General Comment No. 27.

<sup>43</sup> Human Rights Committee, General Comment No. 27.

enter a state's territory. Some border control policies, including interception in overseas airports or on the high seas, visa restrictions and carrier sanctions, or the use of biometric data, prevent migrants from entering countries of destination through regular channels. Many migrants then resort to the services of people smugglers in order to gain access to the country. A large number are subjected to excessive force, arbitrary detention or forms of ill-treatment in transit countries or upon arrival. Many die. Each year thousands drown in the sea or crossing rivers; others freeze, suffocate or starve stowed away in ships, lorries or the cargo holds of airplanes. Others die of heat and thirst attempting to cross vast stretches of desert such as the Sahara or the Sonora Desert between Mexico and Arizona.

J.P., a man in his twenties, fled extreme poverty in Cameroon... He made his way to Morocco through Nigeria, Niger and Algeria to the Spanish enclave of Melilla on the Moroccan coast. The first time he entered Melilla, he reached the Commissariat where migrants can register and get legal assistance. However, he was immediately expelled to Morocco. The second time he managed to enter Melilla, the Spanish police beat him and shot at him with rubber bullets from about two metres away before turning him back. The third time he was one of a group of migrants who stormed the fence of the enclave, but was expelled again back to Morocco from where the Moroccan authorities expelled him to an area at the border between Morocco and Algeria near the town of Oujda. While in remote border areas, migrants are often beaten and robbed by the Moroccan Auxiliary Forces.

*Spain/Morocco: The authorities must be held accountable for the violation of migrants' rights (AI Index: EUR 41/016/2005).*<sup>44</sup>

## **Interception**

Classically, interception takes place on the high seas, where boats are intercepted by the navy or coast guard, and prevented from making the onward journey to their country of destination. However, interception takes other less obvious forms as well, including when immigration and airline officials at airports prevent people from boarding airplanes and travelling on to their destination. Interception measures target people without the required documentation or valid permission to enter a country.<sup>45</sup> Interception may also result from suspicions about the person's motives for travel. Such measures rarely take any account of the human rights

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<sup>44</sup> See also: Amnesty International, *Spain/Morocco: No impunity for killing* (AI Index: EUR 41/005/2006) on the deaths of three migrants in the Spanish enclave of Melilla.

<sup>45</sup> UNHCR describes interception as one of the measures employed by states to:

- prevent embarkation of such people on an international journey;
- prevent further onward international travel by such people if they have already begun their journey; or
- assert control of vessels where there are reasonable grounds to believe the vessel is transporting such people contrary to international or national maritime law.

consequences, especially where those intercepted are trafficked persons, smuggled migrants, or asylum-seekers. People are often left stranded and penniless with nowhere to turn.

An 18-year-old youth, Vullnet Bytyçi from the village of Muç-Has in the Has district of Albania, was shot dead by a border guard on the evening of 23 September 2003. He was clandestinely crossing the border into Greece together with five other Albanians in search of work. According to official reports the group was observed by three border guards, who called to them to stop. Four members of the group complied, and were arrested, while Vullnet Bytyçi and another man fled. One of the guards fired after them, fatally wounding Vullnet Bytyçi. AI wrote to the Greek authorities expressing its concern that border guards appeared to be using firearms to repel people seeking to enter Greece clandestinely, even in circumstances in which they did not present an imminent threat of death or serious injury.

*Greece: Out of the Spotlight - The rights of foreigners and minorities are still a grey area* (AI Index: EUR 25/016/2005)

Some states justify interception measures by claiming that they are aimed at protecting the lives and security of the travelling public as well as stopping the trade in people smuggling. However, such measures can violate human rights including the customary international law principle of *non-refoulement*. The state that intercepts migrants is accountable for such violations.

Where states practise interception, responsibility for human rights consequences lies not only with the state in whose territory the interception takes place, but also with those states that request, finance, or otherwise authorize the interception. Interception measures that interfere with or compromise in any other way the human rights and dignity of migrants are contrary to international law. Interception should not have the effect of imposing penalties on smuggled or trafficked migrants in a manner which breaches international law or abandons them to a legal limbo. States must at all times observe international search and rescue obligations when carrying out interceptions at sea.

### **The right to privacy and use of biometric data**

The use of biometric data (for example, finger-printing and iris recognition) as a border control measure is motivated by national security considerations and a desire to prevent unauthorized or irregular migration. Interest in using biometric data has increased dramatically since the 11 September 2001 attacks in the USA. As with other forms of border controls, the use of biometric data will often invite immigration authorities to make summary decisions about the status of an individual and assumptions about their motives for travel. With migrants as the main targets of such measures, a link is made, either consciously or sub-consciously, between migration and terrorism. There is a concern that border control

biometric techniques could be applied in a discriminatory manner to particular groups of migrants based on such factors as race, ethnicity or national origin. With some states habitually cross-checking biometric migrant records with biometric criminal records, officials and the public alike are led to infer that there is an inherent criminality in migration. Irregular migrants are especially stigmatized, despite the lack of evidence to date that biometric technology has contributed to reducing irregular migration.

The use of biometric border control techniques could raise human rights concerns. It could be viewed as an interference with the right to privacy. The right to privacy is guaranteed by Article 12 of the UDHR, Article 17 of the ICCPR and Article 14 of the Migrant Workers' Convention. Widespread and indiscriminate use of finger-printing and other forms of biometric data exceeds the bounds of proportionality, given the availability of less intrusive border control measures. There have been cases where individuals have committed acts of self-harm, mutilating their fingers to make their fingerprints illegible.

Despite legislative safeguards, biometric data monitoring is also currently prone to varying margins of error and to serious risks of unauthorized and illegitimate use. Such data is also vulnerable to improper storage practices and data protection techniques which do not comply with international data protection standards.

## **Detention**

Many countries detain migrants, particularly irregular migrants, seeing detention as a deterrent against unauthorized migration. In some countries detention in such situations is mandatory, and can be for prolonged or indefinite periods. Migrants are often unable to challenge the lawfulness of their detention.

**Detention of migrants should be justified in each individual case as a necessary and proportionate measure that conforms with international law, and should be subject to periodic judicial review**

Improper use of detention interferes with fundamental human rights crucial to protection of the inherent dignity of migrants. Migrants have the right to liberty and to freedom from arbitrary detention (Article 9 of the ICCPR; Articles 3 and 9 of the UDHR, Article 16 of the Migrant Workers' Convention). This means that detention should be subject to constraints, including the requirement that the detention is in accordance with the law, justified in the individual case as a necessary and proportionate measure and subject to judicial review. The UN Working Group on Arbitrary Detention (WGAD) has adopted Deliberation No. 5 concerning the situation of immigrants and asylum-seekers. This sets out principles concerning people held in custody and a number of safeguards governing detention. These include the right of detainees to be told why they are being held, to communicate with the outside world, to have legal counsel and contact with consular authorities and to be brought promptly before a judicial or other authority. It also recommends that a maximum

period of detention should be set by law and that custody may “in no case” be prolonged or indefinite.<sup>46</sup>

Severe overcrowding, poor hygiene and sanitation, outbreaks of contagious diseases, poor nutrition, and verbal and physical abuse, including beatings, have been identified as serious problems in immigration detention centres in Malaysia. In one centre detainees slept on bare floors with insufficient blankets and lack of proper clothing. The centre’s capacity was for 400 people, but on the day it was visited had 652 detainees. In another, where 260 men were housed together, the centre was found to be “in a deplorable state and unhygienic due to an overflowing septic tank”.  
*Malaysia: Human rights at risk in mass deportation of undocumented migrants* (AI Index: ASA 28/008/2004)

Poor conditions of detention often have a severe impact on the physical and mental health of detainees and may amount to ill-treatment. Conditions of detention should be consistent with the Standard Minimum Rules for the Treatment of Prisoners<sup>47</sup> and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>48</sup>

## **Deportation and expulsion**

Since the attacks in the USA on 11 September 2001, the use of deportation and expulsion of non-nationals has increased. In many ways, however, the 11 September attacks provided new excuses for old policies while reducing the prospects of public condemnation.

Migrants who no longer have a legal basis to remain in host countries may be subject to deportation procedures. However, those procedures should contain appropriate safeguards and conform to international human rights standards. The deportation practices and procedures of a number of states are often harsh, both procedurally and also in the use of excessive force and chemical restraints.

Semira Adamu, a 20-year-old Nigerian asylum-seeker, died on 22 September 2003 within hours of an attempt to deport her forcibly from Brussels-National airport: she had resisted five previous attempts to deport her following the rejection of her application for asylum in Belgium. Nine gendarmes accompanied her onto the plane, including three to act as escorts during the flight bound for Togo and one who was videoing part of the operation (a common practice at that time). Before take-off the gendarmes employed the so-called “cushion technique” — a restraint method authorized by the Ministry of Interior at the time but subsequently banned. It allowed

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<sup>46</sup> Working Group on Arbitrary Detention, *Deliberation No. 5 concerning the situation regarding immigrants and asylum-seekers*, E/CN.4/2000/4, 28 December 1999.

<sup>47</sup> Standard Minimum Rules for the Treatment of Prisoners:  
[http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm)

<sup>48</sup> Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment:  
[http://www.unhchr.ch/html/menu3/b/h\\_comp36.htm](http://www.unhchr.ch/html/menu3/b/h_comp36.htm)

gendarmes to press a cushion against the mouth, but not the nose, of a deportee to prevent biting and shouting.

Between September and November 2003 the three escorting gendarmes were committed for trial on charges of causing grievous bodily harm resulting unintentionally in death. Two officers who had supervised the operation on board the plane were charged with involuntarily causing the death, through failure to take precautionary measures, and failing to offer help to Semira Adamu when she was in great danger and when there was no danger to themselves or to others.

*Belgium: The death of Semira Adamu – Responsibilities past and present* (AI Index: EUR 14/005/2003)

Deportation procedures must be in accordance with due process of law and include guarantees that fundamental human rights will be respected and protected. **A migrant subject to deportation still has human rights.** They are entitled to procedural safeguards including the ability to challenge individually the decision to deport, access to competent interpretation services and legal counsel, and access to a review, ideally a judicial review, of a negative decision. In addition, there are often practical or legal impediments to a deportation that need to be taken into account, such as the fact that the migrant might be at risk of human rights violations upon return, might be stateless, or may face difficulties due to the non-cooperation of countries of origin or essential transit.

Freedom to leave any country, including one's own, includes not only the right to travel abroad or to emigrate permanently, but also, where a non-national is being lawfully expelled, the right to choose the country of destination, subject to the agreement of that country.<sup>49</sup> The principle of *non-refoulement* prohibits the return of any person in any manner whatsoever to a situation where he or she would be at risk of torture or other serious human rights violations.

### ***Criminal deportation***

Deportation of non-nationals who have been charged with or convicted of serious criminal offences in their country of residence is permissible under international law. However, such deportations are still constrained by a number of factors. Criminal deportation of migrants raises human rights concerns when, for example:

- it places such a person at risk of torture or other serious human rights violations
- it results in family separation
- a permanent resident becomes subject to criminal deportation as an adult when they have no meaningful links with their country of origin, having been born in their country of residence, or having first come there as a child
- a person subject to criminal deportation is detained by the immigration authorities pending deportation, but cannot be deported, and so is held in prolonged or indefinite detention.

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<sup>49</sup> See Human Rights Committee, General Comment No. 27.

Criminal deportees are entitled to human rights safeguards applicable to expulsion, including protection from arbitrary or mass expulsion (Article 22 of the Migrant Workers' Convention, Article 13 of the ICCPR). Criminal deportation remains subject to due process requirements (Article 13 of the ICCPR). The provision of an extradition treaty is often, in practice, a necessary element, but it too must conform to international law and in particular must respect the customary international law prohibition against *refoulement*.

### **Mass Expulsion**

Many migrants find they are vulnerable to or threatened with mass expulsion. Some countries engage in periodic collective or mass expulsions of irregular migrants, using procedures which are often cruel, indiscriminate and unlawful.

During a mass expulsion of undocumented migrants from Malaysia in 2002, a 13-year-old girl was reportedly raped in an immigration detention centre in Sabah state by three policemen. She was originally thought to be from the Philippines, but further investigation showed she was in fact a Malaysian citizen.

*Amnesty International Report 2003, (AI Index: POL 10/003/2003)*

Migrant workers are entitled to protection against arbitrary or collective expulsion (Article 13 of the ICCPR, 50 Article 22 of the Migrant Workers' Convention). Protection against collective or mass expulsion is also provided under Article 4 of Protocol 4 to the European Convention on Human Rights (ECHR), Article 22 of the American Convention on Human Rights (ACHR) and Article 12 of the African Charter on Human and Peoples' Rights (ACHPR). Any expulsion decision must be assessed on an individual basis and be subject to due process. It is important to note that collective or mass expulsions are different from the deportation of a number of individuals at once; the latter is permissible provided each individual has proceeded through a fair and satisfactory individual procedure, whereas the former is never permissible.

In any case of mass or collective expulsions there is a risk that the expulsion will be tainted with discrimination and arbitrariness, and will therefore be inherently unlawful. The collective nature makes it virtually impossible for a government to provide the necessary procedural guarantees and to ascertain whether people legally entitled to remain in the country may be among those expelled. Practice shows that, even in instances where a mass expulsion is purportedly aimed at irregular migrants, other groups such as refugees, legal residents or even nationals can be caught up in such expulsions.

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<sup>50</sup> Although Article 13 of the ICCPR only refers to aliens lawfully in the territory of a state, the Human Rights Committee has stated that the purpose of Article 13 is clearly to prevent arbitrary expulsions. Thus, the requirements of Article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions of irregular migrants. See General Comment No. 15, *The position of aliens under the Covenant*.

## **Smuggling**

The 2000 UN Protocol against the Smuggling of Migrants by Land, Sea and Air (the Smuggling Protocol),<sup>51</sup> defines “smuggling of migrants” as the procurement of the illegal entry of a person into a state of which the person is not a national or a permanent resident, in order to obtain a financial or other material benefit. Although smuggling is not itself a human rights abuse, smuggling may expose smuggled migrants both directly and indirectly to serious human rights abuses. The problem is that many people who may think that they are being smuggled – and may well have intended to be smuggled – subsequently discover that they have in fact been abducted or otherwise deceived for the purpose of exploitation, in other words, trafficked.

Overcrowding in lorries and the use of unseaworthy boats is a feature of people-smuggling in many regions. People seeking to enter Australia, the European Union and the USA have drowned at sea or asphyxiated in the cargo-hold of airplanes due to overcrowding, and in some cases have been abandoned in inhospitable and potentially fatal environments by their smugglers. In all parts of the world, smuggled migrants are vulnerable to violence and abuse.

**The International Centre on Migration Policy Development estimates that some 2000 migrants die each year trying to cross the Mediterranean from Africa to Europe. According to Mexican consulates, around 400 Mexicans die trying to cross the border into the USA each year.**

*Migration in an Interconnected World – New Directions for Action: Report of the Global Commission for International Migration (October 2005)*

The Smuggling Protocol contains a “saving clause” (Article 19) stating that it does not affect rights, obligations and responsibilities of states and individuals under other international law, including international humanitarian, human rights and refugee law. The saving clause also contains a limited non-discrimination provision, which prohibits discrimination on the grounds that the person has been smuggled.

Some people view smuggled migrants as “criminals” and trafficked people as “victims”. However, neither the motives nor character of groups of individuals should be judged according to the manner in which they have crossed, or attempted to cross, an international border.

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<sup>51</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000)  
<http://www.ohchr.org/english/law/organizedcrime.htm>

## Trafficking

Women, men and children in poor countries often set out on journeys of migration, deceived by false promises of a well-paid job, or in the case of children, an education. Threatened, coerced, deceived or abducted by members of organized criminal networks, they are taken far from home, are stripped of their identity documents, and are subjected to practices akin to slavery and servitude, including forced prostitution, sweatshop labour, begging, domestic service and forced marriage.

Women are taken, usually in small groups, to “trading houses” in hotels and private apartments around Belgrade, Panëvo and Novi Sad, and also in Montenegro. There they are paraded in front of potential buyers, often being forced to strip before being sold to their new “owner”.

*“First they would put us to get undressed, and to be only in underwear, to look at us and see how we are looking. If you are looking OK, and they [like you], they will buy you. We were like a rag, just like a cloth.”*

*“They put us in a line, standing up, and then they sit in an armchair and look at us, choosing one of us.”*

*“You will not know who bought you. They will just come and tell you that you must get ready because you [have to] leave.”*

*Kosovo (Serbia and Montenegro), “So does it mean that we have the rights?” – Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo ( AI Index: EUR 70/010/2004)*

“Trafficking in persons” is the recruitment, transportation, harbouring or receipt of human beings for the purpose of exploitation, by means of force, coercion, abduction, fraud, deception, abuse of power or payment.<sup>52</sup> Exploitation includes prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Importantly, the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol) recognizes that consent is irrelevant to whether someone is considered to have been trafficked.

Trafficking of people is an abuse of human rights, not least the right to physical and mental integrity. It also violates the rights to liberty and security of person, and may even violate the right to life. It exposes trafficked people to a series of human rights abuses by traffickers, and by those who buy their services. It also renders them vulnerable to violations by governments that fail to protect the human rights of trafficked people.

Like the Smuggling Protocol (see above), the Trafficking Protocol contains a “saving clause” (Article 14), stating that it does not affect the rights, obligations and responsibilities of

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<sup>52</sup> UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) <http://www.ohchr.org/english/law/organizedcrime.htm>

states and individuals under international law, including international humanitarian, human rights and where applicable refugee law. The saving clause also contains a limited non-discrimination provision, which prohibits discrimination on the ground that the person is a victim of trafficking. In this regard, the UNHCR has acknowledged that some trafficked persons may qualify for protection as refugees.<sup>53</sup>

The UN Office of the High Commissioner for Human Rights' (OHCHR) *Principles and Guidelines on Human Trafficking* provide a useful reference point, bringing together the human rights standards that are applicable to trafficked people and practical ways of addressing the issue. In the European context, the Council of Europe Convention on Action against Trafficking in Human Beings<sup>54</sup> requires states to take measures, individually and collectively, to prevent trafficking, to prosecute those responsible for trafficking and to protect and respect the rights of trafficked people.

### ***Forced prostitution***

Many women and girls, and some boys, are trafficked for the purposes of forced prostitution. Being forced into prostitution breaches a range of human rights, including the right to physical and mental integrity, the rights to liberty and security of person, and even the right to life.

Less than three months after the deployment of international forces and police officers to Kosovo, trafficking for forced prostitution had been identified as a problem. Despite measures taken by the UN Mission in Kosovo and others to combat trafficking, by July 2003 there were over 200 bars, restaurants, clubs and cafes in Kosovo where trafficked women were believed to be working in forced prostitution.

When they reach Kosovo, they are beaten and they are raped - by clients, by "owners" and by other people where they work. Many are virtually imprisoned, locked into an apartment or room or a cellar. Some become slaves, working in bars and cafes during the day and locked into a room servicing 10 to 15 clients a night by the man they refer to as their "owner".

*Kosovo (Serbia and Montenegro), "So does it mean that we have the rights?" – Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo (AI Index: EUR 70/010/2004)*

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<sup>53</sup> UNHCR, Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, UN doc. HCR/GIP/02/01, 7 May 2002; UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 7 April 2006.

<sup>54</sup> Adopted by the Council of Europe's Committee of Ministers on 3 May 2005. See Council of Europe: [http://www.coe.int/T/E/human\\_rights/trafficking/](http://www.coe.int/T/E/human_rights/trafficking/)

CEDAW also identifies trafficking as a form of discrimination.<sup>55</sup> The Human Rights Committee has called for measures to be taken by states to eliminate trafficking within and across borders, particularly of women and children. Among other things, states should protect [non-national] women and children from forced prostitution and slavery disguised as domestic service.<sup>56</sup>

### ***Forced labour***

While trafficking in human beings most often conjures up images of women and girls being trafficked for the purposes of forced prostitution and sexual slavery, many men, women and children are trafficked for other reasons, most commonly forced labour. The ILO defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>57</sup>

The NGO Anti-Slavery International has received regular reports of boys as young as four years old being trafficked and exploited as camel jockeys in the United Arab Emirates (UAE). Reports of the use of child camel jockeys were received from races in March 2005.

Traffickers abduct or lure young boys away from their families in South Asia and Africa with promises of well-paid work, education and training. But in reality, the boys are kept in brutal conditions, deprived of food and water to keep them light, and subjected to hazardous work racing at speeds of 40-50km per hour. Children have been seriously injured and some have died, both as a result of their treatment and from falls during races. Using child camel jockeys has been illegal in the United Arab Emirates (UAE) since 1980.

Anti-Slavery International, *Trafficking and forced labour of children in the Gulf region*, submission to the UN Commission on Human Rights, Working Group on Contemporary Forms of Slavery, Geneva, 6-10 June 2005

Labour trafficking occurs in a variety of circumstances, such as when the employment itself is illegal, when the conditions of work are worse than those prescribed by law, when the migrant worker seeks to reach a country where there are barriers to legal migration, or where the migrant worker is below the minimum age of employment.<sup>58</sup> While migrants may be employed in a regular manner, with documents and lawful status, the conditions of their employment can be exploitative to the point where they ought to be characterized as victims of trafficking. In other words, they have been deceived into

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<sup>55</sup> Article 6, CEDAW. See also 1993 UN Declaration on the Elimination of Violence against Women (Article 2).

<sup>56</sup> See Human Rights Committee, General Comment No. 28; see also Article 6 of CEDAW.

<sup>57</sup> ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930, Article 2 (1).

<sup>58</sup> ILO, *Forced Labour, Child Labour and Human Trafficking in Europe: An ILO Perspective* (2000).

exploitative work conditions and may be unable to leave their place of employment and the control of their employer.

## ***Violations in countries of transit and destination***

### **Lack of procedural fairness**

Migrants' rights are often not fully protected in legal proceedings in countries of destination. This applies to criminal, civil and immigration proceedings. Lack of understanding or awareness of national laws and legal systems, as well as problems securing competent and impartial interpretation services and legal assistance can seriously compromise procedural fairness for migrants.

Edirisinghe Jayasooriyage Victor Corea, a migrant worker and a Sri Lankan citizen, was sentenced to death in Saudi Arabia on a charge of theft. According to his family, Mr. Edirisinghe, a married man with two young children who started work in Saudi Arabia in May 1996, had no legal representation at his trial.

Asian Human Rights Commission, 22 March 2005

The rights to equality before the courts and to a fair trial by an independent and impartial tribunal established by law (Articles 6 and 7 of the UDHR; Article 14 of the ICCPR) are fundamental human rights that apply to all people. Migrants, whatever their status, are entitled to these rights (Article 18 of the Migrant Workers' Convention). They are indispensable for the protection of other human rights, such as the right to freedom from arbitrary detention, freedom from torture or cruel, inhuman or degrading treatment, the right to life, and the right to freedom of expression.

In its General Recommendation No. 30, the Committee on the Elimination of Racial Discrimination urges states to ensure that non-citizens enjoy equal protection and recognition before the law, including access to effective legal remedies, reparation for racially motivated violence and protection against arbitrary detention.<sup>59</sup>

**All migrants, whatever their legal status, are entitled to equality before the courts and to a fair trial**

### **Arbitrary confiscation of documents**

Many migrants have their identity documents arbitrarily confiscated by employers or local authorities, in breach of their right to identity documents. Without documentation to establish their identity or as evidence of the legality of their stay, migrants can face serious violations

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<sup>59</sup> Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: *Discrimination against Non Citizens*, 2004, paras 18-19.

of their human rights. Such violations include deprivation of their liberty, arbitrary expulsion and *refoulement*. Trafficked people, indentured labourers, and people working in domestic service are all vulnerable to having their documents unlawfully confiscated.

M.D. Laminiti, a 26-year-old Sri Lankan national, told AI that she had worked in Kuwait for 18 months without being paid. Her employer informed the police that she was pregnant and she was brought to the deportation centre. She had been there with her baby son for five months when AI spoke to her in July 2004. She wanted to go home but could not do so as her employer had retained her passport and would not provide her with a ticket.

It is standard practice for employers in the Gulf Cooperation Council (GCC) countries to take possession of the passports of domestic workers. This may result in domestic workers being detained at deportation centres for weeks or months, while their paperwork is being completed.

*Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect* (AI Index MDE 04/004/2005)

The Migrant Workers' Convention (Article 21) prohibits anyone other than a public official duly authorized by law from confiscating or destroying identity documents, documents authorizing entry or stay or work permits. Any authorized confiscation of these documents requires delivery of a detailed receipt. Destruction of passports or other travel documents of a migrant worker or a member of his or her family is prohibited. The CRC provides in addition the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference (Article 8).

### **Denial of equal access to education**

Education plays a critical role in realizing the full potential of each human being. It also has a protective role in reducing vulnerability to exploitative and hazardous labour, trafficking and sexual exploitation, and child labour.

The extreme poverty of their families means that many farm worker children and youth [many of whom are migrant children and youth] do not have the option of going to school - their families cannot afford for them to study, either because there is not enough money for shoes and clothes or because the children are themselves required to work. "A lot of kids don't even go to school anymore," an outreach worker told Human Rights Watch. "They never get caught because they move around. Their families aren't emphasizing education. They say, 'We need to live day by day; you need to get out there and earn some money.'"

Human Rights Watch, *Finger to the bone: United States failure to protect child farmworkers*, June 2000

Education is a right worthy of protection in itself. It is also an indispensable means of realizing other human rights. All children, without discrimination of any kind, including on the basis of their status or the status of their parents, have a right to education (Article 13 of the ICESCR, Article 28 of the CRC, Article 10 of CEDAW, Article 30 of the Migrant Workers' Convention).

General Comment No. 13 of the Committee on Economic, Social and Cultural Rights establishes that states are obliged to ensure that education is accessible to everyone, without discrimination, within the jurisdiction of the state. Accessibility includes non-discrimination, physical accessibility and economic accessibility.

**States are obliged to ensure that education is accessible to everyone, without discrimination**

The Committee on Economic, Social and Cultural Rights has also recognized that the right to technical and vocational education, which forms part of the right to education as well as the right to work, incorporates equal and non-discriminatory access for the children of migrant workers. The Committee on the Elimination of Racial Discrimination has indicated that public educational institutions should be open to non-citizens and the children of undocumented immigrants.<sup>60</sup>

**Lack of adequate housing**

Affordable and accessible housing is essential as a prerequisite for migrants to enjoy other human rights. The conditions in which migrants live determine to a great extent their health and well-being, ability to secure and maintain employment, access to education for themselves and their children, and their vulnerability to violence or other abuses.

Migrants do not always have family or other networks on whom to draw for accommodation support. Few governments assist migrants in their search for housing. If public housing is available to the general population, access to such housing will usually be limited to refugees and migrants who are permanent residents. Even these however might find themselves at the bottom of public housing waiting lists.<sup>61</sup>

**The right to housing applies to everyone, regardless of status**

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<sup>60</sup> Committee on the Elimination of Racial Discrimination, General Comment No. 30.

<sup>61</sup> The Committee on the Elimination of Racial Discrimination has urged states to "Guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices." Committee on the Elimination of Racial Discrimination, General Comment No. 30. According to the Migrant Workers' Convention, regular migrants should be treated equally with nationals as regards access to housing, including social housing schemes, and protection against exploitation in respect of rents (Article 43).

Most migrants, in particular irregular migrants, find themselves in the poorest housing in overcrowded inner-city neighbourhoods. There, they are vulnerable not only to insecurity, violence and health risks through poor quality housing, but also to forced evictions, exorbitant rents and homelessness. Irregular migrants are less likely to report and seek redress for forced evictions or other violations of housing rights, for fear of being arrested and deported.

A blaze raced through a Paris apartment building housing African immigrants early in the morning of 26 August 2005, killing 17 people, up to half of them children, officials said. The fire also injured about 30 people. Many of the victims were from the West African nation of Mali. Others were from Senegal, Ghana and Tunisia, according to building residents. Cisse, a 71-year-old from Mali, said the building was infested by rats and mice and that there were cracks in the walls and lead in the paint. "It was totally unhealthy," he said.

Associated Press, *Paris fire kills 17, half are children*, 26 August 2005.

The right to housing is derived from the right to an adequate standard of living (Article 11(1) of the ICESCR). The Committee on Economic, Social and Cultural Rights has indicated that the right to adequate housing applies to everyone, regardless of status and includes the "right to live somewhere in security, peace and dignity".<sup>62</sup> It also recommends that state parties adopt a national housing strategy.

### **Lack of an adequate standard of living and access to health care**

One of the main obstacles to the realization of the right to an adequate standard of living is the discrimination experienced by marginalized groups such as migrants. Migrants are often the victims of abusive and discriminatory practices in relation to the right to adequate food and water, perpetrated by officials, companies and private individuals. Particularly in situations of scarcity or humanitarian crisis, migrants, who are often the least visible members of society and frequently do not have access to social support networks, are more likely to be denied the minimum provision of food, water and healthcare services.<sup>63</sup> Irregular migrants are often denied access in practice to emergency aid and health services and are unwilling to approach the authorities for fear of arrest and deportation.

Migrants living in areas of Thailand affected by the 2004 tsunami need better access to maternal and child health services, family planning and information on preventing HIV infection, according to a United Nations-sponsored study. In communities of people from Myanmar in Phang-nga and Ranong provinces, one in four mothers

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<sup>62</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 4, *The right to adequate housing* (Art. 11 (1) of the Covenant), 13 December 1991, paragraph 6.

<sup>63</sup> In some situations of armed conflict, migrants may be at particular risk of human rights abuses if they are seen as a contributory factor to the tensions underlying the conflict.

delivers without a skilled birth attendant, 55 per cent of all infants are not receiving immunization, only half of all married women are using contraception, and half the adults surveyed lack knowledge about how HIV is spread.

Fewer than half the migrants studied were legally registered, and therefore entitled to the same affordable universal health care coverage as Thai citizens. Those not registered reportedly avoid public clinics and hospitals due to the cost and fear of deportation.

*Migrants in tsunami-hit Thai regions need more access to health services, says UN study, UN News Centre, 31 August 2005.*

Article 12(1) of the ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Article 28 of the Migrant Workers’ Convention provides that all migrant workers and members of their families have the right to receive urgent medical care. The Committee on Economic, Social and Cultural Rights has spelt out that “States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services”.<sup>64</sup>

### **All migrant workers and members of their families have the right to receive urgent medical care**

States are obliged in addition to ensure the delivery of the underlying determinants of health. In addition to available, accessible, acceptable and quality healthcare, this includes respecting, protecting and promoting the rights to adequate food and water.

The right to food is provided for in Article 11 of the ICESCR and Article 24(2)(c) of the CRC. The Committee on Economic, Social and Cultural Rights has stated that: “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”<sup>65</sup>

In relation to the right to water, the Committee on Economic, Social and Cultural Rights has said, “States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including ... migrant workers.”<sup>66</sup> Of central importance is non-discriminatory access to and equitable distribution of water and water facilities and services, especially for disadvantaged or marginalized groups such as migrants.

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<sup>64</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14.

<sup>65</sup> CESCR, General Comment No. 12.

<sup>66</sup> CESCR, General Comment No. 15.

## Abuses of the right to work and rights at work

Migrant workers often find themselves working on the margins of the labour market where there is little legal or physical protection. Many migrants are engaged in seasonal work, domestic service, agriculture, construction and manufacturing as well as the entertainment and sex industries. The ILO has noted that “agriculture is one of the most hazardous industries (the other two are mining and construction)”.<sup>67</sup> Not surprisingly, these sectors are often heavily dependent on the labour of migrant workers, many of whom have irregular status.

Lack of formal permission to work is a strong indicator of vulnerability to exploitation. Many migrant women work in unregulated and gender-segregated areas of work such as domestic work where they are at high risk of human rights abuses including rape and other sexual violence. Migrant children too are likely to lack the legal right to work and so are inevitably in an irregular situation and particularly vulnerable to human rights abuses in the workplace.

Irregular migrants often feel unable to assert their rights through available complaints mechanisms and are unable to exercise their right to freedom of association. Yet, irregular migrants still have a claim to rights in relation to their working conditions. An advisory opinion of the Inter-American Court of Human Rights has stated that “[a] person who enters a state and assumes an employment relationship, acquires his labour human rights in the state of employment, irrespective of his migratory status...the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights.”<sup>68</sup>

### **“the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights”**

Inter-American Court of Human Rights, Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants, 17 September, 2003

Conditions of work for millions of migrants are poor, with long working hours, low wages, unhygienic conditions and an unsafe workplace.

A 24-year-old Bama man from Myanmar described his working conditions at a wool factory in Thailand where he had been employed for two years: *"I worked from 8am to 9pm, sometimes until midnight, with no overtime pay... 30 of us men lived in a hall, about 30 feet by 10 feet, sleeping side by side.."* He earned 3,000 baht (approximately US\$70) per month. Another migrant worker, a 35-year-old Bama man, described his working and living conditions: *"I sew piecework, my salary varies from 2,000 to 3,000 per month... [my wife and I] share a small room for two couples, no privacy."*

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<sup>67</sup> ILO, Towards a fair deal for migrant workers in the global economy, p. 50.

<sup>68</sup> Inter-American Court of Human Rights, Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants, OC-18/03 of 17 September, 2003.

*The toilet and the sanitation is so bad and the water is unclean... There isn't enough water to bathe."*

*Thailand - The Plight of Burmese Migrant Workers (AI Index 39/001/2005)*

The Committee on Economic, Social and Cultural Rights adopted a General Comment on the right to work in 2005. In it, the Committee underlined "the need for national plans of action to be devised to respect and promote [the principle of non-discrimination] by all appropriate measures, legislative or otherwise." In general, the right to work (Article 6 of the ICESCR) has two distinct aspects: the right to access employment, and the right to acceptable conditions of work and rights at work. The Migrant Workers' Convention does not expressly provide for a right to work, even though it clearly makes provision for rights at work (Articles 25, 26 and 54).

Even before they have left their country of origin, many migrants find themselves in debt bondage, having been forced by their circumstances to accept abusive terms of debt from recruitment agencies or private individuals who promise transport to and work in the country of destination. Once in this country, many find that they are unable to pay off their debt, and are effectively in a position of bonded labour. Temporary labour migration programmes can also be abusive of the rights of migrant workers, as they usually tie the migrant to one employer, creating a situation where the migrant is reluctant to complain about human rights abuses by the employer.

### ***Bonded and slave labour***

Bonded and slave labour are not historical aberrations but are current, real and deplorable problems in the 21<sup>st</sup> century. The problem often arises in the context of trafficking, whether of women as sex slaves, of men and women into sweatshop labour, or of children for labour exploitation.

**The UN has estimated that at least 20 million people around the world are held in bonded labour.**<sup>69</sup>

Report of the Working Group on Contemporary Forms of Slavery (1999)

Slavery-like practices are often clandestine. This makes it difficult to have a clear picture of the scale of contemporary slavery, let alone to expose, punish or eliminate it. The problem is compounded by the fact that the victims of slavery-like abuses are generally from the poorest and most vulnerable social groups. Fear and the need to survive prevent them from speaking out.

Because slavery is prohibited in international law, slavery has become linked to underground networks of international organized criminals.

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<sup>69</sup> See Report of the Working Group on Contemporary Forms of Slavery, E/CN.4/Sub.2/1999/17, 20 July 1999.

Tens of thousands of children are trafficked in West Africa each year. Although the majority are boys, the largest single employing sector is domestic work and about 90 per cent of all child domestics are girls. They are live-in servants, and unlike child domestics in other parts of the world where most are teenagers, in West and Central Africa most are children and are as young as five years old.

Anti-Slavery International

Article 8 of the ICCPR contains an absolute prohibition on all forms of slavery and the slave-trade, servitude, and forced or compulsory labour.

### **Denial of freedom of association**

The right to freedom of association is an essential component in ensuring that individuals who work in countries of which they are not nationals are able to assert and enjoy effective access to their fundamental human rights. For irregular migrant workers, the right to freedom of association can be important in moving towards regularizing their status in the country of employment. It can also enable migrant workers collectively to expose human rights abuses perpetrated against them, and to seek redress for such abuses. For migrants working in areas where they are likely to become invisible, such as domestic work, the freedom to associate, even in informal networks, is often the only way to speak out against abuses.

Article 20 of the UDHR provides that everyone has the right to freedom of peaceful assembly and association. The Migrant Workers' Convention establishes the right of all migrant workers and members of their families, whether documented or undocumented, to join freely any trade union (Article 26). Article 2 of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948) further establishes that "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization." Article 22 of the ICCPR and Article 8 of the ICESCR recognize the right of everyone to form and join trade unions.

### **Undue restrictions on freedom of expression**

Freedom of expression is a fundamentally important right for migrants. Many migrants, because of the precarious nature of their situation, are too afraid to speak out themselves. It is therefore also vital to safeguard the right to freedom of expression of those who speak out in their defence and against violations of their human rights.

Irene Fernandez is the director and co-founder of Tenaganita, a non-governmental organization that promotes the rights of migrant workers in Malaysia. She was arrested in 1996 and charged with "maliciously publishing false news" following the release of a report by Tenaganita recording allegations of ill-treatment of undocumented migrant workers in detention centres. After a trial lasting more than seven years, she was found guilty on 16 October 2003 and sentenced to 12 months'

imprisonment. As a convicted person, she was barred from standing as a parliamentary candidate in the 2004 Malaysian elections. The Printing Presses and Publications Act 1984 (PPPA) under which she was convicted violates international human rights standards on freedom of expression. Bans on the publication of “false news”, like that set out in Section 8 of the PPPA, have been found by international bodies like the UN Human Rights Committee and a number of constitutional courts around the world to breach the fundamental right to freedom of expression.

Irene Fernandez is currently free on bail and is appealing her sentence to a higher court; if her conviction was to be upheld and she was imprisoned, Amnesty International would consider her to be a prisoner of conscience.

*Malaysia: Irene Fernandez defends rights of migrant workers despite conviction* (AI Index: ASA 28/015/2004)

The right to freedom of expression is set out in Article 19 of the ICCPR and Article 19 of the UDHR. The right to freedom of expression for all migrant workers and members of their families is recognized in Article 13 of the Migrant Workers’ Convention.

### **Denial of the right to freedom of religion**

Migrants often form part of a religious minority in the country of destination. Away from their homes, religious expression can be vital in ensuring that migrants can find support and adapt to a new environment in their host country. Many migrant workers find that religious groups provide them with a vital safety net and social network that renders them less isolated and therefore less vulnerable.

The right to freedom of thought, conscience and religion is guaranteed under Article 18 of the UDHR, Article 18 of the ICCPR and Article 12(1) of the Migrant Workers’ Convention.

### **Abuses of the right to family life or unity**

The right to family life or unity is protected under Article 23 of the ICCPR, as well as Article 10 of the ICESCR. Article 44 of the Migrant Workers’ Convention provides for the protection of the unity of the families of migrant workers who are documented or in a regular situation. The right to family life is also recognized in all key regional human rights instruments. The location where this right may be asserted and enjoyed, however, depends on the circumstances of the migrant and would therefore need to be determined on a case-by-case basis.

At a minimum, the right protects individuals against the arbitrary separation of their family. In contrast, family reunification is a complex issue in the context of migration. States recognize the advantages of family reunification for their migrant population, not least in terms of providing a well-adjusted and productive work force that is integrated into the host

community. They know that the alternative of prolonged and repeated separation of families can have negative social effects. Nevertheless, governments are increasingly resisting family reunification, especially in the context of temporary or low skilled migration, on the grounds that it will prolong the length of time migrants will stay in the country of destination. Governments of the country of origin too are often reluctant for the families of migrants to join them on a secure basis in their country of employment, as this will often mean the end of remittance flows back to the country of origin.

Many non-nationals have been granted work visas for Ireland. Many have been recruited as nurses to fill acute shortages in hospitals. Most notable among work visa holders are Filipino nurses. While holders of work visas can bring their spouses with them to Ireland, the partners do not have the automatic right to take up work there, even though many of them are highly qualified. Officially they are told they should return to the Philippines to apply for a work permit from there in their own right.

Migrant Rights Centre, Ireland

In a case brought by 20 Mauritian women, complaining about laws which deprived their non-national husbands of residence rights in Mauritius, the Human Rights Committee stated “The exclusion of a person from a country where close members of his family are living can amount to an interference within the meaning of Article 17 [no one shall be subjected to arbitrary interference with his...family]”.<sup>70</sup> Similar policies have also been viewed as discrimination if they are applied in a discriminatory way against particular migrants. Depending on the circumstances, they could also be seen to amount to “degrading treatment”.<sup>71</sup> The Committee on the Elimination of Racial Discrimination has noted that states should “Avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life”.<sup>72</sup>

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<sup>70</sup> *Shirin Aumeeruddy-Cziffra and 19 other Mauritian women v Mauritius* (Communication 35/1978), Human Rights Committee, UN Doc. CCPR/C/OP/1 at 67 (1984).

<sup>71</sup> *East Asian Africans*, 3 EHRR 76 (1973) compared with *Abdulaziz, Cabales and Balkandali v United Kingdom*, ECHR A94 (1985), Judgment 28 May 1985. (discrimination on basis of sex, but not a breach of “degrading treatment” provision).

<sup>72</sup> Committee on the Elimination of Racial Discrimination, General Comment No. 30.

## Chapter 5: How can we protect migrants' rights?

There is already a substantial body of international human rights law and standards which guarantees the human rights of migrants. The problem, however, is that governments and other actors lack the political will to turn these guarantees into practical and meaningful measures to respect, protect and promote migrants' rights. Clear, well-informed and strategically planned campaigning to promote these rights is necessary to encourage governments, employers and others to make the rights set out in international standards into a reality for individual migrants.

**This silent human rights crisis shames our world...Migrants are part of the solution, not part of the problem. They should not be made the scapegoats for a vast array of social ills.**

Kofi Annan, Address to the European Parliament, 29 January 2004

Promoting the rights of migrants is not about looking for a "solution" to migration. Migration is a phenomenon, not a problem. It refers to a variety of population movements which are motivated by a range of reasons, across a continuum between voluntary and forced extremes. People migrate in response to push factors originating at home, as well as pull factors from their intended destination. Migrants are at risk of a range of serious human rights abuses, particularly when they are unable to put in place an exit strategy before embarking on their journey. In addressing these abuses, advocates and campaigners must ensure that due attention is paid to addressing the gross inequalities, lack of access to human security and development, discrimination, and extreme poverty which constitute primary motivating factors in the movement of migrants from their countries of origin.

### *AI's eight key priority areas*

#### **1. Focus on those most at risk**

**Irregular migrants**, because of their lack of a recognized legal status, are at particular risk of human rights abuses. Deprived of equal protection before the law, they are more likely to be exploited and abused both by employers and by government officials. Irregular migrants are less likely to seek the protection of the authorities against abuses. Unscrupulous employers know this and feel able to resort to threats and ill-treatment, safe in the knowledge that they are highly unlikely to be held to account. A serious lack of accurate data on irregular migrants, including their numbers and the sectors in which they are employed, makes it harder to formulate and implement strategies of protection for this group of migrants.

Those most likely to fall prey to smugglers and traffickers are so-called "survival migrants". They have left their countries and places of origin as a survival strategy in order to escape human rights violations, including deprivation of economic, social and cultural rights, and in an attempt to gain a measure of human security. This group as a whole suffers the most extreme forms of exploitation and abuse. **Women** and **children** in this category face

particular difficulties. A substantial proportion of them are in an irregular situation and the conditions in which they live and work are less likely to be in the public eye. Their sex and age also means that they are at greater risk of particular forms of abuse. Children of irregular migrants who are separated from their parents are particularly vulnerable to being trafficked and exploited.

Irregular migrants stranded in transit countries or countries of destination, without any means or possibility to go home or remain legally in these countries constitute another vulnerable category. Many “**stranded migrants**”, including rejected asylum-seekers, are held in prolonged or indefinite detention in transit or destination countries. Some are pushed back and forth from one country to another, unable to return to their country of origin for practical or legal reasons and without the option of remaining and regularizing their status in any country.

## **2. Call for ratification and implementation of core human rights and labour rights instruments**

To ensure the protection of the rights of all migrants on their territory, states must be urged to ratify and implement all seven core human rights treaties.<sup>73</sup> In particular, the following international treaties should be ratified and fully implemented as a priority, given their specific role in protecting migrants from exploitation and other human rights violations. Calls for ratification and implementation should emphasize that international human rights standards apply at all times and should be adhered to by ratifying states.

### ***The Migrant Workers’ Convention***

The Migrant Workers’ Convention holds the unenviable record of taking longer to enter into force than any other international human rights treaty.

It was passed in 1990 by the UN General Assembly, but it was only in 2003 that the necessary 20 ratifications were deposited and it entered into force. It is now considered the seventh core international human rights treaty.

Most states which have ratified the Migrant Workers’ Convention are countries from which migrants traditionally originate, although a growing number are countries in which migrant workers are employed. To date, the Convention has not been ratified by a single country in the European Union, or by other developed states including Australia, Canada or the USA.

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<sup>73</sup> These are: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination against Women and the Migrant Workers’ Convention.

**“[The Migrant Workers Convention] established for its ratifying countries the obligation to respect the core human rights and fundamental freedoms of migrant workers and members of their families in their State of immigration. It is a vital part of efforts to combat exploitation of migrant workers and their families.”**

Kofi Annan, UN Secretary-General, 18 December 2003

A number of factors have contributed to the failure of many states to ratify the Migrant Workers’ Convention. These include:

- a lack of knowledge about the scope and content of obligations under the Convention
- concern about the implications of the Convention, financially and otherwise -- for example the cost of reporting, or the misconception that the Convention extends rights to irregular migrants beyond those guaranteed by other instruments
- a belief that migrants’ rights are already sufficiently well guaranteed through national legislation
- a lack of political will to protect the rights of migrant workers.

Many of the reasons cited for the reluctance of states to ratify the Migrant Workers’ Convention can and should be contested by NGOs and civil society advocates and campaigners. This could be done through public education campaigns or through direct lobbying and advocacy at the governmental or inter-governmental levels. For example, if the rights set out in the Convention are already guaranteed in national legislation, it is hard to see why there should be any obstacle to ratification. Indeed, ratification would send a strong signal that the ratifying state was at the forefront of efforts to protect migrants and to defend human rights. Other reasons cited highlight the lack of political will to address the precarious situation of migrant workers, and states should be called to account for their role in allowing abuses to continue.<sup>74</sup>

**NGOs and civil society advocates and campaigners should inform their governments about the content of the Migrant Workers’ Convention (as well as other treaties that relate to migrants’ rights) in order to challenge misconceptions and dispel existing myths about these treaties**

Ratifications by themselves will not bring about greater protection of migrants’ rights. Once countries have ratified the Migrant Workers’ Convention, advocates must press them to ensure that they implement its provisions effectively and report without delay to the Committee on Migrant Workers. In May 2006, out of 27 State Parties due to report to the Committee on Migrant Workers, only three (Mali, Mexico and Egypt) had done so.

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<sup>74</sup> For more information on AI’s view on the Migrant Workers Convention see: Amnesty International, *A vital part of a global response to international migration: Why the Migrant Workers Convention Matters* (AI Index: POL 33/005/2006)

AI is a member of the International NGO Platform on the Migrant Workers' Convention (IPMWC).<sup>75</sup> This coalition of NGOs aims to facilitate the promotion, implementation and monitoring of the Migrant Workers' Convention by NGOs. It monitors and engages with the work of the Committee on Migrant Workers and the other human rights treaty bodies. It also encourages and supports the preparation of NGO submissions to these committees by national NGOs. Other NGOs may consider joining this Platform.

### ***ILO Conventions***

There are eight ILO Conventions that have been identified by the ILO's Governing Body as being fundamental to the rights of human beings at work.<sup>76</sup> In addition, two major ILO conventions specifically address the rights of migrant workers:

- the Migration for Employment Convention (Revised) (No. 97) of 1949
- the Migrant Workers (Supplementary Provisions) Convention (No. 143) of 1975.

Convention No. 97 contains a series of provisions designed to assist those migrating for work. It requires state parties to treat migrants who are lawfully within their territory on an equal basis with nationals in applying a wide range of laws and regulations relating to their working life, without discrimination on grounds of nationality, race, religion or sex.

Convention No. 143 deals with migration in abusive conditions (Part I) and with equality of opportunity and treatment (Part II). It requires states to respect the basic human rights of all migrant workers.

While there have been relatively few ratifications of these two ILO Conventions, it is noteworthy that at least 11 EU states have ratified one or both Conventions.<sup>77</sup>

### ***The UN Convention on Transnational Organized Crime and the Palermo Protocols***

The Palermo Protocols to the UN Convention on Transnational Organized Crime (the Smuggling and Trafficking Protocols – see above) deal with the smuggling and trafficking of people. These are not human rights treaties, as they fall within the framework of transnational organized crime, but they do nonetheless contain some human rights provisions. States should

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<sup>75</sup> For further information on the work of the Platform, see <http://www.december18.net>. The International NGO Platform on the Migrant Workers' Convention has produced a Guide for NGOs on the Implementation of the Migrant Workers' Convention. It can be accessed at <http://www.december18.net> and provides information on ways in which NGOs can contribute to the work of the Committee on Migrant Workers, and more general information for NGOs interested in using UN human rights mechanisms to protect and promote the rights of migrants.

<sup>76</sup> Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Equal Remuneration Convention, 1951 (No. 100), Minimum Age Convention, 1973 (No. 138), Worst Forms of Child Labour Convention, 1999 (No. 182)

<sup>77</sup> To date, ILO Convention No. 97 has 46 ratifications, while Convention No. 143 has 19 ratifications.

therefore be urged to ratify them and implement them as part of a comprehensive strategy to address the problems of trafficking and smuggling.

Calls for ratification and implementation should emphasize the components which focus on human rights and on protection.

### **3. Demand greater accountability**

#### *The international level*

Existing systems to ensure that international legal standards are enforced are generally weak. Nevertheless states remain bound by their international obligations and should be held to account if they fail to fulfil them. Various techniques need to be employed to enforce accountability, including:

- carefully documented reporting
- publicizing failures and abuses
- international and national litigation
- the use of UN supervisory mechanisms such as treaty bodies and Special Procedures including Special Rapporteurs and Working Groups.

**All states are bound by at least some international human rights obligations.<sup>78</sup>**  
**All states care about their international reputations**

#### **UN human rights supervisory mechanisms and expert bodies**

All international human rights mechanisms, whether treaty monitoring bodies, Special Rapporteurs or Working Groups, should be encouraged to affirm and reaffirm migrants' rights as set out in the relevant international treaties. The most effective way of encouraging them to do so is by ensuring they receive well-documented, relevant cases or situation or country reports on which to base their activities.

#### **UN treaty bodies**

Each of the core human rights treaties, including the Migrant Workers' Convention, has a committee of independent experts to supervise states' compliance with their treaty obligations. These treaty bodies do so mainly through the consideration of periodic state reports.

Campaigners, advocates and other activists seeking to promote migrants' rights should ensure that they know when a country is next due to report to a UN treaty body<sup>79</sup> and whether the report is overdue. NGO submissions to the treaty bodies about states which are

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<sup>78</sup> 75 per cent of UN member states have ratified four out of the seven main international human rights treaties.

<sup>79</sup> For reporting status by country, see <http://www.unhchr.ch/tbs/doc.nsf/newhvduebycountry?OpenView&Start=1&Count=250&Collapse=8#8n>. AI's treaty bodies website <http://web.amnesty.org/pages/treaty-index-eng> provides information about the activities of treaty bodies and encourages participation in their work.

going to be considered are effective ways of informing the treaty bodies of human rights abuses and of holding states to account.

When the Committee on Migrant Workers (set up under the provisions of the Migrant Workers' Convention) considers the report of a state party, there is a valuable opportunity to promote migrants' rights and address abuses of migrants' rights in that particular country. Some of the other treaty bodies are also turning their attention to the human rights of migrants. Advocates and campaigners should press all treaty bodies to affirm and reaffirm migrants' rights as set out in the relevant international treaties. NGOs should also ensure that they mainstream reporting on migrants' rights issues in their parallel reports to each of the treaty bodies.

Several of the treaty monitoring bodies also have the capacity to hear individual petitions (or communications) from victims of human rights violations, provided the relevant state has agreed.<sup>80</sup> NGOs may not present a communication on their own initiative, but they may be entitled to represent a victim if authorized by the victim or their family. NGOs can also raise awareness about the individual communications mechanisms, encourage victims of human rights violations to use them and assist victims or their families to file a communication with the appropriate treaty body.

The Migrant Workers' Convention includes provisions for individual complaints to be made by migrant workers who claim that their individual rights as established by the Convention have been violated (Article 77). However, none of the states that have so far ratified the Convention has made a declaration recognizing the competence of the Committee on Migrant Workers to receive and consider individual complaints. Campaigners should promote the use of individual complaints mechanisms set up under other international human rights treaties to ensure accountability for migrant rights. At the same time, they should encourage states to make declarations under Article 77 of the Migrant Workers' Convention.

### **UN Special Procedures**

UN Special Procedures (that is, Special Rapporteurs or Working Groups) are independent experts mandated to investigate either a specific violation or thematic issue, or a particular country. These special procedures were initially created by the Commission on Human Rights, which has now been replaced by the Human Rights Council. Their mandates vary but typically they carry out country visits, intervene with governments on individual cases and undertake studies. NGOs can provide information to the Special Rapporteurs or to members of the Working Groups about particular situations or individuals, as well as in relation to urgent situations through the urgent appeals procedure.

The most relevant UN Special Procedures relating to the rights of migrants are:

- UN Special Rapporteur on the human rights of migrants<sup>81</sup>

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<sup>80</sup> Treaties containing such provisions include the ICCPR, CEDAW, CAT and CERD.

<sup>81</sup> The Special Rapporteur is currently Professor Jorge A. Bustamante (Mexico).

- UN Special Rapporteur on trafficking in persons, especially in women and girls
- UN Special Rapporteur on the sale of children, child prostitution and child pornography
- UN Special Rapporteur on torture
- Working Group on Enforced or Involuntary Disappearances
- UN Special Rapporteur on violence against women, its causes and consequences
- Working Group on Arbitrary Detention.

As the Special Procedures have no enforcement mechanisms, campaigners have an important role in holding governments to account for their implementation of the recommendations of the Special Procedures. These may relate to an individual case or country mission or may be a generic set of recommendations arising from a study. Human rights campaigners should expose governments, in particular at the domestic level, if they fail to cooperate with the Special Procedures by not responding to communications, by providing inadequate responses or by denying requests for a visit.<sup>82</sup>

Efforts should be made to disseminate the Special Procedures' recommendations as widely as possible and to raise awareness of the findings amongst legislators, politicians, the judiciary and the general public. In particular, campaigners can alert their media contacts to the recommendations of a Special Procedure, particularly following a country visit.

It is hoped that the **UN Human Rights Council**, which began its work on 19 June 2006, will be an important forum for promoting respect for migrants' rights. Human rights abuses against migrants can be publicly condemned by the member states of the Council and campaigners, advocates and other activists can raise awareness of migrants' rights.

**Other international forums** where migrants' rights should be raised include:

- the annual Governing Council of the IOM held in November/December each year
- International Labour Conferences of the ILO held annually in June
- as appropriate, the Executive and Standing Committee meetings of the UNHCR which take place three times a year (February/March, June/July and September/October).

In September 2006, the UN General Assembly High-Level Dialogue on Migration and Development provides an important forum for advocates and campaigners on migrants' rights to press for the human rights of all migrants to be placed at the forefront of any debate on migration and development.<sup>83</sup>

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<sup>82</sup> Information about outstanding visit requests, reports containing summaries of communications with governments (individual cases), reports of missions and general recommendations arising from studies, is available at the OHCHR website.

<sup>83</sup> See Amnesty International, Written Submission to the Committee on Migrant Workers day of general discussion on protecting the rights of all migrant workers as a tool to enhance development, 31 October 2005, AI Index IOR 40/028/2005.

Campaigners, advocates and activists also need to identify and work to bridge the existing gaps in international and regional human rights standards. For example, there is currently no international obligation on states to provide assistance to trafficked migrants who have been subjected to human rights abuses or to offer effective protection. Both of these measures are essential if the Palermo Protocols are to be effective.

### ***The regional level***

Despite the fact that there are no regional treaties specifically covering migrants' rights, there are a range of forums in which the human rights of migrants may usefully be promoted.

In **Africa**, relevant treaties for the protection of the human rights of migrants include the 1981 African Charter on Human and Peoples' Rights (ACHPR), the 1990 African Charter on the Rights and Welfare of the Child and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Given the universal nature of the rights provided in these regional treaties, the African Commission on Human and Peoples' Rights can be an important forum in which the human rights of migrants may be defended. The four areas of its mandate include: promotional activities, protective activities (including complaints), the examination of state party reports, and the interpretation of the African Charter. The African Court of Human and People's Rights, launched in July 2006, offers a potential forum for the protection of the human rights of migrants in the continent.

In the **Americas**, in addition to the 1948 American Declaration of the Rights and Duties of Man, relevant treaties include the 1969 American Convention on Human Rights ("Pact of San Jose, Costa Rica"); the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"); the 1994 Inter-American Convention on International Traffic in Minors; and the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"). The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights can be important forums for the promotion of respect for migrants' rights. Notably, in 1997 the IACHR established the position of Special Rapporteur on Migrant Workers and their Families, which aims to foster awareness of the duty of states to respect the rights of migrant workers and their families, to present specific recommendations to the Organization of American States (OAS) on migrant workers and their families, to prepare reports and specialized studies, and to respond swiftly to petitions and communications that indicate that the rights of migrants workers and their families have been violated by member states of the OAS.

In **Europe**, key treaties include the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Council of Europe Convention on Action against Trafficking in Human Beings and the 1977 European Convention on the Legal Status of Migrant Workers. Issues relating to migrants' rights are addressed by the Council of Europe and the European Court of Human Rights. Under Article 34 of the ECHR, the

European Court of Human Rights has compulsory jurisdiction to accept individual petitions from all persons (including migrants) whose Convention rights have been violated by a state party. The Parliamentary Assembly of the Council of Europe also has a Sub-Committee on Migration.

**Existing regional standards can be used to promote the rights of migrants and hold states to account for discriminatory practices**

In addition, a number of sub-regional economic structures and multilateral processes include a focus on labour mobility. They can therefore provide an arena for the defence and promotion of migrants' human rights. These include:

- the Association of Southeast Asian Nations (ASEAN)
- Asia-Pacific Economic Cooperation (APEC)
- the Economic Community of West African State (ECOWAS)
- the South American trade bloc MERCOSUR
- the Southern African Development Community (SADC)
- the South Asian Association for Regional Cooperation (SAARC)
- the League of Arab States
- the European Union (EU)

In recent years, there has been a proliferation of “regional consultative processes” on migration.<sup>84</sup> While many purport to have a broad scope, providing for information and good practice exchange among governments on migration related issues, many processes have focussed solely on migration controls. There is a lack of transparency and no involvement by civil society in most of these regional consultative processes. Campaigners and advocates therefore need to monitor their work and push for greater transparency and more meaningful involvement of all relevant actors - including civil society and NGOs - in regional discussions on migration.

***The national level***

Strategies for promoting migrants' rights at the national or local level need to be approached on a case-by-case basis to take into account local conditions. However, some general guidelines can be suggested.

- Although **bills of rights** rarely grant protection across the board to non-nationals, they remain important tools for safeguarding the human rights of migrants

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<sup>84</sup> See for example, Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants (APC) <http://www.apcprocess.net/>, Inter-Governmental Consultations on Asylum, Refugee and Migration Process (IGC) Bali Process (<http://www.baliprocess.net>), Berne Initiative, Manila Process, Puebla Process (Regional Conference on Migration) 5+5 Dialogue on Migration in the Western Mediterranean and so on. A summary of major regional consultative processes can be found in the website of the International Organization for Migration, at [http://www.iom.int/en/PDF\\_Files/iom-gcim/matrix\\_of\\_major\\_RCPs.pdf](http://www.iom.int/en/PDF_Files/iom-gcim/matrix_of_major_RCPs.pdf)

- **Legislation** that protects the rights of migrants against discrimination and other human rights violations should be promoted, as well as laws that safeguard the rights of specific groups – such as individuals who have been trafficked or migrant children
- Commitments to ensure that immigration, employment and related policies are **non-discriminatory** should be encouraged
- States should be challenged to ratify and implement **key international treaties** and incorporate their provisions into national law. Obligations under existing international treaties should be highlighted strategically at all appropriate opportunities

**“Parliamentarians have a choice. They can make decisions that ensure the protection of children, or they can make decisions that leave children vulnerable to being exploited and abused. The first choice virtually guarantees strong national development; the second choice virtually guarantees the continuation of poverty.”**

Carol Bellamy, the outgoing head of the UN Children’s Agency (UNICEF), speaking to the Inter-Parliamentary Union on the issue of child trafficking in April 2005

All laws that affect migrants should be scrutinized to make sure they are in line with international human rights standards and domestic human rights legislation. Existing legislation should be reviewed to ensure that it adequately protects migrants. For example, specific legislation should deal with the issue of trafficking so that police do not have to “search” for offences under which to charge traffickers (often inappropriately). Similarly, national legislation on the deportation of non-nationals should ensure that it incorporates procedural safeguards to protect the rights of migrants. These include ensuring they can access competent interpretation services and legal counsel, that they are able to challenge the decision to deport, and that they have access to a review, ideally a judicial review, of a negative decision.

**National human rights institutions**, including ombudspersons and human rights commissions, are crucial resources for holding states to account for human rights violations. The powers and independence of such institutions vary from country to country. Seeking accountability through national human rights institutions may for example involve calling for such institutions to be given strengthened powers to investigate or to enforce their findings. In doing so, national human rights institutions should take as their frame of reference human rights standards, as interpreted by the relevant treaty bodies or courts, rather than national legislation.

**Litigation** remains an important mechanism for holding states, private organizations, companies or individuals to account for human rights abuses. In some countries, the extent to which international human rights obligations can be enforced at the national level depends on the strength of national legislation that safeguards human rights. In other jurisdictions, constitutions or legislation may state that any international treaty to which the state is a party is automatically binding on the state upon ratification, and it can therefore immediately be enforced through domestic courts. Another factor affecting the success of litigation strategies

is how well and how independently the judicial and court system functions in the country in question.

In 2004, 18 Burmese migrants working in factories in Tak Province, Thailand were awarded a total of 1,170,000 baht (US \$29,250) in compensation for unpaid back wages. The Tak Labor Court decision was hailed as a “landmark” by the Yaung Chi Oo Workers Association, which backs Burmese migrant workers in their fight with Thai employers for proper wages and working conditions.

Local migrant labour groups, with the assistance of the Law Council of Thailand, helped almost 1,400 Burmese migrant workers in Thailand to claim back wages, improve their living conditions, and gain control of their work permit documentation.

Colin Baynes, “The Price of Exploitation”, *The Irrawaddy*, October 2004

Strategies for protecting and promoting migrants’ rights at the national level should also take into account the obligations of a state to protect the human rights of its nationals who migrate abroad. Advocacy and campaigning activities should therefore also target the government of the country of origin. In particular, governments should be called upon to provide effective consular protection for nationals who are subject to human rights abuses in countries of transit or destination. Consular authorities must be particularly vigilant in ensuring that their nationals are not subject to prolonged or arbitrary detention. In negotiating agreements between countries for labour immigration, including Free Trade Agreements, all states must ensure that basic human rights standards are respected.

**Non-state actors**, including private companies (whether large multilateral corporations or small and medium sized enterprises) and individuals have an increasing impact on the lives and human dignity of migrants, although the primary obligation to protect and promote the human rights of migrants remains with states.

Migrant workers are increasingly engaged by private recruitment companies, brokers and gang-masters. The deregulation of labour markets, the proliferation of sub-contractors and the expansion of the informal sector have meant that the demand for migrant labour has increased in many sectors and countries. Transnational companies engage sub-contractors to recruit migrant workers, and often turn a blind eye to the human rights situation in which these migrants live and work. Migrant workers often pay significant sums of money to sub-contractors and recruitment agencies for jobs and salaries that do not exist; and on arrival in the country of destination are forced to work off their debt in highly abusive conditions without legally enforceable contracts or work visas.

In many countries government regulation and enforcement are inadequate to protect individuals when corporate activities adversely affect the human rights of their workforce or the communities where they operate. Article 7 of the UN Norms on the Responsibilities of

Transnational Corporations and Other Business Enterprises (2003),<sup>85</sup> adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights as a non-binding set of principles, specifies that “transnational corporations and other business enterprises shall provide a safe and healthy working environment as set forth in relevant international instruments and national legislation as well as international human rights and humanitarian law.” Its Commentary specifically states that this means transnational corporations and other business enterprises should take into account the particular needs of migrant workers as set forth in ILO Convention No. 143 and the Migrant Workers’ Convention. Of particular relevance to the protection of migrants’ rights are Article 5 of the UN Norms prohibiting the use of forced or compulsory labour and Article 8 providing for a living wage.

Non-state actors such as private companies should develop policies that comply with the UN Norms and apply these norms with regard to contracts and other dealings with contractors, sub-contractors and any other associates.

AI has produced Human Rights Principles for Companies (AI Index: ACT 70/001/1998)

#### **4. Call for migration policies that protect human rights**

Migration policies rarely incorporate human rights guarantees. Advocates and campaigners should urge states to use human rights as a principled basis for the development and implementation of policies relating to the treatment of all non-nationals, including migrants. They should stress the role of human rights in providing a unique framework agreed by states through which to reconcile the competing interests of countries of origin or destination, host and migrant communities and the individuals caught up in the process of migration. Adopting a human rights framework would improve understanding of the root causes of migration – its links with poverty and insecurity, lack of economic development and growing inequalities between and within countries. It would also contribute to ensuring a better balance between security concerns and the right to freedom of movement.

States should be required to show how their policies comply with international human rights standards. The reporting requirements of the treaty bodies are useful, but the cycle of reporting can mean that there are long periods between state reports. National mechanisms and other international forums should therefore also be considered in the effort to seek commitments from states that their migration policies comply with human rights.

In addressing the situation of irregular migrants, consideration needs to be given to policies to remove irregular migrants from the shadow economy and from the power of abusive employers and traffickers. For example, transparent regularization programmes that respect human rights could benefit both individual migrants and the host economy. The nature

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<sup>85</sup> See

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument)

of such programmes varies. They may be individual or on a large scale, random or predictable. They may take into account how long a migrant has been in the country. It is imperative, however, that such regularization programmes respond foremost to the need to protect the rights of migrants. In all cases, care should be taken to ensure that such programmes do not place migrants at greater risk of abuse, and that migrants who decide to regularize their status are protected from reprisals by employers or others.

## **5. Call for more research and better data**

Data on migrants and on violations of their human rights remains limited. This lack of information, including the absence of comprehensive and authoritative statistics, has been an obstacle to policy development as well as to effective campaigning for the protection of migrants' rights.

Most governments gather some statistics on migration, but these statistics tend to be more reliable for regular migration than irregular migration. Media, government and NGO reports on violations of human rights during the cycle of migration are also on the increase. However, in many areas there remains an absence of quality statistical data and information about the situation of migrants and the impact of laws, policies and practices on their human rights.

Statistics that would help shed light on this area include:

- number of non-nationals detained at the point of entry, where and for how long
- number of migrants arrested and detained because of their irregular status, where and for how long
- number of migrants arrested and detained because of their unauthorized employment, where and for how long
- number of migrants lawfully engaged in low skilled employment sectors such as domestic service, entertainment, agriculture, construction and factory work
- numbers of migrants lawfully in the country
- number of irregular migrants deported to countries of origin and to third countries
- number of "stranded migrants" in transit and destination countries
- number of people trafficked
- number of trafficked people returned to their country of origin.

All these statistics should be disaggregated by sex and age.

Detailed and accurate research is needed on the types of violations faced by migrants, where they occur, their incidence and specific characteristics. Most importantly, there is a need to lift the veil of invisibility on those migrant groups that are rarely in the public eye.

These include:

- irregular migrants in situations of forced or exploitative labour
- women and children, especially those employed in private homes

- stranded migrants including rejected asylum-seekers and people stranded in transit countries
- victims of trafficking.

## **6. Place migrants at the centre of debates on migration**

It is deeply regrettable that the debate on international migration continues to be framed with little or no focus on the human rights of migrants. On the contrary, misinformation, prejudice and fear often characterize discussion of migration issues amongst decision-makers and the general public. Placing migrants at the centre of discussions on migration and challenging misinformation is a critical part of promoting migrants' rights.

There has been a tendency in public debates to treat migrants either as victims or as criminals. Although portraying migrants as victims of poverty, conflict or criminal networks may be part of an effort to claim rights, there is a risk that they are seen as passive, rather than as individuals with agency. The converse approach, portraying them as criminals or terrorists, encourages a racist or xenophobic climate in which human rights abuses against migrants are overlooked and even condoned.

Strategies need to build upon migrants' agency and recognize migrants' capacity to adapt, find ways out of bad situations, build a future for themselves and their families and contribute to the societies they live in.

### ***Involve migrants***

It is vital that individual migrants, migrants' associations and groups are involved in the development of appropriate strategies and action to promote their rights. Campaigns on migrants' rights must be credible and useful to migrants themselves if they are to be effective and bring about real and practical improvements in the protection of migrants' human rights.

An important way to ensure this is to consult widely amongst migrants and to work in partnership with migrant groups and communities to formulate and implement strategies to protect their rights. In speaking with migrant communities, it is necessary to ensure that each element of that community is able to find a voice and articulate its strategy, including marginalized sectors. Rather than approaching the community as homogenous, advocates for the human rights of migrants should listen to the different voices that emerge based on age, gender and other characteristics such as minority status within the community.

## **7. Protect human rights defenders**

When migrants are unable to speak out against the abuses they suffer, because of their irregular status or other reasons, human rights defenders act to protect them and to promote their rights.

In some countries, public sector workers including healthcare, police and social services staff are obliged to report irregular migrants that they come across in the course of

their work to the immigration authorities. This places at risk irregular migrants who may need services such as healthcare or who may be the victims of crimes. Such policies also penalize public sector workers who do not comply with this “duty”. Private individuals have also faced punishment by the authorities for assisting migrants in distress.

AI raised concerns with the US authorities about the filing of criminal charges against Daniel Strauss and Shanti Sellz after they attempted to provide humanitarian assistance to three migrants found in a distressed condition in the Arizona desert in July 2004. Daniel Strauss and Shanti Sellz were charged with committing two felonies under federal law: transporting illegal aliens and conspiring to do so. The charges carry a maximum penalty of 15 years’ imprisonment. Given the high death toll among undocumented migrants crossing the Arizona desert, the two were arguably acting directly to protect and preserve life, a basic human right to which everyone is entitled. AI considered that if Daniel Strauss and Shanti Sellz were convicted and imprisoned, they would be prisoners of conscience.

*USA: Amnesty International’s concerns about criminal charges filed against two human rights activists who assisted migrants in desert (AI Index: AMR 51/201/2005)*

The voices of these courageous individuals who speak out for migrants’ rights must not be silenced. They should be protected from punishment for seeking to remove the veil of invisibility and abuse under which far too many migrants live.

## **8. Increase public awareness of migrants’ rights and contributions to society**

In a world where migrants are increasingly blamed for a whole raft of social ills both in the media and in political debate, **dispelling fear and countering misinformation are vital parts of promoting migrants’ rights.**

Campaigners, advocates and other activists need to give priority to raising awareness not only of the suffering and exploitation experienced by many migrants, but also of their contribution both to the host society and to their countries of origin. Whether low or highly skilled, migrants bring positive benefits to societies and countries in all regions of the world; benefits which are not only economic, but also social and cultural.

Most governments are concerned not only about what other states think of them, but also about their wider international reputations. Development of effective and tactical tools for public information is therefore an essential component of an effective strategy to promote the human rights of migrants. Information must be clear, relevant, comprehensible and accurate.

It is vital that a **public advocacy** and **media strategy** not only highlights the existing human rights problems that migrants experience, but also suggests ways of overcoming them. Such a strategy should seek among other things to educate local, national, regional and international media on the human rights violations faced by migrants and encourage the media to report on government policies that are discriminatory or abusive towards migrants. It should help media professionals to utilize accurate terminology when reporting on migrants' issues.

**18 December is International Migrants' Day. Campaigners, advocates and activists should use this opportunity to highlight the situation of migrants around the world, to campaign for ratification and implementation of the Migrant Workers' Convention, and to press governments and others to protect, promote and respect the human rights of all migrants.<sup>86</sup>**

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<sup>86</sup> See <http://www.amnesty.org/refugees>