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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

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

**Summary**

This is the second report submitted to the Human Rights Council by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, since his appointment in July 2005.

The report summarizes responses of Member States to a questionnaire on the “Impact of certain laws and administrative measures on migrants” as formulated by the Special Rapporteur. The report also reflects some of the findings of his country visits to the Republic of Korea and Indonesia.

Finally, the Special Rapporteur has made some recommendations to the Global Forum on Migration and Development, which will take place 9-11 July 2007 in Brussels.

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\* The present report is submitted after the deadline in order to reflect the most recent information.

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## **Introduction**

1. This report is submitted pursuant to resolution 2005/47 of the Commission on Human Rights and to Human Rights Council decision 1/102.
2. This report contains a summary of the activities undertaken by the Special Rapporteur during the period from 30 August to 15 December 2006. It also reflects a summary of responses received from Member States to a questionnaire he had sent on 8 and 9 September 2006. Lastly, the Special Rapporteur makes some recommendations for consideration by the upcoming Global Forum on Migration and Development.
3. The activities of the Special Rapporteur are carried out in accordance with Commission on Human Rights resolution 1999/44, in which the Commission established the mechanism and defined its functions. At its sixty-second session, the Commission decided, by its resolution 2005/47, to extend the Special Rapporteur's mandate for a further three years. The Human Rights Council, in decision 1/102, extended the mandate for one year.
4. This report is to be read concurrently with the addendum containing a summary of communications and the two country visit reports of the Special Rapporteur to the Republic of Korea and Indonesia, respectively (see A/HRC/4/24/Add.2 and Add.3).

## **I. VISITS**

5. From 4 to 12 December 2006, the Special Rapporteur undertook an official visit to the Republic of Korea followed by an official visit to Indonesia from 12 to 20 December 2006. In the Republic of Korea, the Special Rapporteur addressed the situation of spouses of mixed marriages and the Government's poor approach towards integration of foreign spouses. Mr. Bustamante also addressed the Act Concerning the Employment Permit for Migrant Workers due to some discriminatory measures (EPS Act) (see A/HRC/4/24/Add.2), and encouraged the Republic of Korea to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
6. In Indonesia, the Special Rapporteur welcomed the Government of Indonesia's decision to discuss the ratification of the Convention in 2007. However, Mr. Bustamante is very concerned with some of the provisions contained in the Memorandum of Understanding (MoU) between the Governments of Indonesia and Malaysia (see A/HRC/4/24/Add.3) on the recruitment and placement of Indonesian domestic workers.

## **II. CASE STUDIES AND RESPONSES TO THE QUESTIONNAIRE ON THE IMPACT OF CERTAIN LAWS AND ADMINISTRATIVE MEASURES ON MIGRANTS**

### **A. Antecedents**

7. In its resolution 2005/47 the Commission on Human Rights requested the Special Rapporteur to include in annual reports "a chapter on the impact of the legislation and the

measures adopted by some States that restrict the human rights and fundamental freedoms of migrants”. In his 2006 report (E/CN.4/2006/73, para. 78), the Special Rapporteur noted that because of his recent appointment and time restrictions, he would address it in the following year’s reports.

8. By note verbale sent on 8 and 9 September 2006, the Special Rapporteur submitted a questionnaire to all United Nations Member States, which addressed questions relating to five main themes: border control and measures to reduce/address irregular migration; expulsion; conditions for admission/stay; rights of migrants and the protection of migrants.

9. To date, the Special Rapporteur has received 26 responses to the questionnaire. The Special Rapporteur would like to thank all the Governments that responded for demonstrating their support and cooperation to his mandate. These States are: Algeria, Argentina, Australia, Azerbaijan, Belarus, Bosnia and Herzegovina, Canada, Costa Rica, Ecuador, Germany, Greece, Japan, Kuwait, Lebanon, Malta, Mauritius, Mexico, Moldova, Morocco, the Russian Federation, Singapore, Spain, Syrian Arab Republic, Trinidad and Tobago, Turkey and Venezuela.

10. In this report, responses from Azerbaijan, Kuwait, Lebanon, Morocco and the Russian Federation could not be included due to the delay with official translation. Responses from Trinidad and Tobago were also not included in the report due to the delay of submission. The Special Rapporteur regrets this and will endeavour to include the responses in his next report.

11. The following paragraphs attempt to reflect the responses received. The Special Rapporteur would like to encourage the States that have not yet submitted a response to the questionnaire to do so, since they will be reflected in his next report.

## **B. Border control**

### **Measures to reduce/address irregular migration**

**Question:** *Please give details regarding rules and regulations applicable to law enforcement officials charged with border control, in particular, concerning situations in which the use of force may be authorized, weapons and other control materials that may be used (guns, rubber bullets, tear gas, etc.) as well as any existing regulations regarding the conditions in which these may be used. Please provide information on existing mechanisms to investigate and prosecute incidents of abuse.*

### **Responses**

12. In its reply, Argentina states that the national security forces which are designated by law to be auxiliary police officers can use force but with limited capacity.

13. In Belarus, border control officials or the armed forces are authorized to use force in self-defence or to prevent crossing illegally into the country. Force may also be used in the protection of citizens, self-defence of military personnel or family members whose life is under threat.

14. In Bosnia and Herzegovina, the State Border Services (SBS) use of force is authorized only when necessary and exclusively to an extent necessary for the realization of legal objective. Concerning mechanisms for investigation and prosecution of cases of abuse of coercive weapons, the Office for Professional Standards and Internal Affairs has been established at the central level of the SBS.

15. In Canada, the Canadian Border Security Agency (CBSA) states that justification to use force is limited; however, officers may only use whatever force is necessary for that purpose and may be held criminally responsible for any force deemed to be unnecessary or excessive. Incidents that involve serious injury or death are always investigated by independent police or civilian investigative authority to ensure there was just cause for the amount of force used. There is no federal investigative body to review matters of the use of force by law enforcement officers but they are available at the provincial level.

16. Germany stated that administrative coercion may be used only when specifically allowed by law and is used as the severest coercive measure. Affected persons may ask an administrative court to re-evaluate the advance warning, determination and execution of a coercive measure.

17. In Japan, Coast Guard officers and their assistants may use arms within limits, according to the situation in case. Malta stated that the use of force must be absolutely necessary and proportionate.

18. In Spain, the National Police Force use of arms is allowed in cases of serious risk for life or physical integrity of the border officials or third persons, or in cases of serious risk for public safety. In cases of incidents of abuse, the penal jurisdiction should be competent to examine those abuses committed by members of the Security Forces. Syria's border control guards are provided with training and any incidents of abuse or violations are subject to the legislation following decree 29/1970.

19. In its reply, Venezuela (Bolivarian Republic of) states that the use of force may be authorized in case of public disorder and lack of respect for an authority.

**Question:** *Please indicate if, in the context of border control, any laws, regulations or agreements with other countries exist to prevent loss of life and/or serious harm to migrants attempting to cross borders irregularly.*

## **Responses**

20. The Special Rapporteur regrets the limited number of responses received on this issue. He encourages States to adopt all the necessary measures in order to prevent the loss of life of irregular migrants at the border controls. He welcomes the actions taken by the Governments of Turkey and Ecuador which have ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

21. In its reply, Bosnia and Herzegovina states that illegal crossing of the border is considered an offence. Besides legislation regulating this area, Bosnia and Herzegovina has concluded numerous agreements with surrounding countries and beyond.
22. In Canada, the Royal Canadian Mounted Police enforces laws and regulations along the Canadian border. There is no specific agreement with other countries to prevent harm to migrants attempting to cross borders irregularly.
23. Germany states that under article 13 (1) second sentence of the Schengen Borders Code and section 15 (4) of the Residence Act (AufenthG), a foreigner may be allowed for humanitarian reasons to enter the country even if he/she does not fulfil the necessary requirements for conditions of entry.
24. Spain indicated that major efforts are being made in order to cooperate and collaborate with countries of emission and transit of irregular immigration from the coastal countries of Africa.

**Question:** *Please provide information regarding existing legal obligations for State or non-State actors to aid persons at risk at sea (if applicable).*

### **Responses**

25. The Special Rapporteur regrets the fact that a number of countries did not provide information on this issue.
26. In Bosnia and Herzegovina, issues of aid to persons at risk at sea are regulated by article 20 of the Law on Supervision and Control of Crossing the State Border.
27. Canada's obligation is reflected in the Canada Shipping Act, section 384 of which states that a vessel that rescues persons on the high seas (i.e., international waters) need not decide upon the merits of asylum claims.
28. Ecuador is party to an international instrument on the matter, the International Convention for the Safety of Life at Sea (SOLAS).
29. In Japan, the Japanese Coast Guard has a mission to rescue life in case of marine accidents and to give necessary assistance in case of natural calamities and other events where relief is required, as prescribed in article 5 (2) of Japan Coast Guard Law.
30. In Malta, the Armed Forces of Malta apply all the norms of international law: the United Nations Convention on the Law of the Sea (UNCLOS 2) places upon the masters of all ships (military included) the obligation to assist a person in distress at sea. The Armed Forces of Malta also ensure that civilian vessels within the Malta Search and Rescue Region (SRR) also observe this behaviour. Further obligations, as outlined in the International Convention on Maritime Search and Rescue (SAR Convention, 1979) and SOLAS Convention of 1974 regarding the way operations are conducted and coordinated.

31. Mauritius states that section 12.1 (c) of its National Coast Guard (NCG) Act empowers the NCG to undertake search and rescue operations in all situations of distress in the maritime zones.
32. In Mexico, according to article 137 of the General Law on Population, the Governance Secretary is able to create groups of protection of migrants located in the national territory. Among the functions of these groups are those of executing the programmes and participating in the operations for safety, rescue and first aid.
33. In Singapore, the Singapore Police Coast Guard doctrine stipulates protection of life as first priority, and all efforts should be made to care for any injured person. Any person found to be at risk at sea (man overboard) within Singapore territorial waters would be first rescued and brought onboard, followed by the necessary first aid and medical attention as appropriate. Efforts will be made thereafter to establish his identity and legality of entry.
34. The Government of Spain indicated that the United Nations Convention on the Law of the Sea (1982) provides in its article 98 the obligation for the master of a ship to render assistance to any person found at sea in danger of being lost. The person should be brought to the nearest Spanish port, in case the State of origin is not able to accept him/her in its territory, for not being a citizen or for not possessing documentation.
35. In its reply, the Syrian Arab Republic states that its Government provides for rescue operations at sea and it has many bilateral agreements with neighbouring countries on this issue.
36. In Turkey, according to article 14 of its Law on Safety of Life and Properties at Sea, any captain is liable to do his/her utmost in order to assist any person at risk at sea without endangering anyone on his/her vessel. Turkish Naval Forces Command performs its rescue and search activities for the people at risk in accordance with the following regulations: the Hamburg Convention which determines the basic principles of the international rescue and search activities; International Convention for the Safety of Life at Sea (SOLAS).
37. As it was underlined in the report of the Special Rapporteur submitted to the General Assembly (A/61/324), aware of the importance of this issue, “the State parties to the relevant international maritime conventions<sup>1</sup> adopted a number of amendments to ensure that the obligation of the ship’s captain to render assistance is complemented by a corresponding obligation of States to cooperate in rescue situations. These amendments should lift from the captain the sole responsibility for the care of survivors, allowing persons rescued at sea in such circumstances to be promptly taken to a safe place. The Special Rapporteur has been concerned about the alarming number of reports received in 2006 concerning migrants who lost their lives at sea, in particular in the Mediterranean region. He warmly welcomes the entry into force of these amendments, which he hopes will grant greater protection for persons who out of great desperation risk their lives at sea.

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<sup>1</sup> The 1974 International Convention for the Safety of Life at Sea (the SOLAS Convention) and the 1979 International Convention on Maritime Search and Rescue (the SAR Convention). See International Maritime Organization at <http://www.imo.org/home.asp>.

**Question:** *Please provide information regarding the existence of non-State actors (private individuals) active in immigration control, such as vigilante groups or groups of private citizens acting with powers similar to security forces. If applicable, please provide information on legislation regulating these groups' activities.*

### **Responses**

38. The Special Rapporteur regrets that many States did not provide information on this issue. Mass media of countries of destination very frequently report on non-State actors involved in direct actions of immigration controls resulting in human rights violations of immigrants. The Government of Venezuela identified the National Reserve and the Territorial Guard as organs composed by citizens and which could assist the Armed Forces in border control. In Bosnia and Herzegovina, no non-State actors are active in immigration control. In Belarus, under article 38 of the civilian protection of border control, civilians are able to exercise the right to protect the borders of Belarus on a voluntary basis, which is defined by the President of Belarus.

39. In Germany, under the Act on the Federal Police (BPolG), a legal possibility is provided for appointing appropriate persons as auxiliary police officers to help with certain tasks of border policing and inspecting cross-border traffic. These appointments are based on a case-by-case basis. The relevant authorities and not the auxiliary officers are ultimately responsible for the actions of its officers.

**Question:** *Does the law in your country criminalize irregular migration? If so, please provide details, including information regarding existing sanctions and their application.*

### **Responses**

40. The Special Rapporteur notes that irregular migration is criminalized in several States, including Belarus, Bosnia and Herzegovina, Japan, Mauritius, Moldova, Singapore and Turkey. There are countries of destination where a new trend of criminalization of immigrants has recently emerged. This consists of local governments issuing ordinances establishing fines and other sanctions against those who rent housing or hire irregular migrants, or are found in public places waiting to be recruited, implying that those involved in these actions are criminals. The United Nations should address this trend which is practised in total disregard of constitutional provisions explicitly prohibiting local governments from passing any laws regarding immigration, which is the exclusive jurisdiction of national Governments.

41. Argentina recognizes migration as an essential and inalienable right of a person, and irregular migration is not criminalized.

42. In Belarus, migrants who are caught crossing the borders irregularly are subject to arrest for up to six months and/or may be subjected to the deprivation or restriction of their liberties for up to five years.



43. In Bosnia and Herzegovina, article 61 of Chapter X, Penalty Provisions, of the Law on Supervision and Control of Crossing the State Border (*Official Gazette of BiH*, No. 56/04) stipulates fines for the following offences: if a natural person crosses or tries to cross State border beyond border crossing; if he/she does this beyond working time or contrary to the purpose of border crossing; if he/she avoids border control or leaves territory of border crossing before the end of border control; or tries in any other way to avoid border control, he/she can be sentenced to imprisonment of 30 days or fine in amount up to BAM 2,500.

44. An undocumented foreign national who arrives in Canada is not subject to persecution before a criminal court.

45. In Japan, criminalization of irregular migration is prescribed by the provisions of article 70 of the Immigration Act. Any person subject to any of the following items shall be punished with imprisonment with or without labour for not more than three years or a fine not exceeding 3 million yen, or shall be punished with either imprisonment with or without labour and a fine: (a) a person who entered Japan in violation of the provision of article 3; (b) a person who landed in Japan without obtaining landing permission from an immigration inspector (see article 3). Any alien who falls under any one of the following items shall not enter Japan: (a) a person who does not possess a valid passport (This shall not apply to a crewman possessing a valid crewman's pocket-ledger); (b) a person who intends to land in Japan without receiving a stamp of permission for landing or without obtaining authorized permission for landing (hereinafter referred to as "permission for landing") from an immigration inspector (except for those who fall under the preceding item).

46. Mauritius indicated that section 8 of the Immigration Act deals with prohibited immigrants. Section 23 of the same legal document provides that: Any person who contravenes this act or any order made or condition imposed under it, for which no specific penalty is elsewhere provided in this act, shall commit an offence and shall, on conviction, be liable, to a fine not exceeding 2,000 rupees or to imprisonment for a term not exceeding six months.

47. In Moldova, consequent actions have been undertaken to criminalize illegal migration. By Law No. 376-XVI of 29 December 2005, the Criminal Code was completed with a new article 362/1, "Organization of illegal migration". Consequently, organization, for the purposes of profit, of entry and/or illegal stay on the territory of a State by a person who is not its national or resident, committed through making, holding, selling or use of false official documents; issuing or acquisition of documents illegally or by means of false declarations; use of official documents by other persons than the legal owner, is punished with a fine in the amount of 300 to 500 conditional units or with imprisonment from one to three years, with deprivation of the right to hold certain functions or carry out certain activities for the term of one to three years, whereas a legal person is punished with a fine in the amount of 1,000 to 2,000 conventional units, with deprivation of the right to carry out certain activity or liquidation of the enterprise.

48. In Singapore, the Immigration Act makes offences of unlawful entry and departure, producing misleading travel documents, giving false information, abetment and engaging in the business of illegally conveying prohibited immigrants or immigration offenders. These offences carry penalties of between six months and five years' imprisonment, caning or a fine of not exceeding US\$ 10,000.

49. The response of Spain specified that, while irregular immigration constitutes an administrative infringement, trafficking and smuggling involving migrants are considered as criminal offences. Irregular immigration is punished with a fine up to 6,000 euros in cases of a serious infringement, or 60,000 euros, in cases of a very serious infringement. In the second case, the expulsion from the Spanish territory can be applied instead of a fine. Finally, imprisonment of 2 to 5 years and a fine of 6 to 12 months may apply to the criminal offences of trafficking and smuggling of migrants.

50. The Syrian Arab Republic does not criminalize migration, although an individual whose State is at war with Syria can be sanctioned for up to two years for trying to enter the territory.

51. Illegal migration is a criminal offence in Turkey, according to article No. 34 of the Passport Law, which was adopted in 1950. Any person entering Turkey by illegal means (without passport or any valid documents for entry) is first brought before a court; illegal migrants may be deported by Turkish National Police upon the court's decision.

52. The Special Rapporteur notes that there are Governments that allow for corporal punishment (whipping) of irregular migrants in blatant violation of the human rights of immigrants. He notes with concern that there are countries in South-East Asia where both licensed and private individuals are involved in the brokerage of the de facto markets of irregular migrant workers involving gross violations of human rights derived from practices of trafficking and smuggling of migrants.

53. According to article 5 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, each State party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally: "trafficking in persons", meaning the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>2</sup>

### C. Expulsion

**Question:** *Does the law in your country regarding the expulsion of non-nationals, in particular those in an irregular situation, require an individualized expulsion procedure allowing for the identification of vulnerable persons such as refugees, victims of trafficking, and unaccompanied children? If so, please give details regarding this process, including the authority responsible for this procedure and rights/assistance given to persons concerned with such a procedure.*

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<sup>2</sup> Round Table 2: Measures to ensure respect for and protection of the human rights of migrants, and to prevent and combat smuggling of migrants and trafficking in persons, <http://www.un.org/esa/population/hldmigration/Text/SummaryFinalRT2.pdf>.

## Responses

54. The Special Rapporteur notes that in Japan and Argentina there are no individual procedures for the expulsion of non-nationals.

55. In Belarus, an individualized expulsion procedure exists for vulnerable groups. In order to be recognized as a refugee, the non-national will have to make a claim to the Court or Ministry of Interior or the State Service.

56. In Bosnia and Herzegovina, procedures and conditions under which expulsion of aliens that illegally reside in the territory may be carried out are stipulated by the Law on Movement and Stay of Aliens and Asylum (*Official Gazette of BiH*, Nos. 29/03 and 4/04). The Ministry of Security has passed the Rulebook on the Protection of Aliens Victims of Trafficking in Human Beings (*Official Gazette of BiH*, No. 33/04), which defines rules and standards of procedure of admission, recovery and repatriation of aliens victims of trafficking, with special reference to protection of children. Apart from the above-mentioned, the Procedures on Treatment of Victims of Trafficking in Bosnia and Herzegovina, adopted on 29 July 2005 (the Vlastic Procedures), determine the means of mutual cooperation in the treatment of victims of trafficking between the competent institutions in Bosnia and Herzegovina, non-governmental organizations and the International Organization for Migration (IOM).

57. In Canada, the Charter of Rights and Freedoms applies to all individuals, including those without immigration status and in an irregular situation. A foreign national may make a refugee claim and deportation will not be enforced until the claim is resolved. A person, including a failed asylum-seeker, can apply at any time to remain in Canada on humanitarian and compassionate grounds. In all immigration proceedings, consideration is given to minors. For women who are refugee claimants, the Immigration and Refugee Board of Canada has developed guidelines on gender-related persecution. In December 2006, IRB issued Guidelines on Procedures with Respect to Vulnerable Persons Appearing before the IRB. Canada has produced guidelines to assist immigration officers to provide legal immigration status to victims of trafficking in persons.

58. In Costa Rica, current legislation does not provide a procedure for the case of non-accompanied children and adolescents, although a draft reform to the law does contemplate coordination with the competent authorities, such as the national child welfare authority (Patronato Nacional de la Infancia, PANI).

59. Germany's asylum applications go through the Federal Office for Migration and Refugees (BAMF) that initiates a procedure based on the Asylum Procedures Act (AsylVfG) to determine whether the applicant qualifies for asylum under article 16 (a) of the Basic Law. Section 60 (7) of the Residence Act stipulates that consideration be given to the special threat faced by witnesses in German criminal proceedings directed against organized crime, particularly human trafficking. In accordance with national law (cf. section 80 (2) of the Residence Act) minors are not automatically granted refugee status and if there are no legal grounds for recognition, the minor will be returned to his/her country of origin, on the principle that he/she will be received and taken care of.

60. In Spain, an individualized expulsion procedure is provided by Immigration Law 4/2000 and Royal Decree 2393/2004, which allow for the identification of vulnerable persons such as refugees and pregnant women. In the case of unaccompanied children, they shall be repatriated to their own country for their family reintegration or for their protection by the local social services. Finally, in the case of victims of trafficking, they may be excluded from being deported if they accept to denounce their traffickers to the authorities.

61. In the Syrian Arab Republic, the Migration and Passport Services are the competent authorities to deal with the issue of expulsion procedure. Migrants who have entered Syria illegally are held in detention until the individual has gone through a judicial process. Should the individual be expelled, the person will not be able to re-enter the territory.

62. In Venezuela (Bolivarian Republic of), notification to the National Council for the Child and Adolescent is required, according to the Law on the Protection of Children and Adolescents.

**Question:** *Does the law in your country allow for the expulsion of non-nationals to countries other than their countries of origin? If so, has your country entered into any readmission agreements with third countries to allow for such returns? Please provide details, including in regard to mechanisms in place for the protection of persons expelled under such agreements.*

## **Responses**

63. Concerning the expulsion of non-nationals to countries other than their countries of origin, Argentina, Australia, Belarus, Bosnia and Herzegovina, Canada, Ecuador, Germany, Japan, Moldova, Spain and the Syrian Arab Republic do allow the expulsion to third countries.

64. In Argentina, the expulsion of non-nationals to a third country is allowed only after the admission by the said country, while in Australia non-citizens may only be removed to a country of citizenship or to a country in which they have the right to reside permanently. The relevant legislative provision governing removal of unlawful non-citizens from Australia is section 198 of the Migration Act 1958.

65. In Belarus, a foreigner can be expelled to the State of origin, the State of habitual residence, the country of transit, a State which is interested in receiving the non-national or to the State requesting the foreigner's expulsion from Belarus.

66. In Bosnia and Herzegovina, the regulations of Law on Movement and Stay of Aliens and Asylum enable the return of this category of persons to a country of origin or habitual residence. During the procedure, the principle of non-refoulement is applied. The Government has signed readmission agreements with nine States. Agreements have also been ratified with eight States.

67. In Canada, the law allows the expulsion of foreign nationals to countries other than their country of origin. Protected persons and Convention refugees will not be removed to that country against which they made their claim, unless Citizenship and Immigration Canada (CIC) renders a "danger" opinion for serious criminality, security, human rights violations or organized crime. Canada has in place nine readmission agreements with other countries. The agreements, however, do not allow for the return to any destination country other than the destinations specified in the Immigration and Refugees Protection Act.

68. In Germany, the Residence Act (cf. sect. 59 (2)) provides for the possibility of deportation to a third country if the country allows the foreigner to enter or is obligated to admit the foreigner. In principle, foreigners are to be deported to their country of origin. In some cases, it could be possible to deport foreigners to a third country, only if the third country allows deportation or if the foreigner has a right of residence in a third country and it is more expedient to deport him/her to that country rather than the country of origin.

69. In Japan, according to article 53 of the Immigration Act, which regulates the destinations of deportees, it is possible to expel non-nationals to countries other than their countries of origin (countries of which they are nationals or citizens). In article 52 of the revised Immigration Act, which came into force on 24 November 2006, a person who has received permission for departure at his/her own expense can be sent to an accepting country other than his/her home country.

70. In Moldova, foreigners are expelled to the country of his/her nationality or the one that issued him/her an identification document or, based on international treaties, to the country from which he/she entered Moldova. The Government has signed agreements of readmission with eight States.

71. Spain has signed bilateral agreements which allow not only for the readmission of non-nationals to their own countries, but also their readmission to transit third countries.

72. The Syrian Arab Republic also has agreements with the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration to send a person to a third country on condition that the person is not in possession of a criminal record.

#### **D. Conditions for admission/stay**

**Question:** *Please provide information regarding conditions for admission of non-nationals as migrants into your country, in particular: language proficiency requirements, pledges and promises required, questionnaires to be filled, etc. Indicate recent changes in such legislation.*

73. The Special Rapporteur regrets the maintenance of a pattern among recipient countries of resisting the recognition of the endogenous demands of the labour force of irregular migrants. Given this endogenous labour demand, much could be advanced in the combat against irregular migration if countries of destination issued statistical information on an annual basis about the sectors of their economies where there is a de facto demand for irregular migrants and about the basic socio-economic characteristics of their respective contingent of irregular migrants. Such quantitative information could lead to better practices of management of international labour markets involving irregular migrant workers. It also could lead to practices of more rational economic planning of de facto international labour markets, following the same rationale that has given rise to the issuing of quantitative information for de jure international labour markets as the Organization for Economic Cooperation and Development does.

## Responses

74. Australia indicated that all applicants for migration are assessed against requirements set out in the Migration Act 1958. Permanent entry to Australia can be through the migration programme, for skilled, family and special-eligibility stream migrants. The Temporary Business (Subclass 457) visa programme is Australia's main temporary work visa. It allows Australian or overseas employers to sponsor skilled overseas workers and their families on a temporary basis, for up to four years. Subclass 457 visa-holders are subject to the same remedies, protections and obligations under workplace laws as Australian citizens.

75. In Belarus, there are three types of visas to reside in the country. They are temporary-stay visas for 90 days, temporary-residence visas for more than 90 days or up to a maximum of one year and permanent residency visas.

76. In Bosnia and Herzegovina, aliens may stay on the basis of visa or non-visa residence. After the expiry of a visa or non-visa residence, they are obliged to submit the application for a temporary-residence permit. In view of strengthening cooperation with neighbouring and third countries in this area, as well as more efficient combating of illegal migration, the Government has signed or is in the process of signing several agreements on admission of persons whose stay is illegal.

77. In Canada, there are a number of categories of foreign nationals who can immigrate to Canada. There are several criteria that are common to all immigration classes. Firstly, all applicants must abide by the rules and regulations of the IRPA. Secondly, all immigrants who intend to reside in the province of Quebec must receive a "Certificat de Sélection du Québec". All immigrants must also pass security, criminality and medical checks. However, family members and refugees are excluded from this requirement.

78. In Greece, the general conditions of stay included, in addition, the absence of danger for the public order, public security and public health, full health insurance for all dangers for which nationals are covered, and resources to cover the expenses for their return to their country of origin.

79. Mauritius indicated that non-citizens are granted entry provided that they satisfy the requirements set out in the Passport Act and Immigration Act. Unless a non-citizen is a holder of a valid residence/work permit issued by the Ministry of Labour, Industrial Relations and Employment, he will not be allowed to enter the country for work.

80. The case of Singapore deserves particular attention, since all foreign workers entering Singapore to work are required to meet the prevailing educational and entry requirements imposed by the Ministry of Manpower. These requirements vary according to the specific industry sectors:

(a) Foreign domestic workers - The minimum age of new foreign domestic workers was increased from 18 to 23 years with effect from 1 January 2005. Foreign domestic workers must also have completed at least eight years of formal education. An entry test in English was

also introduced in April 2005 to validate the worker's linguistic, numerical and practical abilities. Foreign domestic workers who have not worked in Singapore before must attend a safety awareness course;

(b) Foreign workers - Foreign workers in other sectors (e.g. construction) have to pass basic safety orientation courses before commencing work in their respective sectors.

81. In Spain the admission of a non-national is conditional on: the possession of a valid passport; a visa; the justification of the purpose and conditions of the stay; accreditation of financial resources, or being able to obtain them; medical certificates (if required); not being subjected to a prohibition of entry; and not representing any risk for public safety, public order, national security or international relations of Spain with third countries.

82. All non-nationals entering the Syrian Arab Republic require a visa. There is a different category of application for Arab males.

**Question:** *Please also provide information regarding conditions for requiring citizenship in your country including periods of residence required, integration tests and other requirements. Please indicate recent changes in such legislation.*

## **Responses**

83. With regard to application for citizenship, States such as Australia, Bosnia and Herzegovina, Costa Rica, Malta, Mauritius or Turkey require sufficient knowledge of their respective languages. On the other hand, States such as Costa Rica, Japan and Turkey indicate that the person should also have enough financial resources to support himself/herself and his/her family.

84. In Australia, people are eligible for a grant of citizenship if they have been present as a permanent resident in Australia for two of the past five years and for at least 12 months in the last two years; are aged 18 years or over; understand the nature of the application; are of good character; understand the responsibilities and privileges of being an Australian; and intend to reside in Australia, or maintain close association with Australia. The Australian Citizenship Bill 2005, which is currently before Parliament, will replace the current law. The Bill proposes that the residence requirement change from two years permanent residency to four years lawful residency in Australia, including at least 12 months as a permanent resident. Lawful residence includes holders of temporary-residence visas.

85. Some of the conditions for the application of citizenship in Belarus include family reunification, application by a foreign spouse, a refugee who had been living in Belarus for seven years consecutively, a close relative of a citizen of Belarus, a resident residing in the Republic seven years, an individual who has legal grounds to apply for citizenship, professionals or individuals that have exceptional talent in science, technology, sports, culture, etc., an individual who invests more than €150,000 in the Republic or in exceptional situations, with the approval of the Council of Ministers in consultation with the President of the Republic.

86. In Bosnia and Herzegovina, the conditions for the application for citizenship include: a person being aged 18 years and over; a person having resided in the territory of Bosnia and Herzegovina for at least eight years before submitting the request; knowledge of one of the languages spoken in the territory; that he/she was not the object of the security measure of expulsion of a foreigner from a country or of the protective measure of removing an alien foreigner from the territory; that he/she was not sentenced to a term of imprisonment for a premeditated criminal act for longer than three years within the eight years of submitting a request; the renouncement of his/her former citizenship upon acquisition of Bosnia and Herzegovina citizenship unless there is a bilateral agreement with the alien's State of origin. In the case of marriage with a foreign spouse, citizenship may be acquired by the foreign spouse if the marriage lasts at least five years; he/she renounces the former citizenship unless there is a bilateral agreement with the country of origin and that he/she has been a permanent resident of Bosnia and Herzegovina for at least three years.

87. In Canada, permanent residents who submit an application and meet the eligibility criteria provided in the Citizenship Act (1977) will be granted Canadian citizenship. To become a Canadian citizen, an applicant must be a permanent resident of Canada; have lived in Canada for at least three years; be at least 18 years of age; able to communicate in one of the official languages (English or French); demonstrate knowledge of Canada and the rights and responsibilities of citizenship.

88. Costa Rica also requires proving good behaviour. In addition, the person is required to have knowledge of the history of the Republic, and to make a promise to reside in the national territory on a regular basis and to respect the constitutional order.

89. In Greece there exists a differentiation made by law between those persons who have Greek origin and those who do not. The conditions for a foreigner to be granted Hellenic nationality are: (a) have reached 18 years of age; (b) he/she must not have been convicted, during the last decade before the submission of the naturalization application, to a sentence of deprivation of freedom for at least one year; and (c) a decision of deportation should not be pending against him/her. However, for a foreigner not having Greek origin, it is also necessary to: (a) have resided legally and permanently in Greece for 10 of the last 12 years before the submission of the naturalization application; (b) have sufficient knowledge of the Greek language, Hellenic history and civilization in general; and (c) have a deposit of €1,467.35. Foreigners of Greek origin are not obliged to pay the deposit.

90. Japan requires, among other conditions, that: (a) he or she has lived in Japan for five years or more consecutively; (b) he or she is 20 years of age or more and of full capacity according to the law of his or her home country; and (c) he or she is of upright character.

91. In Malta, it is necessary to have satisfied a minimum five-year residence requirement. In Singapore, good character is required, to be over 21 years old, and to have resided in Singapore for at least 12 months. Non-citizens who are successful in their application to become a Singapore citizen must take the Oath of Renunciation, Allegiance and Loyalty before they are registered as a citizen of Singapore.



92. In Mauritius, the Minister may grant a certificate of naturalization to any alien or “British protected” person of full age and capacity who makes an application in the prescribed manner and satisfies the Minister that: (a) he is of good character; (b) he has an adequate knowledge of the responsibilities of a citizen of Mauritius; (c) he has resided in Mauritius for a continuous period of 12 months immediately preceding the date of his application; (d) during the seven years immediately preceding the period of 12 months, he has resided in Mauritius for periods amounting to not less than five years.

93. Spain indicated that the application should be made by a person aged 18 years old or over; by a person aged at least 14 years old assisted by a legal representative; by the legal representatives of a minor under 14 years old or of a disabled person. The applicant must have resided in Spain for 10 years. For refugees five years of residence are required, and for nationals of Latin American countries, Andorra, the Philippines, Equatorial Guinea, Portugal or Sephardim two years of residence are required. The residence must immediately precede the application, and the applicant shall show evidence of good conduct and sufficient integration into Spanish society. In addition, the applicant must promise loyalty to the King and obedience to the Constitution and the laws of Spain, as well as renounce his/her previous nationality (an exception is made for the nationals of certain countries).

94. Finally, Turkey requires that: (a) the applicant should be at the age of consent according to his/her national law; (b) the applicant should have resided in Turkey for the last five years and should have the intention of settling in Turkey (this condition may be not applicable to those who are married to a Turkish national or those who are with Turkish origin); and (c) the applicant must be in good health.

**Question:** *Please provide information regarding legal conditions for family reunification in your country, including delays before persons are eligible for reunification and any other requirements. Please indicate recent changes in such legislation.*

### **Responses**

95. The Special Rapporteur strongly regrets the limited number of responses received on this issue.

96. In Australia, “family stream” applicants are sponsored by a close family relative living in Australia who must be a citizen, a permanent resident or eligible New Zealand citizen and 18 years of age or older. In the spouse and parent classes, there are circumstances in which a child under 18 years of age can allow other persons over the age of 18 to act as sponsor, such as a spouse, a close relative or guardian, or even a community organization. “Family stream” migrants are selected on the basis of their family relationship with their sponsor in Australia; there is no test for skills or language ability as for “skilled stream” migrants.

97. In Bosnia and Herzegovina, a close family member of a citizen or an alien holding a temporary or permanent residence permit may be granted temporary residence for the purpose of family reunification. The general conditions of entry include: the alien having proof of the grounds required for granting temporary residence; enough funds to support himself/herself;

proof of accommodation; no high-risk disease; and he/she is capable of work. For an application for a temporary residence permit: proof that the alien holding a temporary or permanent residence permit in Bosnia and Herzegovina has a permanent and sufficient income and proof of relations and dependent persons.

98. In Canada, family members can apply in any immigration category. However, there are programmes that are in place specifically to facilitate family reunification. Canadian citizens and permanent residents can reunite with their family members through the family-class category, spouse and common-law partner in Canada class and on humanitarian and compassionate consideration. Canadian citizens or permanent residents can sponsor family members, and only family members that meet the definition in the Immigration and Refugee Act can be sponsored.

99. In Greece, country nationals, who have legally lived in Greece for at least two years, have the right to apply for the entry and residence in the country of their family members. The conditions for family reunification are: (a) family ties are proven; (b) family members are going to live with the sponsor; (c) the sponsor proves that he has stable and regular income, sufficient to cover the needs of his family, which is independent of the system of social assistance of the country; (d) the sponsor holds complete health insurance regarding all dangers for which Greek nationals are covered, which can cover the members of his/her family as well. However, there have been recent changes in legislation. Recently the Presidential Decree 131 (*Official Gazette* 143/A/13.7.2006) has been issued, which transposed into national law the Directive 2003/86/EC on the right of family reunification of third-country nationals legally residing in the territory of the member States.

100. In Malta, there are no legal conditions yet for family reunification. However, family members of a foreigner who has been authorized to reside in Malta for a specific purpose are issued with a residence permit allowing them to reside in Malta for the duration of the foreigner's residence.

101. In Mauritius, dependants are authorized to stay with working non-citizens provided documentary evidence of their family relationship is presented.

102. In Spain, a non-national may apply for family reunification after having legally resided in Spain for one year and having obtained the authorization of residence for at least one more year. Family members who can be part of the reunification include: spouses; unmarried children (or children of the spouse) under age 1; children under 18 when the applicant is his/her legal representative; ascendants of the applicant or of the spouse's applicant if they are in charge of them.

**Question:** *Please provide information regarding any existing requirements and conditions for marriages of non-nationals and/or of nationals with non-nationals as well as the possibility for withdrawing authorization to stay following separation; and conditions for reunification of children. Please indicate recent changes in such legislation.*

## Responses

103. In Bosnia and Herzegovina, in the case of divorce or the death of a spouse, an alien who has been granted temporary residence on the grounds of family reunification with a Bosnia and Herzegovina citizen or an alien holding a temporary or permanent residence permit shall not have the right to extend his/her temporary residence unless: he/she has custody of a minor child who has citizenship or has been born in a marriage with a Bosnia and Herzegovina citizen; has resided in Bosnia and Herzegovina for three years continually based on temporary residence granted for the purpose of family reunification; or, has expressed reasons relevant to granting temporary residence on humanitarian grounds.

104. In Greece, legal or even temporary residence constitutes a condition for contracting a civil marriage between third-country nationals. In cases of foreigners residing legally in Greece, the issuance of a Hellenic marriage licence is necessary, according to the procedures required for Greek citizens too. Alternatively, they need to hold a valid marriage licence issued in their own country. While submitting the relevant supporting documents, foreigners are required to hold a document proving they reside legally in the country (i.e. passport, visa or residence permit depending on the case). Interested foreigners are asked to have a document proving their residence, a certificate of non-impediment for marriage issued by their consulate in Greece, a birth certificate, as well as a wedding notice published in a newspaper (Law 1250/82). Marriage of convenience is not allowed, and residence permits for family reunification purposes are not issued or renewed and they are withdrawn, in the following cases (Law 3386/2005, art. 58).

105. In Mauritius, requirements and conditions for marriage of non-citizens and of Mauritians with non-citizens are governed by the Civil Status Act, section 19A, concerning marriage of a non-citizen to a citizen. Where a non-citizen has acquired Mauritian citizenship as a spouse of a citizen, he/she shall cease to be a resident six months after the termination of his/her marriage to the Mauritian citizen.

106. Section 24A, of the Civil Status Act, concerning marriage of non-citizens states: “(1) Notwithstanding sections 19 (2), 21 and 23 of this Act, an officer may, where the intending spouses are not citizens of Mauritius, and do not reside in Mauritius, celebrate their civil marriage on the day immediately following the day of publication. (2) The temporary presence in Mauritius of the intending spouses specified in subsection (1) shall not be deemed to constitute residence for the purposes of that subsection. (3) A certificate issued under the authority of the Prime Minister shall be sufficient proof, for the purposes of subsection (1), that the intending spouses are not citizens of and do not reside in Mauritius.”

107. Spain specified that the same laws must apply for a marriage between nationals and a marriage between a national and a non-national, according to article 27 of the Civil Code. An exception is made for homosexual marriages in the case that the country of origin of one of the future spouses has no regulation yet on the matter. If both spouses are non-nationals, Spanish law or their national law should be applied.

108. The Syrian Arab Republic administers marriage and divorce through the civil department. When a divorce occurs between a Syrian national and his foreign spouse, the residency of the foreign spouse is withdrawn unless she has a young child in her custody. If the union did not produce any offspring, the foreign spouse would have to leave the territory.

### **E. Rights of migrants**

**Question:** *Please specify if the law (or decisions by the courts or administrative practice) excludes or grants limited access for particular categories of non-nationals (for example, irregular migrants, children, persons admitted for limited periods, etc.) to the items detailed below:*

- *Social security benefits;*
- *Housing;*
- *Health services;*
- *Education;*
- *Labour law (in particular indicate if domestic workers or agricultural labourers are excluded from the labour law);*
- *Participation in unions;*
- *Access to the justice system; in particular please specify if persons who have engaged in legal procedures and/or lodged complaints can continue to participate in such procedures once they have left the country;*
- *Voting rights for legal immigrants in local elections.*

*Please provide details.*

### **Responses**

109. The Special Rapporteur regrets the different treatment given to non-nationals by the legislation on this issue, which could lead to discrimination.

110. In Algeria, immigrant workers benefit from the same rights as national workers, while in Argentina, non-nationals have access to education and health, regardless of their migratory status, as well as to free legal assistance (in procedures which could lead to the denial of entry or expulsion) if they do not have enough financial resources.

111. Argentina applies the law of non-discrimination, reflected in the national Constitution and under Migration Law 25.871, which does not differentiate between nationals and non-nationals. Article 6 of the Migration Law states that both regular and irregular migrants have access to education, health, right to public, national and municipal services. In addition, irregular migrants are entitled to a salary and social provisions.

112. In Australia, mainstream services such as employment, education and health care are provided by the responsible government agencies in a culturally appropriate way to their migrant and refugee clients. In addition, the Government of Australia provides a range of programmes and services to offer settlement support to new migrants and humanitarian entrants. Settlement assistance begins with providing pre-embarkation information to new migrants through the

Australian Cultural Orientation (AUSCO) programme. This aims to enhance entrants' settlement prospects and create realistic expectations for their life in Australia. Furthermore, the Adult Migrant English Program (AMEP) provides English-language tuition to entrants who do not have functional English. The Translating and Interpreting Service (TIS) also provides translating and interpreting services 24 hours a day, seven days a week from anywhere in Australia.

113. In Belarus, all foreigners are guaranteed the rights stipulated in the Constitution. Foreigners have the right to move freely within the Republic in accordance with the relevant legislation or with a permit issued by the Ministry of Interior and/or the relevant local authorities. Foreigners cannot be members of political parties or other associations that are of a similar nature. Foreigners can inherit and buy property and have the same medical and legal rights as citizens.

114. In Bosnia and Herzegovina, children who are victims of trafficking have access to accommodation, health care and education. Regular migrants have protection in accordance with the work contract concluded with the employer. Work contracts are concluded on the basis of Entity Labour Laws. Participation in unions is also proscribed by Entity regulations which do not differentiate between nationals and non-nationals.

115. In Canada, all foreign workers are entitled to the same labour rights and protection as citizens. Enforcement of labour/employment standards is largely a matter of provincial jurisdiction. Human Resources and Social Development (HRSD) and Citizenship and Immigration Canada (CIC) ensure that all Seasonal Agricultural Worker Program (SAWP) workers receive essential information at the point of entry, often in their mother tongue, on issues such as workplace health and safety rights, employer/employee rights and responsibilities, labour laws, income tax and legal information.

116. In Costa Rica, all migrants should have the right to access to justice and urgency or emergency medical assistance, while in Ecuador access to social security, education, labour law, justice and trade unions is guaranteed to all migrants.

117. In Greece, regular migrants have access to social security, housing, health services and trade unions. Irregular migrants are entitled to hospitalization in emergencies and education.

118. In Japan, all regulations and laws concerning labour standards such as the Labour Standards Law are applied to all workers in Japan regardless of their nationality, including irregular migrants. In addition, children of non-nationals can enter a public primary or secondary school without cost, if requested. Finally, according to the Japanese Code of Civil Procedure, non-nationals who have filed civil suits in Japan can continue the proceedings after leaving Japan.

119. Regarding Mauritius, there is no such law or regulation in force which discriminates between a citizen or a non-citizen as far as the fundamental rights/freedom/access to social services or to the judicial system is concerned. Illegal migrants have the rights of appeal to the judicial system to contest the decision of any authority in Mauritius. Even if they have left the

country, they can still continue to participate in such legal procedures or be represented by an agent nominated by them in court. Finally, migrant workers are free to join trade unions and enjoy the benefits of collective bargaining.

120. In Singapore, only persons granted lawful stay are entitled to social welfare services, shelter and employment.

121. In Spain, migrants, regardless of their administrative situation, are provided with the right to free primary education (for children under 18); free legal assistance in case they do not have enough financial resources; and the right to medical assistance.

122. The Syrian Arab Republic does not provide to non-nationals social insurance. Under the law, non-nationals are not allowed to participate in unions or the judiciary. The language of legal proceedings is usually Arabic. However, exceptions are made for the proceedings to be in French or English.

123. In Turkey, non-nationals and Turkish citizens have the same rights with regard to elementary education; as far as emergency cases are involved, medical assistance is extended to all non-nationals deprived of adequate financial means and according to the Law on Residence and Travel of Aliens in Turkey. All non-nationals, including refugees and asylum-seekers, possessing residence permits valid for at least six months can apply to the Ministry of Labour and Social Security for a work permit.

## **F. Protection of migrants**

**Question:** *Please provide information on existing mechanisms and procedures (for example, national human rights institutions, or mediation by certain officials) in your country that can be used by migrants who complain of abuse and of conditions that may exist for migrants seeking to use such mechanisms (for example, complaints have to be made in certain languages, etc.).*

### **Responses**

124. A number of countries have established national mechanisms in order to provide protection to migrants in their territory.

125. For example, the Government of Argentina provides interpretation services to migrants who may need them in order to carry out the pertinent administrative procedures in the National Direction of Migrations. Migrants can also find protection in the various Ombudsman institutions.

126. In Australia, the Commonwealth Ombudsman discharges the core function of handling complaints from members of the public about immigration administration. The Immigration Ombudsman role has a number of other strands, some of which are at an early or very early stage of implementation in developing an inspection/monitoring function in relation to detention, both for people held in detention facilities and in community detention. On the other hand, the Human Rights and Equal Opportunity Commission (HREOC) is a national independent statutory government body, which is responsible for the investigation and attempted resolution of complaints about breaches of human rights and anti-discrimination legislation.

127. In Bosnia and Herzegovina, there are no legal-aid services for migrants within the State institutions. However, in the course of the procedure, an alien is advised ex officio on his/her rights and obligations and manner for their realization. The Law on Movement and Stay of Aliens and Asylum stipulates that in cases of mass influx of aliens in need of international protection, the Bosnia and Herzegovina Council of Ministers may, in consultation with UNHCR, issue special regulations for their protection.

128. In Canada, the rights of all persons, including migrants in both regular and irregular situations, are protected by the Canadian Charter of Rights and Freedoms and by virtue of the provisions of the various human rights instruments to which Canada is a party.

129. In Costa Rica, the Ombudsman is the body responsible for protecting the rights and interests of the country's inhabitants (nationals or foreigners, independently of whether their migratory condition is regular or irregular). The Ombudsman makes sure that the activities of the public sector are consistent with morality, justice, the political Constitution, laws, agreements, treaties subscribed by the Government and general principles of law.

130. In Ecuador, the Metropolitan House of the Migrant (CMDM) located in Quito was set up in January 2002 and provides protection for migrants and refugees, as well as for their families.

131. In Japan, with regard to the various human rights issues involving foreign nationals, including abuse of migrants, the human rights organs of the Ministry of Justice provide remedy in cases of human rights infringements and prevent harm caused by such infringements through human rights counselling, and investigation and resolution of human rights infringement cases.

132. As to human rights counselling for foreign nationals, the human rights organs of the Ministry of Justice have established Human Rights Counselling Centres for Foreign Nationals staffed with interpreters who speak English, Chinese and other languages in the Legal Affairs Bureaus all over Japan. These respond to various human rights inquiries from foreign nationals.

133. In Mauritius, a migrant worker who feels that his/her fundamental rights have been violated can seek redress either from the National Human Rights Commission (NHRC), which acts as watchdog for the protection of the fundamental rights of all citizens, or any Court of Law in Mauritius or the Special Migrant Workers Unit of the Ministry of Labour, Industrial Relations and Employment.

134. In Mexico, following a request made by the National Institute on Migration, an office of the National Commission on Human Rights was opened in Iztapalapa, in August 2003. The National Commission visitors provide the migrants with legal assistance in a direct and permanent manner. Another office with the same functions was installed in Tapachula in March 2006.

135. In Singapore, foreign workers and foreign domestic workers have access to the Ministry of Manpower and the justice system. At any time they can call the police or Ministry hotlines

for help. The Ministry also offers free conciliation services to foreign domestic workers and foreign workers to help mediate employment disputes. If necessary, interpretation facilities are provided to facilitate the process of seeking assistance. To facilitate criminal proceedings against errant employers, they are also permitted to reside in Singapore until the proceedings are concluded.

136. Finally, in Spain, non-nationals have access to the same mechanisms of protection as nationals. Migrants have access to the judiciary system in the same conditions as nationals, as well as to the Ombudsman.

137. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families recommended that “States should establish effective and accessible channels which would allow all migrant workers to lodge complaints of violations of their rights without fear of retaliation on the grounds that they may be in an irregular situation”.<sup>3</sup> The Special Rapporteur highly encourages Member States to implement this recommendation.

### III. CONCLUSIONS AND RECOMMENDATIONS

138. **The Special Rapporteur would like to thank the Governments of more than 20 countries that have responded to his questionnaire. He is greatly encouraged by the responses and states that it represents an important attempt to document the efforts of States working towards the improvement of the protection of the human rights of migrants. This certainly leaves room for improvement but it also shows some signs of hope.**

139. **The Special Rapporteur welcomes the numerous initiatives by States that have stemmed from the High-Level Dialogue, including the forthcoming Global Forum on Migration and Development to be hosted by the Government of Belgium. The Global Forum would provide an opportunity to identify best practices, exchange experiences, identify obstacles to be removed, explore and adapt innovative approaches and enhance cooperation between countries in a process that involves Governments and other stakeholders as appropriate.**

140. **The Special Rapporteur would like to make the following recommendations for consideration by the Global Forum:**

- **A large variety of stakeholders should participate in the Global Forum on Migration and Development, including adequate representation of young migrants, migrant women and migrants from indigenous groups, with a view to ensure an inclusive process;**

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<sup>3</sup> Contribution by the Committee on Migrant Workers to the General Assembly’s High-Level Dialogue on Migration and Development (A/61/120, para. 15 (f)), <http://www.ohchr.org/english/bodies/cmw/docs/HLMigration/A.61.120E.pdf>.



- **United Nations human rights mechanisms, including the special procedures mandate-holders and the members of the Committee on Migrant Workers, should also be invited to participate and share their views, findings and recommendations;**
- **Member States should take concrete measures to include a human dimension when formulating migration policies, such as providing both documented and undocumented migrants access to the enjoyment of basic economic, social and cultural rights, including access to health care, education and basic services;**
- **Member States should demonstrate their commitment towards improving the rights of migrants by ratifying the International Convention on the Protection of All Migrant Workers and Members of Their Families;**
- **A voluntary fund to support the participation in the Global Forum should be made available for the funding of least developed countries and other stakeholders, especially civil society representatives and migrant groups, in order to have adequate attendance from all sectors.**

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