

BACKGROUND PAPER BY  
THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS  
TO THE EIGHTH COORDINATION MEETING ON INTERNATIONAL MIGRATION

*Office of the United Nations High Commissioner for Human Rights (OHCHR)*

A. THE IMPACT OF THE ECONOMIC AND FINANCIAL CRISIS  
ON INTERNATIONAL MIGRATION

The challenges faced by migrants are today compounded by new threats, such as the global financial crisis and economic downturn, climate change and food insecurity. Special sessions of the Human Rights Council on food emergencies and on the financial crisis highlighted the critical vulnerabilities of migrants. As the global financial meltdown becomes a protracted and diffuse economic crisis, a rise in xenophobia, anti-migrant sentiment and discriminatory practices is likely to affect the civil, cultural, economic, political and social rights of migrants. Migrant workers —those documented as well as those in an irregular situation— will, and in some cases already are, the first ones to lose their jobs. They are usually employed in sectors that are either structurally more exposed to the vagaries of market forces, or that are more directly affected in times of crisis. In a context of growing unemployment accompanied by shrinking States' resources, policy adjustments, such as cutbacks in spending in the health, education and social protection sectors, might be taken at the expense of, or have a disproportionate impact on, migrant workers and their families whose status is called into question. In light of these considerations, human rights protection is particularly crucial during an economic crisis that has the potential of exacerbating or igniting discrimination and xenophobia.

B. CURRENT AND PLANNED ACTIVITIES  
IN THE AREA OF INTERNATIONAL MIGRATION AND DEVELOPMENT

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

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

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

for the repeal of such laws in order to ensure the protection of the human rights of migrants and their families.

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

These concerns have also been addressed by special procedures of the Human Rights Council. For example, the Working Group on Arbitrary Detention, in its 2009 annual report noted a trend towards the tightening of restrictions applied to asylum-seekers, refugees and immigrants in irregular situations, even to the extent of making the irregular entry into a State a criminal offence or qualifying the irregular stay in the country as an aggravating circumstance for any criminal offence. The Working Group concluded that immigrants in irregular situations should not be qualified or treated as criminals and recalled a number of human rights standards and principles that should be adhered to by Member States with respect to deprivation of liberty in the context of irregular migration.

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

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

- (a) An open-ended expert consultation to explore the relationship between human rights, the inclusion, acceptance and integration of migrants in host societies, and migrants' contribution to the development in both origin and destination countries which was held in Geneva, Switzerland, on 8 October 2009. The meeting aimed to support States and other stakeholders preparing for discussions during the 2009 Global Forum on Migration and Development (GFMD) in Athens, Greece, from 2 to 5 November 2009. The meeting (i) focused on the international human rights framework relevant for the inclusion and acceptance of migrants in host countries; (ii) discussed practical experiences in promoting integration and inclusion through the protection of migrants' human rights, and (iii) focused on the relationship between human rights, migrants' empowerment and human development;
- (b) A panel discussion on migration, discrimination and economic, social and cultural rights, co-hosted with the International Labour Organization (ILO), the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR), held in Geneva, Switzerland, on 24 April 2009 on the margins of the Durban Review Conference;
- (c) A public information campaign highlighting human rights concerns related to immigration detention as part of "Dignity and justice for detainees week" from 6 to 12 October 2008;<sup>1</sup>

- (d) The international meeting on the protection of the rights of children in the context of international migration, organized in cooperation with the Government of Mexico, held from 30 September to 1 October 2008;
- (e) Support for the activities of national human rights institutions in the area of migration, including follow-up to the Santa Cruz Declaration on the rights of migrants, which was adopted by the International Coordinating Committee of National Human Rights Institutions in 2006.<sup>2</sup>

Through its field presence, OHCHR has also increasingly engaged in migration-related human rights work through the promotion of the Convention and other relevant instruments, training activities, advocacy, technical advice and other initiatives, including:

- (a) The OHCHR office in Guatemala provided technical support for the reform of national legislation and regulations on migration issues and for the preparation of the initial report of Guatemala to the Committee on Migrant Workers, including through a series of workshops in collaboration with the national human rights institution and non-governmental organizations to facilitate civil society participation in this process;
- (b) The OHCHR office in Mexico provided technical support to Government bodies and civil society organizations on international human rights standards in the area of migration and contributed to the preparation of a handbook on the human rights of migrants;
- (c) The OHCHR Middle East regional office in Lebanon, together with the ILO, contributed to the development of a unified contract to protect the human rights of women migrant domestic workers developed by a Lebanese steering committee;
- (d) The OHCHR South-East Asia regional office in Bangkok, Thailand, worked in partnership with member States of the Association of Southeast Asian Nations, United Nations agencies and civil society organizations on several programmes and activities related to the protection of migrant workers and building the capacity of non-governmental organizations in monitoring and reporting on the human rights situation of migrants;
- (e) The OHCHR East Africa regional office, together with UNHCR, IOM and the Economic Community of West African States (ECOWAS), organized a regional conference on refugee protection and international migration in West Africa, held in Dakar, Senegal, from 13 to 14 November 2008, focusing on the protection response to mixed migration in West Africa, including regional responses to human trafficking.

Within the Global Forum on Migration and Development there has been an increasing interest in the human rights dimensions of international migration, with specific

discussions dedicated to this issue at the second meeting of the Global Forum, held in Manila, the Philippines, in October 2008, and at the third meeting of the Global Forum held in Athens, Greece, in November 2009. OHCHR has been providing technical advice and support to a round table at the Athens meeting on inclusion, protection and acceptance of migrants in society —linking human rights and migrant empowerment for development.

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

## *2. Human Rights Council*

In September 2009, in follow-up to its resolution A/HRC/RES/11/9 of June 2009,<sup>3</sup> the Human Rights Council held a panel discussion on the human rights of migrants in detention centres. The discussions focused on current trends, good practices, challenges and possible approaches to address the issue of detention of migrants and explored ways to promote and protect their human rights, and elaborated on how to reduce the recourse to and duration of detention for persons who entered or remained in a country in an irregular manner and on how to provide them with appropriate access to due legal process. In 2010, in follow-up to this discussion, OHCHR is planning to organize an expert seminar on alternatives to migration detention, together with relevant partners and stakeholders.

For September 2010, in follow-up to Human Rights Council resolution A/HRC/RES/12/6 of October 2009, OHCHR has been requested to submit a study on challenges and best practices in the implementation of the international legal framework for the protection of the rights of the child in the context of migration. OHCHR intends to carry out this study jointly with the United Nations Children's Fund (UNICEF), in consultation with relevant stakeholders.

## *3. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*

At its ninth session, held from 24 to 28 November 2008, the Committee considered the initial report of El Salvador. At its tenth session, held from 20 April to 1 May 2009, the Committee considered the initial reports of Azerbaijan, Bosnia and Herzegovina, Colombia and the Philippines. Common issues raised by the Committee were (a) the need for measures to bring legislation into line with the provisions of the Convention; (b) the importance of data collection to assist in the development of sound migration policies; (c) the need to strengthen and expand training programmes for all officials working in the area of migration on the rights enshrined in the Convention; (d) the importance of ensuring that in practice all migrant workers and members of their families, including those in undocumented situations, had access to an effective remedy for the violation of their rights; (e) the need for effective coordination among the different agencies dealing with migration issues; (f) the need to supervise recruitment agencies, and (g) the importance of continuing measures aimed at preventing and combating smuggling and trafficking in human beings.<sup>4</sup>

In addition, the Committee on Migrant Workers (CMW) at its eleventh session celebrated International Labour Day on 1 May 2009 with a half-day panel discussion on the right of all migrant workers to freedom of association, including the rights to organize themselves in trade unions. The CMW decided to start elaborating a general comment on migrant domestic workers in its 2010 session.

On 14 October 2009, the CMW held a day of general discussion on the topic of migrant domestic workers. The day aimed, inter alia, at providing input to the debate at the ninety-ninth session of the International Labour Conference to be held in Geneva, Switzerland from 2 to 18 June 2010 which will discuss decent work for domestic workers and consider the adoption of a new ILO instrument on domestic workers by 2011. More generally, the Committee intended to promote greater awareness of the particular situation and rights of migrant domestic workers, including at international forums such as the Global Forum on Migration and Development.

#### *4. Human rights special procedures*

OHCHR continued supporting the activities of the Special Rapporteur on the Human Rights of Migrants, which are carried out in accordance with resolution A/HRC/RES/8/10<sup>5</sup> and resolution A/HRC/RES/9/5.<sup>6</sup> The Special Rapporteur continued to emphasize the State's obligation to respect and protect the human rights of all human beings under the jurisdiction of the State, regardless of immigration status. Following the momentum created by the Durban Review Conference, the Special Rapporteur drew attention to a number of human rights concerns that should be considered as warnings that xenophobic outbreaks were on the rise and emphasized the need for a serious and in-depth approach to combat racism, racial discrimination, xenophobia and related intolerance that are negatively affecting the enjoyment of human rights by migrants. This concern was reiterated throughout the year in statements before the Human Rights Council and the General Assembly and at several panels and events the Special Rapporteur had organized, which discussed, inter alia, (a) the protection of children and migrant domestic workers in the context of migration as well as the realization of migrants' economic, social and cultural rights and (b) the interrelatedness between the human rights of migrants, the financial crisis as well as the achievement of sustainable and alternative measures to the detention of migrant.

In addition, the Special Rapporteur's major thematic focus of 2009 was the protection of children in the context of migration to seize the momentum created by the celebration of the twentieth anniversary of adoption of the Convention on the Rights of the Child. This theme was included in the annual report A/HRC/11/7<sup>7</sup> by the Special Rapporteur to the Human Rights Council and his report to the General Assembly, A/64/213, and was the major theme addressed in the interactive dialogues held with both bodies.

In 2009, at the invitation of Governments, the Special Rapporteur undertook country visits to Romania from 15 to 20 June, the United Kingdom from 22 to 26 June and Senegal from 17 to 21 August. The country mission reports as well as a thematic annual report will be presented to the Human Rights Council in June 2010. A comprehensive report on the activities of the Special Rapporteur between January 2009 and June 2010 will be submitted to the sixty-fifth session of the General Assembly at its request.

Within the framework of their mandates, a number of other special procedures of the Human Rights Council related to migration were undertaken in 2009. Some mandate holders participated in human rights and migration-related activities and migration was a theme mainstreamed in efforts undertaken by the experts within their respective mandates. The mandates on contemporary forms of racism, human rights defenders, torture, freedom of expression, freedom of religion, trafficking in persons, summary executions and arbitrary detention were addressed to Governments by a number of communications by non-nationals and migrants independently or jointly with other special procedures, including in some instances the Special Rapporteur on the Human Rights of Migrants. Following the special procedures' mandate on education, for example, a questionnaire among stakeholders was distributed to request information on the right to education of migrants, refugees and asylum-seekers, which would also be the topic of the annual thematic report of the Special Rapporteur for 2010.

The Special Rapporteur on freedom of religion or belief, in her latest report to the General Assembly, A/64/159,<sup>8</sup> analysed the ability of persons in vulnerable situations, including migrants, to freely exercise their right to freedom of religion or belief. The Rapporteur expressed her concerns at restrictions imposed on migrants' freedom to manifest their religion or belief publicly and she recalled that according to international human rights law any such limitations must be prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The Special Rapporteur on violence against women, its causes and consequences, addressed the issue of violence against women migrant workers in an addendum to her annual report on "Political economy and violence against women", A/HRC/11/6/Add.6,<sup>9</sup> presented to the Human Rights Council in June 2009. The Special Rapporteur on torture, in his latest report to the General Assembly, A/64/215,<sup>10</sup> mentioned that the status as foreigners may be an aggravating factor for detainees. In April 2009, the Special Rapporteur on sale of children became a member of a scientific committee for the preparation of a conference on children on the move to be held in 2010. The Special Rapporteur on contemporary forms of slavery was planning to cover the issue of migrant domestic workers as part of her next annual thematic report on domestic workers, to be presented to the Human Rights Council in September 2010.

Special procedures have also addressed concerns related to the human rights of migrants during country visits, including mandates on anti-racism (United Arab Emirates), torture (Kazakhstan and Equatorial Guinea), housing (Maldives), as well as the Working Group on Arbitrary Detention.

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NOTES

<sup>1</sup> For more on this week, see [http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention\\_infonote\\_7.pdf](http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_7.pdf) (accessed 5 May 2010).

<sup>2</sup> For the Santa Cruz Declaration see [http://www.nhri.net/pdf/Santa\\_Cruz\\_Declaration\\_unedited\\_E.pdf](http://www.nhri.net/pdf/Santa_Cruz_Declaration_unedited_E.pdf) (accessed 27 July 2010).

<sup>3</sup> For the resolution, see [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_11\\_9.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_11_9.pdf) (accessed 6 May 2010).

<sup>4</sup> For concluding observations of the Committee, see CMW/C/AZE/CO/1, CMW/C/BIH/CO/1, CMW/C/COL/CO/1 and CMW/C/PHL/CO/1 at <http://www2.ohchr.org/english/bodies/cmw/cmws10.htm> (accessed 5 May 2010).

<sup>5</sup> For the resolution, see [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_10.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_10.pdf) (accessed 6 May 2010).

<sup>6</sup> For the resolution, see [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_9\\_5.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_5.pdf) (accessed 6 May 2010).

<sup>7</sup> For the annual report see <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.7.pdf> (accessed 6 May 2010).

<sup>8</sup> For the report, see <http://www2.ohchr.org/english/issues/religion/docs/A-64-159.pdf> (accessed 10 May 2010).

<sup>9</sup> For the addendum, see <http://www2.ohchr.org/english/issues/women/rapporteur/docs/A.HRC.11.6.Add.6.pdf> (accessed 10 May 2010).

<sup>10</sup> For the report, see <http://www2.ohchr.org/english/issues/torture/rapporteur/docs/A-64-215.pdf> (accessed 10 May 2010).

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