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COUNCIL UPDATE – ITEM 3, SPECIAL RAPPOREUR ON THE HUMAN RIGHTS OF MIGRANTS HUMAN RIGHTS COUNCIL, 11TH SESSION 2 JUNE 2009

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Overview

On 2 June 2009, the Special Rapporteur on the human rights of migrants, Mr Jorge Bustamante, presented his annual report ¹ and reports on his missions to Mexico² and Guatemala.³ The annual report focused on child migrants.

Special Rapporteur on migrants

The Special Rapporteur on the human rights of migrants, Mr Jorge Bustamante gave a brief summary of the findings of his annual report, which examined the protection of the rights of child migrants. The report recalls the obligation of the State to ensure the protection of the rights of all children in all stages of the migration process. The Special Rapporteur categorised the affected children into three groups; the children left behind by migrating family members, migrant children moving across borders and migrant children in host countries.

Mr Bustamante highlighted two major protection gaps that remain in most countries; Firstly the lack of specific provisions on children in most migration laws. He recommended that this be addressed in part by harmonisation of migrant laws with the *Convention on the Rights of the Child* and through public policies that address the specific conditions and needs of migrant children. He restated the importance of two of the report's major recommendations; the need to ensure information sharing across borders and regions to make available statistical and substantive information on the root causes of migration of children and adolescents to help States identify policy gaps; the need to strengthen efforts to collect data and measure the impact of migration on children in countries of origin, transit and destination.

¹ A/HRC/11/7.

² A/HRC/11/7/Add.2.

³ A/HRC/11/7/Add.3.

He encouraged the adoption of bilateral agreements between States to promote learning of heritage language in the host countries among children with a migrant background. Host countries like Japan, Uruguay and Paraguay were commended for the efforts made to improve equality in access to education for migrant children.

Mr Bustamante also highlighted that of the 26 communications addressed to 19 States only 11 responses were received. He thanked the governments of Belgium, France, Japan, Mexico, Panama, Saudi Arabia and Spain and reminded Governments that had not done so, to provide a response to the issues raised in his communications. The key areas of concern that gave rise to intervention by the Special Rapporteur included, arbitrary detention and incommunicado detention of migrants, repatriation of migrants facing the threat of torture in their countries of origin, racism, disproportionate use of force by law enforcement officials towards persons attempting to cross borders, enforced disappearances, and violence against women.

Mr Bustamante in commenting on his visit to **Mexico** recommended that the Government review its laws regarding expulsion and formulate policies according to international human rights law standards, that migrants are expelled only pursuant to a decision taken by the competent authority in accordance with the law. He commended the reform of the General Population Act which decriminalised irregular migration and urged its harmonisation with international law. He praised the Government for the efforts made in handling migrants in detention centres and for the protection of the rights of child migrants.

Regarding the visit to **Guatemala**, the Special Rapporteur welcomed the efforts towards a more comprehensive approach to the management of migrant children and their return to their families, but noted with concern the gaps and ambiguities in the legislative framework regulating migration in Guatemala. He was concerned about the procedures for deportation of undocumented migrants and the various abuses committed during the interception and deportation of migrants from the United States to Guatemala.

In conclusion, Mr Bustamante restated that much remains to be done to ensure the protection of children in the context of migration. He called upon stakeholders to continue making a serious effort to put an end to the violations of migrants' human rights and showing their determination to resolve them.

Interactive Dialogue

Guatemala, as a concerned country, welcomed the Special Rapporteur's visit in March 2008 and discussed the progress they have made since then in regard to the human rights of migrants; training of health professionals to ensure the protection of the rights of migrants especially those with mental problems; efforts by the Ministry of Public Health to provide health care for all persons without discriminating especially for the migrants that live on the Guatemala- Mexican border.

Mexico elaborated on the revision of its laws and practices; a 2008 legislative process which saw the elimination of the criminalisation of undocumented migrants, training of law enforcement officials on migration, training of the police in high migratory flow areas, and special training for actors who work at ports of tourism. The Government with the help of the OHCHR held a seminar in Mexico to educate the public on the rights of children, additional support to the children was shown by having international and national experts and members of civil society to participate. During the dialogue, the National Human Rights Commission of Mexico endorsed the recommendations made by Mr Bustamante and reiterated its support for the protection of the rights of child migrants. The Commission drew attention to two key areas of violations of the rights of migrants in Mexico; migrants passing through Mexico to get to the US and migrants returning from the US.

The States that took the floor expressed support for the importance of the protection of the rights of children in the context of migration and the relevance of the work done by the Special Rapporteur this far. However, it is interesting to note that most of these interested States were Latin American or African. The Czech Republic, on behalf of the European Union (EU), and the Russian Federation, Turkey, the Philippines and Thailand supported the view that there was a need for the inclusion of a children's perspective into migrant law.

The elimination of the criminalisation of undocumented migrants was raised by Azerbaijan and the Philippines as a way to ensure less susceptibility of migrants to trafficking. Questions were raised on how policies can be mainstreamed in host countries as well as countries of origin to ensure the protection of the rights of migrant women and children. Algeria criticised the industrialised countries for lack of support for the *Convention on the Protection of the Rights of all Migrant Workers and Members of their Families* (CMW). Azerbaijan and Indonesia stressed the significance of the CMW and the role it plays in safeguarding the rights of migrants while Turkey questioned the effectiveness of the Convention in guarding against the violations of migrants' rights. Senegal enquired on whether the issue of child migrants is sufficiently covered at the international level.

A majority of the States that spoke praised the work done by the Special Rapporteur except for Ecuador which pointed out the Special Rapporteur's 'failure to address the full aspect of the mandate'. It requested an expansion of this report to also include adults.

Amnesty International and Human Rights Watch drew attention to violations of migrants' rights in Mexico and Thailand respectively. Amnesty International called for further investigations into allegations that irregular migrants in Mexico are vulnerable to abuse by criminal gangs and by law officials at verification check points. Human Rights Watch highlighted the situation of 2 to 4 million migrants living and working in Thailand under an inflexible migration system where they are deprived of access to labour rights. It questioned the Special Rapporteur on whether he had received a response from the Government to a previously sent communication. Thailand, in a right of reply, noted the concerns in the statement made but requested that the Government's efforts to improve the situation for migrants be recognised, including with regard to access to basic medical care and labour protection. The International Commission of Jurists stated that Italy captured and escorted migrants back to Libya in May 2009 with no attention paid to whether or not they may have been potential asylum seekers. It underlined that as a party to the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, Italy is required under article 3 not to expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would risk being subjected to torture.

In his closing remarks, Mr Bustamante stressed that the financial crisis could increase the vulnerability of migrants. As a result he argued that it was an appropriate time to reflect on the failure of the large number of host migrant receiving countries to ratify the CMW. This in turn means that an increase in the number of violations of migrants' rights can be expected especially taking into account the global economic situation.

Further information

For further information on the Human Rights Council, please consult the following resources:

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- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

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COUNCIL MONITOR STAFF

Eléonore Dziurzynski, Communications Officer
Michael Ineichen, Human Rights Officer
Gareth Sweeney, Deputy Manager
Katrine Thomasen, Manager International Programme

CONTRIBUTORS

Rachel Breen, intern
Joelle Dek, Intern
Dmitry Foryy, Intern
Mabel Kirabo, Intern
Ladina Knapp, Intern
Clara Martino, Intern
Isabella Ries, Intern
Peter Tubman, Intern

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