

# UN Committee on Migrant Workers

## Written submission to the CMW day of general discussion on protecting the rights of all migrant workers as a tool to enhance development

*“Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community... Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection”*

(Preamble to the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families)

### 1. Introduction

Amnesty International welcomes the first Day of General Discussion organized by the Committee on Migrant Workers. The theme of “protecting the rights of all migrant workers as a tool to enhance development” is timely, chosen as it has been to enable the Committee to provide substantive input to the High Level Dialogue on International Migration and Development, due to be held at the 61<sup>st</sup> Session of the General Assembly in 2006. Amnesty International welcomes the opportunity to contribute to this discussion and to emphasise our belief that sustainable development can only be based on the respect, protection and fulfilment of the human rights of all people. This discussion is extremely opportune because, while migration is increasingly a subject of debate within the international sphere, all too often it is framed solely within a discourse of control, containment or even criminality. Yet migrant workers play an essential role in the development process, including through filling employment and skills gaps in destination countries, and sending much needed remittances back to countries of origin.

Migration *per se* is not and should not be seen as a problem which requires a solution; it is an inevitable part of the human condition. It is important to recognise, as the General Assembly recently has, that migrant workers have positive impacts on development on both the countries they leave and those to which they migrate.<sup>1</sup> In framing the discussion on migrant labour and development, it is essential that the rights of all migrant workers and their families are placed at the centre. This is all too often not the case, an omission which Amnesty International believes has created a climate in which human rights abuses by governments and employers against migrant workers are too often overlooked, or even accepted. In the

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<sup>1</sup> In this regard it is instructive to recall General Assembly resolution A/C.2/59/L.54 of 26 November 2004, which realises “the benefits that international migration can bring to migrants, their families, the receiving societies and their communities of origin, and the need for countries of origin, transit and destination to ensure that migrants, including migrant workers, are not subject to exploitation of any kind and that the human rights and dignity of all migrants and their families, in particular of women migrant workers, are respected and protected.”

organization's view, if the human rights of individual migrants are not placed at the forefront of any analysis of, or proposed engagement with, the phenomenon of migration, it is likely that resulting migration policies will lead to human rights abuses; including as a result of the individual being viewed as a commodity, or a unit of labour. A consequence of which could be that the individual's rights would be placed secondary to the requirements of the host country or country of origin, or the industry that requires his or her labour. While the benefits to both migrants themselves as well as to the countries of origin and destination are an important positive consequence of international migration, Amnesty International is firmly of the view that migrant workers should not be looked upon solely as "agents of development", and accordingly encouraged or even coerced to migrate in conditions which may violate the inherent dignity of the human person, and at the expense of other fundamental human rights.

Building on the Millennium Declaration, the UN Secretary General recognised the interrelation of human rights, development and security in his report "In Larger Freedom", noting that "we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights."<sup>2</sup> Experts in human development increasingly recognise that human rights should be both the means and the end of development.<sup>3</sup> Recognition that this extends to the rights of migrant workers is essential to ensure that increasing economic development is not based on exploitation, discrimination, abuse and the deepening of inequality.

The Migrant Workers Convention ("the Convention"), one of the seven core international human rights treaties, places the human rights of all migrant workers and members of their families at the centre of the phenomenon of migration and emphasises the fundamental principle of non-discrimination in this regard. Article 7 provides that state parties should apply all the provisions in the Convention without discrimination. Article 64 provides that States Parties should "promot[e] sound, equitable and humane conditions in connection with international migration...due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families." While the pivotal principles of equality before the law and of non-discrimination permit for distinctions to be made between certain groups, these exceptional distinctions must serve a legitimate objective and must be proportional to the achievement of that objective.<sup>4</sup> Crucially, they must not interfere with the right of the individual to respect for his or her fundamental human rights.<sup>5</sup>

The following sections in this submission highlight major issues of concern to Amnesty International in relation to the protection of migrants' rights in the context of development as illustrated by recent research the organization has conducted into the situation of migrants in different regions of the world.

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<sup>2</sup> Kofi Annan, *In Larger Freedom: towards development, security and human rights for all*, UN Doc. A/59/2005.

<sup>3</sup> See Amartya Sen, *Development as Freedom*, Oxford University Press, 1999. The Human Development Reports of the United Nations Development Programme have also "affirmed that human development is essential for realising human rights, and human rights are essential for full human development. Human rights are inalienable entitlements; they constitute the ground rules for human development."

<sup>4</sup> See Committee on the Elimination of Racial Discrimination, General Comment XIV and Human Rights Committee, General Comment No. 18. See also Joan Fitzpatrick, 'The Human Rights of Migrants', in Aleinikoff, T. A. and Chetail, V., eds., *Migration and International Legal Norms* (T.M.C. Asser Press: the Hague, 2003), pp. 169 – 184.

<sup>5</sup> See on this point General Comment 30 of the Committee on the Elimination of Racial Discrimination.

## 2. Migration as a survival strategy

Human rights violations in countries of origin are often the motivating factor for the movement of migrant workers and members of their families. The report of the Global Commission for International Migration (GCIM) notes that “migration has become a survival strategy, employed by people who are seeking to escape armed conflict, human rights violations, authoritarian and corrupt governments, as well as unemployment and poverty.”<sup>6</sup> While movement in response to violations of economic and social rights or environmental degradation is not generally considered to constitute refugee flight, commentators have noted that “it has become increasingly difficult, in practice, to separate out refugees from other involuntary migrants or from economic migrants.”<sup>7</sup> The United Nations High Commissioner for Refugees also recognises that the distinction between economic migrants and refugees is sometimes blurred.<sup>8</sup> Such migrants, who have been termed “survival migrants” by some commentators<sup>9</sup>, are migrating less out of choice than out of necessity. Lack of access to human security and development, discrimination, and extreme poverty are all primary motivating factors for the movement of such migrants from their countries of origin.

Survival migrants often migrate in conditions that are severely detrimental to the protection of their human rights. For instance, such migrants are especially vulnerable to unscrupulous and abusive practices by recruitment agents in countries of origin. The International Labour Organisation (ILO) has noted that some private fee-charging recruitment agencies “have sent workers for non-existent jobs, some provide false information about jobs, and many charge excessive fees for services.”<sup>10</sup> Such migrants are also more likely to seek out the services of people traffickers, to be vulnerable to labour exploitation and to suffer serious physical and mental harm in the course of their migratory journey. This is migration out of desperation, not choice.

In the last decade hundreds of thousands of workers<sup>11</sup> from Myanmar have migrated to neighbouring Thailand in search of jobs and other economic opportunities. Migrants interviewed by Amnesty International had left their homes in Myanmar for a variety of reasons, including the inability to find a job; confiscation of their houses and land by the military; and fear that if they remained they would be subjected to human rights violations, including forced labour. Many of the young people who were interviewed had come to work in Thailand in order to send money back to their families. However some of them could not save enough to send any money home, but were working in Thailand so as not to be a burden to their parents. Those who had fled from militarized areas in Myanmar were much more

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<sup>6</sup> Global Commission on International Migration, *Migration in an Interconnected World: New Directions for Action*, October 2005.

<sup>7</sup> Stephanie Grant, *International migration and human rights*, A paper prepared for the policy analysis and research programme of the Global Commission on International Migration, September 2005.

<sup>8</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva, reedited 1992), paras. 62-64.

<sup>9</sup> See Anne Gallagher, *Trafficking, smuggling and human rights: tricks and treaties*, *Forced Migration Review*, Issue 12, February 2002.

<sup>10</sup> ILO, *Towards a fair deal for migrant workers in the global economy*, pg 44

<sup>11</sup> Many of these migrant workers would be recognised by Amnesty International as refugees, and the organisation has called on the government of Thailand to ensure “that those migrants who express fear of persecution if returned to Myanmar have full access to a fair and satisfactory procedure to determine their refugee status”. See Amnesty International, *Thailand – the plight of Burmese migrant workers* (AI Index ASA 39/001/2005), 8 June 2005.

likely to have had direct experience of human rights violations at the hands of the Myanmar military. [M]uch of the rural population of Myanmar have been systematically deprived of their economic rights since the military's re-assertion of state control in September 1988.<sup>12</sup> Although the then State Law and Order Restoration Council and later the State Peace and Development Council attempted to shift the country from a centrally planned economy to a market-driven economy, the majority of the rural population continued to suffer. As the military increased its presence throughout the country from 1989 until the present, particularly in "ceasefire areas",<sup>13</sup> and almost doubled its troop numbers, it implemented policies which resulted in widespread deprivation of economic rights for rural people.<sup>14</sup> One Burmese migrant spoke to AI of his reasons for coming to Thailand: "I didn't want to come to Thailand – because I love my country and land – but because of economic mismanagement and poverty and lack of education, especially for rural people – what they want is a better life. But we are being subjected to abuses here." Another Burmese migrant worker said of the situation in Burma "Prices are going up, the population is growing, people are having a hard time feeding themselves and have to leave."<sup>15</sup>

All over the world, grave abuses of civil, cultural, economic, political and social rights compel migrants to leave their homes, and often also their families, in search of safety, security and a sustainable livelihood.

### **3. Human rights abuses in State measures to “combat” irregularity**

Irregular migration is an issue that is increasingly at the forefront of the agenda of government migration policies. Irregular migrants are vilified by the media as well as politicians as criminals, economic burdens and even as a risk to the public health.<sup>16</sup> In every region of the world, states are engaged in bilateral or multilateral efforts to “combat” irregular migration; from joint border patrols to the conduct of readmission agreements. Yet, as has been recognised by the GCIM “the issue of irregular migration is inextricably linked to that of human security”<sup>17</sup>. Migrants who find themselves in an irregular situation in countries of transit or destination are often those who left their homes and countries of origin in response to human rights violations, poor governance, and socio-economic deprivation. Many feel that they have no choice but to migrate, and on many are pinned the hopes for the survival of families they have left behind. Accordingly, irregular migrants are vulnerable to abuse and exploitation during the journey, as well as when they manage to arrive in a country of destination. This includes the most serious violation of their rights; being deprived of their right to life. Article 9 of the Convention provides that without exception “the right to life of all migrant workers and members of their families shall be protected by law.”

Thousands of migrants, many of them from sub-Saharan Africa, try to cross into the Spanish enclaves of Ceuta and Melilla each year. Their numbers have been increasing in recent

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<sup>12</sup> Having said that, the centrally planned economic policies of the Burma Socialist Programme Party also routinely deprived the population of their economic rights.

<sup>13</sup> Beginning in 1989 the then SLORC began to agree cease-fires with ethnic minority armed opposition groups; 17 such agreements are believed to have been agreed. The army then began expanding rapidly both in terms of troops under arms and in terms of its presence throughout the country.

<sup>14</sup> AI, Myanmar – Leaving home (AI Index ASA 16/023/2005), 8 September 2005.

<sup>15</sup> See AI, Thailand – the plight of Burmese migrant workers (AI Index ASA 39/001/2005), 8 June 2005.

<sup>16</sup> See, instance, Asian Labour News, Southeast Asia: Images of migrants often negative – critics, 17 December 2004.

<sup>17</sup> GCIM report pg. 33

months. There are currently hundreds of migrants, mainly from sub-Saharan Africa, living in northern Morocco. The number of migrants killed or seriously injured as the alleged result of ill-treatment or use of excessive force by the Spanish or Moroccan security forces has risen sharply over the last few months. In the latest and most serious incident, five men of sub-Saharan origin died and several others were seriously injured during the night of 28 September, when several hundred people tried to enter Spanish territory by climbing over two razor-wire fences separating Ceuta from Morocco and were confronted by law enforcement officials from both countries.<sup>18</sup>

Migrants including irregular migrants suffer human rights abuses as a result of restrictive administrative arrangements put in place by governments at their borders. Here, many migrants are simply refused entry even where such refusal would expose them to human rights abuses.

In a recent mission to Morocco, Amnesty International delegates collected evidence confirming reports that hundreds of migrants, including possible asylum-seekers, were transported in buses, trucks and other vehicles to remote desert regions near the border with Algeria, and then ordered to walk across the frontier towards towns inside Algeria. People from west and central African countries told Amnesty International that they had been left with little or no supplies of food and water. One of them described how a man he travelled with had died of exhaustion as his group walked through the desert back into Morocco.

J.P., a man in his twenties, fled extreme poverty in Cameroon over a year ago. He told Amnesty International that he made his way to Morocco through Nigeria, Niger and Algeria to Melilla. The first time he entered the Spanish enclave, he made it to the Commissariat where migrants can register and get legal assistance. However, J.P. was expelled immediately to Morocco. The second time he managed to enter Melilla, the Spanish Guardia Civil beat him and shot at him with rubber bullets from about two metres distance before turning him back. The third time he stormed the fence of the enclave with other migrants, but was expelled again back to Morocco from where the Moroccan authorities removed him to an area at the border between Morocco and Algeria near the town of Oujda. While in the wilderness, migrants are often beaten and robbed by the Moroccan Auxiliary Forces.<sup>19</sup>

When placed in administrative detention in order to verify their identity, migrants are often subject to abusive conditions, including overcrowding, lack of adequate sanitation and even physical abuse.

Following an escape attempt by two North African detainees from an administrative detention centre in northern Italy, it is alleged that they and a number of the other 65 detainees housed in the centre were subjected to repeated physical assault on the night of 2 March 2003. The detainees said that officers wore helmets and struck them with shields and truncheons. Over 10 of the detainees, including one woman, from South America, suffered various significant injuries during incidents, including bruising, cuts to the head, thorax, back and the arms.<sup>20</sup>

States often enter into cooperation agreements with countries through which these migrants have transited, further exposing individuals to abuses such as mass expulsion, arbitrary detention, torture and ill treatment in detention, and return to countries where they are at risk

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<sup>18</sup> AI Urgent Action, Spain / Morocco: Fear for safety: Hundreds of migrants from sub-Saharan Africa (AI Index EUR 41/012/2005), 3 October 2005.

<sup>19</sup> AI, Spain/Morocco: The authorities must be held accountable for the violation of migrants' rights (AI Index EUR 41/016/2005), 26 October 2005.

<sup>20</sup> AI, Italy: Temporary stay - Permanent rights: The treatment of foreign nationals detained in "temporary stay and assistance centres (CPTAs), (AI Index EUR 30/004/2005), 20 June 2005.

of serious human rights violations. Of the situation at the EU's southern border, Amnesty International recently stated "The present dire situation in North Africa, where people trying to gain entry to EU territory are reportedly being shot dead, or even dumped in the desert without food or water, relates directly to pressure exerted by EU countries to strengthen fortress Europe."<sup>21</sup> Such pressure will often result in readmission agreements with countries on the borders of Europe which do not contain adequate safeguards to ensure the effective protection of the human rights of the migrants that are subject to these agreements.

Every year, hundreds of migrants arrive in Lampedusa in Italy, having undertaken a hazardous journey from North Africa. After a dubious identification, over a thousand migrants have been handcuffed and put on military or charter flights in recent months. Their destination is Libya, a country where many fundamental human rights are not respected. Italy has acted contrary to its international obligations, including the European Convention on Human Rights and Fundamental Freedoms which forbids the return of anyone to a country where s/he would be at risk of torture and other ill-treatment and Protocol 4 of the same Convention, which forbids the collective expulsions of non-nationals. Libya, in its turn, is also known to have violated its international obligation not to send anyone to a country where they are at risk of serious human rights violations on several instances in the past.<sup>22</sup>

In December 2004, Amnesty International expressed concerns about the Malaysian government's plans to expel up to one million migrant workers and members of their families from its territory, noting that the organization was "seriously afraid that the mass deportation will result in large scale human rights abuses, such as ill-treatment, prolonged detention, and lack of access to medical care. A similar deportation in 2002 resulted in migrants falling gravely ill, with three children dying because of the unhygienic conditions in government detention centres, according to Malaysian media reports." The organization went on to note that "Malaysian government officials acknowledge the contribution to the economy that foreign labour makes. After the 2002 mass deportation there were severe labour shortages in the construction and plantation sectors, prompting the authorities to ease the immigration process for certain industries."<sup>23</sup> In the aftermath of the tsunami in December 2004, the government of Malaysia appears to have postponed plans to carry out this mass deportation, and Amnesty International has appealed to the government "to halt any deportations until it can be guaranteed that the fundamental human rights of all refugees, asylum-seekers and migrants, including undocumented migrants, will be respected in this process".<sup>24</sup> Article 22 of the Convention stipulates that "Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually."

The fact remains that there is, and will continue to be, a demand in the labour markets of relatively richer countries for irregular migrant workers. The GCIM report acknowledges that "[i]n some parts of the world, certain sectors of the economy, including agriculture, construction, hotel and catering services, as well as domestic and sex work, have come to rely to a significant extent on migrants with an irregular status, who are prepared to work in difficult, dangerous and dirty jobs with little security and low wages."<sup>25</sup> In many countries and in many situations, governments tolerate the existence of this informal economy, and

<sup>21</sup> AI EU Office, EU Countries compromising global refugee protection, 11 October 2005.

<sup>22</sup> See AI, Italy: Lampedusa, the island of Europe's forgotten promises (AI Index EUR 30/008/2005), 6 July 2005.

<sup>23</sup> AI, Malaysia : Government must halt deportation of one million migrants (AI Index ASA 28/014/2004), 2 December 2004.

<sup>24</sup> AI, Malaysia – Open letter from the directors of Amnesty International's Sections in the Asia-Pacific region (AI Index ASA 28/003/2005), 15 February 2005.

<sup>25</sup> GCIM report, pg. 36

society reaps the benefits from its existence, while at the same time these irregular migrant workers are criminalised, and the individuals themselves are too afraid of the repercussions to seek redress for abuses perpetrated by their employers.

#### 4. Migrant workers at work

Article 25 of the Convention provides that all migrant workers, irrespective of their legal status, should enjoy treatment not less favourable than nationals in respect of remuneration, conditions of work (including hours of work, safety and health) and other terms of employment. Other human rights standards that protect the rights of migrant workers at work include the International Covenant on Economic, Social and Cultural Rights which provides that all workers should enjoy *inter alia* “fair wages” and “safe and healthy working conditions”.<sup>26</sup> The Committee on the Elimination of Racial Discrimination has urged states to “Take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.”<sup>27</sup> When migrants reach countries of destination, whether the country in which they were intending to reside when they left their countries of origin, or the “transit” country in which they have resided for a lengthy period of time either unable or perhaps unwilling to make a further onward journey to their intended destination, they may still be at risk of human rights abuse.

As Thailand has become more prosperous, fewer Thai people are willing to work in low paying jobs, and Burmese nationals have arrived in Thailand in increasing numbers to fill the labour shortage. One migrant worker told Amnesty International: “Thai police are a big threat to Burmese workers. Sometimes they abuse their power and harass us even if we have a pass [work permit]. The Burmese sometimes don’t realize their rights so they are mistreated by police. Generally Thai people regard us as garbage. They don’t see Burmese as helping the economy. We are taking jobs which the Thai won’t do. They regard us as troublemakers, never as good friends...” Another Burmese worker in Thailand who sold plastic bags for a living told Amnesty International about his employer “He doesn’t treat me well – I am verbally abused and sometimes physically. He threatened to fire me but I must be patient because jobs are hard to find...sometimes he shoves me around –he doesn’t let us have a meal until the job is finished.”<sup>28</sup>

Among other violations of the right to just and favourable conditions of work, in many parts of the world some employers routinely withhold salary payments from migrant workers, others routinely retain passports or other identity documents of their migrant employee.

In 1997 the Human Rights Committee commented on “the difficulties faced by many foreign workers in Lebanon whose passports were confiscated by their employers” and recommended that Lebanon “take effective measures to protect the rights of these foreign workers by preventing such confiscation and by providing an accessible and effective means for the recovery of passports.” In 2005 the practice remains whereby passports are confiscated from many migrant workers upon their arrival in Lebanon.<sup>29</sup>

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<sup>26</sup> International Covenant on Economic, Social and Cultural Rights, Article 7(a)(i) and (b).

<sup>27</sup> Committee on the Elimination of Racial Discrimination, General Comment No. 30.

<sup>28</sup> See AI, Thailand – the plight of Burmese migrant workers (AI Index ASA 39/001/2005), 8 June 2005.

<sup>29</sup> See AI, Lebanon - A Human Rights Agenda for the Parliamentary Elections (AI Index MDE 18/005/2005), 18 May 2005.

K.B. a 30-year-old female domestic worker from Indonesia working in Qatar, told Amnesty International: "I have been working in Qatar for my Lebanese employer family for two years and two months, but have not been paid a penny. When on 6 January 2004 I told my employer I would complain to police, she immediately took me to the police. I was detained in al-'Asima police station in Doha for three days before they brought me to prison. I have been to court six times. I have no lawyer and don't know what is happening. The Indonesian embassy does not know I am here. No one has visited me. My family in Indonesia does not know I am here. My husband works in Saudi Arabia and he does not know what is happening to me. My child lives with my mother in Jakarta."<sup>30</sup>

Due to their particular vulnerability, migrant workers often find themselves working in dirty, dangerous and demeaning places. The "3 Ds" as this is commonly known characterise much of the work undertaken by migrant workers, especially that undertaken by particularly disadvantaged groups such as irregular migrants, women and children. Often through lack of choice, migrant workers have to work in extremely dangerous sectors of the economy. The ILO notes that "agriculture is one of the most hazardous industries (the other two are mining and construction)". Not surprisingly, these sectors in many countries are often heavily dependent on the labour of migrant workers, many of whom are in an irregular status. The ILO has noted in this context that "migrants in irregular status are often preferred since they are willing to work for lower wages, for short periods during production peaks, and to accept physically demanding and hazardous jobs."<sup>31</sup> All migrant workers, whether or not they have the legal right to work, are entitled to respect for their fundamental human rights. An advisory opinion of the Inter-American Court of Human Rights recently stated that "[a] person who enters a state and assumes an employment relationship, acquires his labour human rights in the state of employment, irrespective of his migratory status...the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights."<sup>32</sup>

In Malaysia, the majority of those designated by the government as 'illegal immigrants' are migrant workers. They become 'undocumented' for various reasons: either because they enter Malaysia without proper documentation, or because they lose their legal status during their stay in Malaysia.<sup>33</sup> Many migrant workers work and live in inadequate conditions, without access to basic services and at risk of physical and sexual abuse. They are subject to weak recruitment regulations and limited legal protection and are vulnerable to exploitation by unscrupulous recruitment agents and employers.

In Lebanon, at least five migrant workers died during 2004 having reportedly suffered abuse. Of four Filipinas who fell from buildings to their deaths, three were reportedly trying to escape from abusive employers, while autopsies on the fourth discovered that she had been recently sexually abused. A fifth female migrant worker, a Nepalese, hanged herself after reportedly being beaten by her employer. Amnesty International is not aware of any prosecutions being made in any of the five deaths.<sup>34</sup>

<sup>30</sup> See AI, Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect (AI Index MDE 04/004/2005), 11 May 2005.

<sup>31</sup> ILO, Towards a fair deal for migrant workers in the global economy, pg. 45

<sup>32</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003, Juridical Condition and Rights of the Undocumented Migrants.

<sup>33</sup> In Malaysia, migrant workers are constantly at risk of having their work permit terminated or their passport confiscated by their employer.

<sup>34</sup> See AI, Lebanon - A Human Rights Agenda for the Parliamentary Elections (AI Index MDE 18/005/2005), 18 May 2005.

## 5. Women migrant workers particularly at risk of abuse and exploitation

The growing “feminisation of migration” has meant that increasingly more women are moving away from their homes and places of origin, in search of safety, security and better opportunities for themselves and their families. The GCIM notes that “the most recent UN figures indicate that women now comprise almost half of the world’s migrant and refugee population.”<sup>35</sup> Many women migrate on their own, increasing their vulnerability through the migratory journey and leaving behind families dependent on remittances they send back. Women are particularly vulnerable to sexual abuse and gender-based violence and discrimination during the process of migration, especially when compelled to migrate in an irregular status. The nature of work undertaken by many women migrant workers also leaves them vulnerable to exploitation and abuse; most migrant women workers are confined to unregulated and gender-segregated sectors of work. Domestic work is one such area that in many countries is overwhelmingly serviced by migrant women, who are often targets of abuse and exploitation by employers and even by authorities of the state.

N.R., a 28-year-old Indian national, who was married and had two sons in India, told Amnesty International that she had worked as a domestic worker in Kuwait for three years. She told the organisation that her Kuwaiti employer had not allowed her out of the house for the three years she had worked for him. N.R. had been asked to work for a relative of her employer for three days. The relative raped her and she became pregnant. She went to the hospital to give birth and was then taken to the deportation section of the women’s prison, where she was detained with her baby daughter. Her employer gave her passport and airline tickets to the police. The police told her that she could not leave the country with her baby daughter without the consent of the baby’s father. However, she did not know where the man lived. She told Amnesty International that she had not been able to direct police to his house, where she had been raped because, having not been allowed out of the building, she did not know its location. At the time the organisation interviewed her in July 2004, she and her daughter had been detained in the deportation centre since December 2003 and her status remained unclear.<sup>36</sup>

In countries belonging to the Gulf Cooperation Council (GCC)<sup>37</sup> laws that criminalize “immoral conduct” are more likely to target women. Due to their subordinate social position as migrants and their lack of knowledge of the Arabic language, women migrant domestic workers are even more likely than female nationals of GCC countries to be charged with this type of offence.

S.M, a 32-year-old Filipina, told Amnesty International: “I was arrested on 17 July 2004. The police brought me to the women’s prison in Qatar on 19 July 2004. The reason was that a man came into the house and knocked on the door of my room. My employer saw that and suspected me of knowing and having a relationship with that man and reported me to the police. They took me to the public prosecutor on 18 July 2004 where the prosecutor asked me

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<sup>35</sup> GCIM, pg. 15. Increasingly, women constitute the majority of migrants from many countries; for instance, in 2003 according to the Indonesian government and the World Bank 76 percent of migrant workers from Indonesia were women. Similarly, in 2001 women represented 73 percent of newly hired migrant workers from the Philippines. Stephanie Grant, International migration and human rights, A paper prepared for the policy analysis and research programme of the Global Commission on International Migration, September 2005., p. 33.

<sup>36</sup> Amnesty International, Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect (AI Index MDE 04/004/2005), 11 May 2005.

<sup>37</sup> Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE).

whether I wanted to stay and work in Qatar or go back to the Philippines. I said to him I want to stay in Qatar and work.

In Israel<sup>38</sup>, women migrant workers are mainly employed in the agriculture and care giving sectors. In the latter, 90% of the workers are women,<sup>39</sup> most of them from the Philippines and other Asian countries. The number of migrant women workers in Israel now exceeds the number of male migrant workers, with some 30,000 women working as care givers,<sup>40</sup> as the government has reportedly encouraged the immigration of women workers in this sector as an alternative to setting up and running institutions for elderly and disabled people.

Most migrant workers pay commissions to placement agencies in order to obtain work in Israel. According to the Israeli non-governmental organisation Kav LaOved, a caregiver from the Philippines may pay some \$5,000 to an agency, which will take her about one year to reimburse. Such women may thus find themselves in a debt-bondage situation for an extended period of time and be more vulnerable to exploitation by their employers. If they end up with an employer who does not pay them or exploits them, caregivers feel they cannot leave as their stay in the country would become illegal and they would be at risk of deportation – while still indebted to and unable to pay back the agency which placed them in their job.

Female migrant domestic workers in Lebanon face multiple discrimination on account of their lack of Lebanese citizenship, their gender and their lower economic and legal statuses. Many female migrant domestic workers work excessive hours, face restrictions on their freedoms of movement and association, and do not receive pay that is due to them. An unquantifiable number also suffer physical and sometimes sexual abuse. A consequence of discriminatory laws forbidding them from changing their employers is that they remain more vulnerable to abuse while their employers are effectively guaranteed impunity.<sup>41</sup>

## 6. Conclusion

In discussing the issue of international migration in the context of development, there is a danger that the rights, needs and vulnerabilities of the human beings who are migrating will be obscured. Too often the debate has taken a cost-benefit approach to the issue of migration, placing at the forefront the economic imperatives of countries of origin and destination, at the expense of the human rights imperatives of the individual migrant worker. For too many people, migration is not a voluntary and informed option, and the conditions in which they live and work do not respect fundamental standards of human rights and dignity. In the view of Amnesty International, the Committee on Migrant Workers is uniquely placed to recommend to the 2006 High Level Dialogue that the issue of international migration and development must be discussed within the framework of international human rights law and standards, including the rights and principles contained within the Migrant Workers Convention.

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<sup>38</sup> See Amnesty International, Israel, Briefing to the Committee on the Elimination of Discrimination Against Women (AI Index MDE 15/037/2005), 30 June 2005.

<sup>39</sup> Kav LaOved, Newsletter, October 2003.

<sup>40</sup> Kav LaOved, Annual Report 2004, p.12.

<sup>41</sup> See AI, Lebanon - A Human Rights Agenda for the Parliamentary Elections (AI Index MDE 18/005/2005), 18 May 2005.

## RECOMMENDATIONS

Amnesty International recommends that the Committee integrates the following points into its submission to the 2006 High-Level Dialogue on International Migration and Development:

1. The human rights of all migrant workers and members of their families must be placed at the forefront of any debate on migration and development. States and all other stakeholders should promote, protect and respect the fundamental human rights of all migrant workers and members of their families, irrespective of their status.
2. All governments are urged to ratify the Migrant Workers Convention, and implement effectively its provisions.
3. The international community must address the root causes of the movement of survival migrants, to ensure that migratory movements are the consequence of an informed and truly voluntary decision on the part of the individual rather than the result of direct or indirect coercion, including through the denial of fundamental human rights. In this context, the international community and national governments are urged to adopt development strategies that contribute to realise the protection of fundamental human rights, including the right to live in dignity.
4. The fundamental human rights of irregular migrants must be protected by state and non-state actors; including through ensuring that such migrants are not subject to arbitrary detention, abusive conditions of detention, collective or mass expulsion, and abuses of their economic, social and cultural rights. States should take appropriate measures, in accordance with international human rights law and standards, to ensure that the irregular situation of migrants on their territory does not persist.
5. Any deportations of migrants must only be carried out lawfully, in a safe and dignified manner and in humane conditions, including through the provision of adequate food, water and medical attention. All efforts should be taken to prevent migrants being pushed back and forth from one country to another, without being able to access the protection of their national authorities or to access international protection.
6. All migrant workers, irrespective of their status, should be assured conditions of work which accord with international human rights law. States should take adequate measures to protect the rights at work of all without discrimination, including in the private sector.
7. States must take particular measures to respect, protect and promote the rights of all migrant women on their territory or under their effective control. Women migrant workers must be protected from discriminatory and unlawful practices and human rights abuses at their places of work, whether perpetrated by state or non-state agents. This includes unlawful restrictions on their freedom of movement, torture and ill-treatment, including sexual and other forms of gender-based violence. States must practice due diligence to protect migrant women against violence and abuse by non-state actors, including hate speech.