

**Statement of Jorge G. Bustamante, Special
Rapporteur on the human rights of
migrants**

**Second Session of the Human Rights
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Mr. Chairperson, distinguished delegates, representatives of the UN and NGO community,

It is with great pleasure that I address the 2nd session of the Human Rights Council.

Since my appointment in July 2005, I participated in numerous activities relating to my mandate in various parts of the world. To list some of the main activities, during a first visit to Geneva in August 2005, I met and consulted with staff of the Office of the High Commissioner for Human Rights with a view to obtain a holistic understanding of the workings of Special Procedures. While in Geneva on this same visit I also had extremely fruitful meetings with members of OHCHR's Task Force on Migration and the Secretariat of the Committee on Migrant Workers.

In October 2005 I presented my first report to the United Nations General Assembly in New York, and participated in a dialogue with Member States following the General Assembly session. In April I visited Ecuador and had various meetings with NGO's involved in the advocacy and assistance to immigrant groups from several countries of South America. In July 2006 I visited Spain to participate in a meeting on migration and development in preparation for the 2007 Ibero-America summit of heads of state, and then travelled to Jakarta, Indonesia to attend a meeting organised by the Asia Pacific Forum on Women, Law and Development, on migrant women in domestic services and their vulnerability as subjects of human rights.

Mr. Chairperson,

In my report to the Commission on Human Rights I reviewed the methods of work as well as the international legal framework on the basis of which the mandate should be guided. This review was largely based on my observation of a resistance of many countries of destination to recognize the endogenous nature of their respective demand of the labour force of undocumented immigrants. This is a common feature in most of the countries of destination from which a hypothesis could be drawn, namely, that this is not unrelated to the fact that no important country of destination has ratified the International Convention for the Protection of the Human rights of all Migrant Workers and their Family Members of 1990. This has led to a new division of the world of migration between countries of origin and countries of destination.

This is not an act of nature. It is the result of a political will in some countries of destination, not unrelated to the rise of anti immigrant ideologies and xenophobia in many of these countries. The international consensus that gave rise to the approval of the UN Convention of 1990 on the rights of all migrant workers is found today in contradiction with the rise of anti immigrant sentiments around the world. This is an unfortunate development that has affected particularly the undocumented immigrants as if their irregular migratory status would preclude them from being subjects of human and labour rights. The *de facto* denial that undocumented immigrants have rights, has led to new trends in some countries of destination that imply ominous ruptures of the rule of law of which the international community should not be indifferent. This new trend consist of the promotion and approval of anti-immigrant measures by some states and local governments in spite of constitutional prohibitions, that matters of immigration can only be addressed and dealt with by the federal government. This practice represent a virtual rebellion against the rule of law, more often then not, initiated by opportunistic politicians that try to advance their personal agendas by taking advantage of the rise of xenophobia in some sectors of the public opinion, by proposing anti-immigrant measures in spite of the high probability that they end up being challenged and nullified by judicial decisions. In some cases, these unlawful initiatives only last short periods of time before they are legally nullified. This, short time however, is sufficient for the political objectives of gaining the support of anti-immigrant groups for electoral purposes of the authors of such initiatives.

With the idea of doing something to neutralize new trends such as that described above, I proposed recently in New York, in the context of the High Level Dialogue on Migration and Development the creation of a new UN standard through which the UN would request member states the production on an annual basis, of statistical information of the volume and the areas of the national economy where the domestic demands of the undocumented immigrant labor force are located. It is ironic that some of the most important countries of destination already produce and publish data on the presence and use of undocumented immigrants' labor force; however, these domestic demands are not recognized officially by the same countries where the statistical data on these demands are produced. A new UN standard requesting

member states to produce annual reports to be compiled and made available by the UN, on the location and measurement of the domestic demand respectively, of the labor force of the undocumented immigrants would make its compliance an implicit recognition of its existence and of the nature of its contribution to the wealth of the country of its immigration. Data produced and compiled this way, could lead to a more objective approach to bilateral or multilateral agreements aimed at a rational management of labor migration.

The creation of a new UN standard aimed at the measurement of undocumented immigration, would be completely independent from the exercise of the sovereign right of countries of destination, to decide who should enter and who should not and, under what conditions a foreigner could stay legally in their respective country. At the same time, the production of statistical data on the size and location of the domestic demand of the labor force of the undocumented immigrants, could make it more difficult for the anti immigrant groups to insist on the undesirability of the presence of undocumented immigrants in their country. Therefore, such a production of labor statistical data could help to combat the rise and diffusion of xenophobia in the countries of destination of undocumented immigration where anti-immigrant sentiments lead to the impunity of violations of human rights. Furthermore, the creation of such a new UN standard could result in the breaking of the impasse in the fulfillment of the objectives aimed by the UN Convention on migration of 1990. The reluctance to ratify it by countries of destination has become the most important obstacle for the achieving of the objectives that inspired the international community to approve such a standard setting in 1990.

Mr. Chairperson, the abuses and human rights violations that irregular migrants are subjected are directly correlated to the vulnerability of migrants. That could be expressed as: the greater their conditions of vulnerability, the greater the violations of their human rights. This is particularly evident in the cases of women and children, further compounded when they are members of indigenous groups. In this regard, I highlighted in my report practices that have been brought to my attention in the context of temporary migration that can render migrants especially vulnerable to abuse, when such policies and practices include, for example, the confiscation of a

migrant's identity documents by employers; the implementation of "sponsorship" systems where migrants are not allowed to change employers so that the legality of their stay in a specific country depends entirely on these employers; lack of monitoring of places of work and private recruitment agencies and placing of certain categories of migrants such as domestic migrant workers outside the protection of the labour laws of the countries of destination.

Another important observation from my contacts with NGO's and my visits with other representatives of the civil societies is an increasing practice of subcontracting of undocumented immigrants. Very often the practice of subcontracting of undocumented immigrant workers is used by parent companies as a subterfuge to avoid the responsibilities established by the labour and public health laws of increasing number of countries of destination. This practice of subcontracting should be of special concern of the ILO, OIM and the international community at large because it involves a de facto increase of the vulnerability of migrant workers as subjects of human rights.

Lastly, I stressed that the issue of protection in general and, more specifically, that of consular protection is a theme that also deserves further consideration and examination as such practices can provide important examples and guidance to Governments seeking to protect migrants from violations and abuse.

Mr. Chairperson,

I have received and transmitted to governments numerous complaints of alleged violations of the human rights of migrants, Addendum 1 to the report I submitted to the Commission, includes the texts of complaints that I, separately and jointly with other Special Rapporteurs and Independent Experts, sent to governments between January and December 2005, as well as replies received from governments. The communications sent and received since then will be summarized in the report that I shall submit at the next session of the Human Rights Council. The situations in which violations of the human rights of this group are alleged to have occurred during the period under review include allegations of: (a) arbitrary detention, including that of children; (b) inhumane detention conditions; (c) ill-treatment in situations of border

control; (d) deaths as a result of the excessive use of force by members of the police and security forces; (e) collective deportations, summary expulsions and violations of the human rights of deported persons; (f) impunity for crimes committed against immigrants; and (g) gender violence.

Mr. Chairperson

Since my appointment to the mandate in July 2005, I requested visits to Australia, Guatemala, Indonesia, Japan, Malaysia, Qatar, the Republic of Korea, Romania, and South Africa. Follow up visits were requested to: Canada, Mexico, the Philippines and the United States of America.

Moreover, in view of the numerous reports received this year on the mass displacement of persons in boats and deaths at sea of migrants, generally of Sub-Saharan origin attempting to reach Europe, I also requested a visit to Mauritania, a follow-up visit to Italy and a follow up visit to Spain, in particular to the Canary Islands.

Regarding the alarming amount of reports received in the course of 2006 concerning migrants who lose their lives at sea, in particular in the Mediterranean region, allow me to make a small footnote here and refer you to what I consider to be an extremely important development towards the protection of migrants at sea. I am referring to the recent amendments which have been made on 1 July 2006 to the Maritime Conventions. Ships have long had a duty to rescue persons at risk at sea. However, those fulfilling this obligation have often faced problems as states have sometimes refused to authorize migrants and refugees rescued at sea to disembark, in particular undocumented persons. This has often placed ship-owners and companies in a very difficult situation, and has at times been seen to threaten the humanitarian tradition to assist persons at peril at sea.

In recognition of the seriousness of this issue, the states parties to the relevant international maritime conventions 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.

Coming back to my planned visits, Australia, Indonesia, the Republic of Korea, South Africa and the United States of America have already responded positively to my requests. A visit to the Republic of Korea is scheduled to take place in December of 2006. The dates of the other visits are currently under discussion. I would like to take this opportunity to thank the governments of the countries that have responded positively to my requests for visits and to urge the governments that have not yet done so to reply to my requests. Such visits provide the mandate with a unique opportunity to directly assess the situation in the countries concerned and to meet with the different stakeholders on issues relevant to the mandate.

Finally Mr. Chairperson

The Commission on Human Rights requested, in its Resolution 2005/47 on the human rights of migrants, that the Special Rapporteur on the human rights of migrants 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 my report to the Commission on Human Rights I regretted that because of my recent appointment I had not had the time to address the issue but that I would do so in next year’s report. After due consideration of the Commission’s request, I decided to request information through a questionnaire focusing on a few targeted issues regarding gaps or inadequacies in legislation which, according to reports received, can have a negative impact on migrants. I am currently awaiting responses to the questionnaire and on the basis of an analysis of these replies I plan to present a study on this issue in my next report to the Human Rights Council.

I look forward, Mr. Chairperson, to a constructive dialogue with the distinguished members of this Council.

Thank you.