



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2004/NGO/188
10 March 2004

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixtieth session
Items 11 (a) and 14 (c) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS:
TORTURE AND DETENTION**

**SPECIFIC GROUPS AND INDIVIDUALS:
MASS EXODUSES AND DISPLACED PERSONS**

Written statement* submitted by the International Catholic Migration Commission (ICMC) and the Jesuit Refugee Service (JRS), non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2004]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Migrant Workers Convention:

The past year has been a watershed year for the advancement of the human rights of migrant workers and their families. The cornerstone for migrant workers protection, the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families finally came into force on 1st July 2003. From now on there is an established international legal framework for the protection of the human rights of migrants. The Convention reiterates a number of rights applicable to migrant workers and members of their families included in the six other core international human rights instruments. It complements them with a few additional ones related to the specificity of the migration experience. For instance the right to have recourse to consular assistance (Articles 16, 23 and 65), the lifting of obstacles to the transfer of remittances (Art. 47) and protection against the arbitrary withholding or outright destruction of identity documents by employers or public officials (Art. 21). It provides a synthesis of the human rights of migrants organized as a tool kit to better address the specific vulnerability they find themselves in when they are outside their State of origin and at all stages of the migration process.¹

The Convention takes a refreshing broad view of the rights of migrants and it not restrictive to specific individual rights. According to Part VI, States Parties must promote sound, equitable and humane conditions for international migration. This includes formulating and implementing policies regarding migration, exchanging information with other States parties, providing information to employers and to workers on policies, law and regulations and providing information and appropriate assistance to migrant workers and members of their families (Art. 65). Article 66 regulates the right to undertake operations for the recruitment of workers for employment, which shall be restricted to public services. States must take measures regarding the orderly return of migrant workers and members of their families to their State of origin (Art. 67). States parties shall also collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation (Art. 68). This section is particularly relevant at the beginning of the 21st century as migration is increasingly discussed in a number of international and regional migration fora.

We call on Western and other affluent host States to ratify the Convention and protect this set of persons whose presence outside their State of origin renders them specifically vulnerable. Such a model for an international convention, consolidating the rights of one specific group of persons, has already been recognized and widely endorsed by the 174 States parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 192 States Parties to the 1989 Convention on the Rights of the Child. Sadly, only 25 countries have ratified the Migrant Workers Convention.

In his address to the European Parliament upon receipt of the Andrei Sakharov prize for freedom of thought on 29 January 2004, United Nations Secretary-General Kofi Annan again urged European States, and all States, to ratify the Convention. Addressing the various dimensions of migration, including the management of migration, he said: "Migrants are part of the solution not part of the problem. "

Human Rights Thematic Mechanisms:

The mandate of the Special Rapporteur (SR) on the Human Rights of migrants requests the SR to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation.

In order to preserve the credibility and integrity of their asylum and immigration policies and systems, many countries are implementing return policies for irregular migrants. Government return proceedings can be different for persons in cases of voluntary repatriation and mandatory returns. Distinctions can also at times be made between persons who no longer have the right to remain in a country for protection-related reasons and persons who are subject to return as a result of changes to their immigration status or because, following their irregular entry, they never sought any form of legal status.

However, we recommend that voluntary returns policies be framed within a broader context including root causes in countries of origin. Further, return and readmission should be carried out in a humane manner and in full respect for the human rights and dignity of persons, without resort to any force, and, in the case of children, taking due account of their best interests.¹

We recommend that the Special Rapporteur examine the circumstances and process for returns. In particular we highlight the need for “pre-departure” and “follow-up to return” measures including safeguards during detention and expulsion; information dissemination on return programmes; protection of family unity (and respect for children’s school cycle); provision of adequate legal travel documents; reception, readmission and re-integration policies and programmes; attention to the rights and welfare of vulnerable groups and individuals, in particular unaccompanied children (see Article 12 of the Convention on the Rights of the Child), women heads of households and victims of trafficking; transfer of earnings and recognition of titles of property.²

Detention of migrants:

In Europe and Australia we see an increase in detention of rejected asylum seekers. Detention for deportees is in most cases unnecessary and ineffective because³:

- Serious factors motivating a person to leave his/her home country and to go to another country exist such as civil war, human rights violations, disastrous economical or environmental situations etc., and these factors are more decisive than the deterrent effect of detention.
- Detention criminalizes people.
- Detention causes harm and injustice.
- Detention itself does not help to verify a person’s identity.
- Detention has enormous financial costs.
- Detention has an adverse effect on the morals of society as it normalizes exclusion and administrative imprisonment of a part of the society and provokes racism and xenophobia.

- Research in the UK has shown that only 2 % of people released on bail have absconded.

We strongly believe that special groups of individuals should never be detained in detention centres given the negative impact of detention on their psychological and physical health and on the right to family life. These groups are:

- Minors
- Pregnant women
- Traumatized persons
- Persons with special physical or mental health needs
- Persons older than 65 years
- Mothers or fathers accompanying minors under 14 years
- Chronically or seriously ill persons.

Considering these reasons along with the principle of proportionality and the tendency to use detention as a deterrent measure in immigration policy and to establish the practice through legislation in more and more countries, we call on the EU and individual states to avoid the use of immigration detention.

There are significant problems related to the return on people to their country of origin. These problems include the lack of readmission agreements with the country of origin, which can lead to people lingering in detention for unlimited time. We strongly believe that it is critical to ensure that national legislation imposes time limits on the length of detention for people awaiting return to their country of origin in accordance with the principles established by the UN Working Group on Arbitrary Detention. We recommend that the Working Group on Arbitrary Detention examine whether national legislation does indeed establish such time limits, and that the duration does not exceed reasonable time limits.

Notes

¹ See How to Strengthen Protection of Migrant Workers and Members of their Families with International Human Rights Treaties: a do-it-yourself kit, ICMC, December 2003, www.icmc.net

² See also Agenda for Protection, UNHCR, Goal 2, Objective 7, <http://www.unhcr.ch/prexcom/standocs/english/52crp9eR1.pdf>

³ See European Council on Refugees and Exiles, Position on Return, October 2003, <http://www.ecre.org/positions/returns.shtml> and Compilation of comments and positions on the asylum and migration policy of the EU since 1999 issued by Caritas Europa, Churches' Commission for Migrants in Europe – CCME, Commission of the Bishops' Conferences of the EC – COMECE, Jesuit Refugee Service-Europe, International Catholic Migration, Commission, Quaker Council for European Affairs, Compiled by Heike Vierling-Ihrig and Doris Peschke, CCME, updated June 2003, www.comece.org

⁴ JRS Europe: Position Paper on Detention, 2003, www.jrseurope.org