

Distr. GENERAL

A/HRC/4/23/Add.2 25 de abril de 2007

ESPAÑOL Original: INGLÉS

CONSEJO DE DERECHOS HUMANOS

Cuarto período de sesiones*

Tema 2 del programa

APLICACIÓN DE LA RESOLUCIÓN 60/251 DE LA ASAMBLEA GENERAL, DE 15 DE MARZO DE 2006, TITULADA "CONSEJO DE DERECHOS humanOS"

Informe de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños, Sra. Sigma Huda

Adición

MISIÓN A BAHREIN, OMÁN Y QATAR**

Resumen

El presente informe contiene las conclusiones principales de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños, Sra. Sigma Huda, a raíz de su visita en 2006 al Reino de Bahrein del 29 de octubre al 1º de noviembre, a la Sultanía de Omán del 2 al 7 de noviembre y al Estado de Qatar del 8 al 12 de noviembre. También contiene una serie de recomendaciones a los diversos Gobiernos, en particular para prevenir y combatir la trata y para disponer una mayor protección de los derechos humanos de las víctimas.

La Relatora Especial estimó que Bahrein, Omán y Qatar son países de destino y, en algunos casos, también de tránsito de los trabajadores migrantes, sobre todo para realizar un trabajo forzoso, incluso en la cría de camellos, o para la explotación sexual.

La Relatora Especial destacó en su informe sobre todo dos motivos de preocupación. El primero es el sistema de patrocinadores y la situación de injusticia que genera, es decir, que deja a los trabajadores migrantes extranjeros a merced de quien los apadrina. Ella sostiene que, debido al equilibrio de poder desigual que crea, ese sistema aumenta el grado de vulnerabilidad de estos trabajadores y, por ende, fomenta la demanda de la trata. El otro motivo de preocupación son los migrantes que trabajan en el servicio doméstico, en particular porque no gozan de protección en virtud del código de trabajo de ninguno de los tres países, de modo que a efectos prácticos sus condiciones laborales se rigen como un asunto privado entre ellos y quien dirige el hogar.

A pesar de algunas medidas que en mayor o menor grado ya se han adoptado, o están en proceso de ser elaboradas, y a pesar de la existencia de un marco legislativo por lo general firme para la protección de todos los trabajadores, hay que hacer más para potenciar a los trabajadores migrantes extranjeros, para vigilar detenidamente el cumplimiento de la legislación en vigor, para velar por que se investigue y procese a todos los sospechosos de estar involucrados en la trata de seres humanos y que se ejecuten las resoluciones judiciales, y para concienciar y sensibilizar al público en general y los funcionarios públicos, en especial de las cuestiones relativas a la trata de personas y los derechos de los trabajadores migratorios.

Las recomendaciones se refieren a la necesidad de que las leyes protejan mejor a los empleados domésticos, de que existan una alternativa al sistema de patrocinadores y mecanismos más firmes de colaboración y cooperación entre los Estados de donde proceden y en que son acogidos, y de que la sociedad civil participe más en la lucha contra la trata de personas y en la promoción y protección de los derechos de las víctimas de la trata.

Annex

Report of the Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda ON

HER Mission to Bahrain, Oman and Qatar (29 October-1 November, 2-7 November, 8-12 November 2006)

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Introduction

1. The Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda, undertook a visit to the Kingdom of Bahrain from 29 October 2006 to 1 November 2006, the Sultanate of Oman from 2 to 7 November 2006 and the State of Qatar from 8 to 12 November 2006.

2. The Special Rapporteur thanks the respective Governments for their hospitality and collaboration in facilitating meetings with officials from various branches of Government as well as visits to State facilities, including deportation centres and labour camps. She particularly welcomes the openness with which the authorities discussed issues concerning trafficking in persons. She regrets that due to the timing of the visit prior to the parliamentary elections in Bahrain, she was unable to meet with members of the *Shura* Council, and that in Oman, meetings with officials from the Ministry of Justice and with members of the judiciary were not arranged.

3. The Special Rapporteur also met with senior diplomats of foreign embassies, United Nations representatives, members of the civil society and trafficked persons. She thanks everyone wholeheartedly for their willingness to share their expertise and experiences with her. She particularly thanks the United Nations Development Programme in Bahrain, the United Nations Children's Fund in

Oman and the United Nations Educational, Scientific and Cultural Organization in Qatar for their hard work in carrying out the necessary preparations and coordination before and during her visit.

4. The Special Rapporteur chose to visit Bahrain, Oman and Qatar following reports describing these countries not only as major receiving countries for foreign migrant workers, but also as destination, and in some cases, transit countries for human trafficking. She was further motivated to carry out such visits on account of the Governments' recognition of the existence of trafficking within their territories and their willingness to undertake the necessary measures to combat it. She is confident that this visit is but a positive prologue to a constructive dialogue with the respective Governments on ways to address gaps and to reinforce the already existing, but not sufficient, measures.

I. CONTEXT

5. Bahrain, Oman and Qatar attract a large foreign workforce due to an increasing demand for labour in certain types of employment, mainly domestic work, entertainment and construction. Thus in 2004, foreign migrant workers made up 38 per cent of the total workforce in Bahrain;^[1] in Oman, foreign workers amount to approximately half a million, that is, around 20 per cent of the total population.^[2] In Qatar, there are approximately 500,000 expatriates, making up for 70 per cent of the total population. The main sending countries include Bangladesh, Belarus, China, Egypt, Ethiopia, India, Indonesia, Jordan, Myanmar, Nepal, North Korea, Pakistan, the Philippines, the Republic of Moldova, the Russian Federation, South Africa, Sri Lanka, the Syrian Arab Republic, Thailand, Ukraine, the United Kingdom and Viet Nam.

6. Often, the attraction to leave home lies in the hope that the receiving countries will provide foreign workers with an opportunity to attain a better life and the means to support their families back home. Such migration flows also relieve pressures of unemployment in the sending countries and constitute a vital source of remittent income. It is therefore in the interest of both sending and receiving countries to provide safeguards to ensure that these movements can be undertaken in conditions conducive to the protection of the rights and freedoms of migrants.

7. The Special Rapporteur wishes to emphasize, in fact, that many migrant workers do find in the receiving States what they had looked for a place which provides them with good working conditions, as well as with the possibility to live well and to have their rights and freedoms properly respected. Despite the positive returns that such migration brings to the countries concerned and to the migrants themselves, they however sometimes come at a painful and horrific price for some of the parties involved. The Special Rapporteur was informed of numerous cases of foreign migrant workers who were deceived into leaving their countries with false promises as to the kind of employment and conditions to expect in the receiving country and to being further subjected to abuse and exploitation once there.

8. Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention against Transnational Organized Crime adopted in Palermo, Italy in 2000 (Palermo Protocol) provides that "trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

9. On this basis, the situation reported to the Special Rapporteur and personally witnessed by her in Bahrain, Oman and Qatar, cannot be addressed merely as one of human rights of migrants, but also as one of trafficking in persons, since the required elements for trafficking in persons - recruitment, deceit and exploitation - are present when these migrant workers, as described below, find themselves in situations of abuse and exploitation after having been recruited for employment and deceived in the process.^[3]

10. The Special Rapporteur will first describe the legal and institutional framework existing in Bahrain, Oman and Qatar to combat trafficking in persons and to provide for the protection of the human rights of trafficked persons, and will then relate how and why, despite the existence of such measures, foreign migrant workers who, in most cases, enter Bahrain, Oman and Qatar in full legality, still end up being victims of trafficking.

II. LEGAL AND INSTITUTIONAL FRAMEWORK

11. States have an obligation to act with due diligence to prevent, investigate and punish human trafficking, and to provide a human rights framework for trafficked persons. An extensive delineation of these obligations is provided for in, inter alia, articles 5, 6 and 9 of the Palermo Protocol as well as in the Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1). Strong legislation, in particular comprehensive human rights and labour laws, together with effective implementing and monitoring mechanisms, are intrinsic tools in curbing abuse and exploitation of migrant workers and therefore of combating the demand that fosters human trafficking.

A. Prevention, protection and punishment

12. The ratification of the core international human rights instruments is thus a necessary tool.^[4] Bahrain, Oman and Qatar should therefore take the necessary steps to ratify the remaining relevant international conventions, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,^[5] as well as relevant

International Labour Organization (ILO) Conventions.^[6] The Special Rapporteur notes with interest that the constitutions of the three countries provide a list of entrenched human rights and freedoms. She further welcomes the initiative of the members of the Gulf

Cooperation Council (GCC), including Bahrain, Oman and Qatar, in drafting guiding principles to be used to combat trafficking in the region.

13. The Special Rapporteur further commends Bahrain and Oman for having ratified the Palermo Protocol and strongly encourages Qatar to follow suit.

1. Bahrain

Prevention

14. Bahrain's Labour Code of 1976 contains various provisions protecting against abuse and exploitation of foreign workers, with the exclusion, as explained below, of domestic workers.

15. The Labour Code requires employment to be regulated by a written contract, which must specify the conditions and the kind of employment to be undertaken such as wages, hours of work, leave, etc. Employers are, moreover, prohibited from making workers perform tasks which differ fundamentally from those initially agreed upon, especially when such tasks are done intentionally to offend the worker, and wages must be paid directly to the employee. Charging the worker for employment is prohibited and it is, moreover, illegal for sponsors to take possession of the workers' passports. Furthermore, under certain circumstances, the worker has the right to receive compensation when the employer terminates his/her contract; this right is not prejudiced when it is the employee who decides to terminate the contract, under certain conditions. In addition, unless a contract is free of the use of coercion, undue influence, fraud, misrepresentation and mistakes, it may be declared null under the Contract Law of 1969. Finally, for any employment disputes, the Ministry of Labour will first attempt an amicable solution, and only if this fails, the case is referred to the courts. In this case, and contrary to the situation of domestic workers, foreign workers are exempted from paying court fees, and court proceedings are to be dealt with urgently. Before resorting to any such options, workers have the right, since September 2002, to address any employment issues through trade unions.

16. The Labour Code specifies 14 as the minimum age of employment and applies certain conditions for minors between the age of 14 and 16 obliging employers to carry out mandatory medical examinations before and periodically during employment. Immigration laws further prohibit the entry of minors (under 18 years of age), unless accompanied by a parent or a grandparent. According to article 3 of the Palermo Protocol, this provision does not necessarily protect children from being trafficked unless verification of whether any means were used to obtain the parents' or guardian's consent, is carried out. In view of reports concerning the falsification of children's age on identity documents, the Special Rapporteur received with interest information to the effect that the Aliens Act (Immigration and Residence) of 1965 makes it a crime to alter, forge, falsify or possess any certificate or document issued or drafted under this act, such as certificates, passports, visas, residence permits, or other documents.

17. The situation of women brought to Bahrain as entertainers, for a renewable three-month period, is regulated specifically by Ministry of Information Decision No. 3/1991. It is forbidden for these workers to appear in indecent clothes at work and to accept invitations from clients. Employers are further prohibited to force the women to perform in establishments other than those designated in the licence. The employer is bound to provide the entertainers with appropriate housing.

18. The possibility of monitoring the compliance of the above is envisaged by the Subsidiary Legislation No. 23 which gives the labour inspectors extensive rights to enter work premises, including night premises, and to examine documentation and working conditions of the workers. The Special Rapporteur was informed that there are 278 labour camps registered with the Ministry for Labour, but that other non-registered labour camps exist and are not subject to such inspections. She welcomes information to the effect that spot checks at entertainment venues are carried out, and that pimps, for example, have been arrested. Inspections of private business premises are also carried out, and this has led to the closing of 65 recruiting agencies and 18 hotels in 2006. She was not, however, provided with specific information on the reasons and basis for these closures.

19. The Special Rapporteur received with interest information concerning the establishment in 2002 of an Inter-Ministerial Anti-Trafficking Task Force with a mandate *inter alia*, to develop a national plan of action against trafficking in persons. Measures foreseen in that include the publication and distribution at the airport and at seaports of information brochures in a number of Asian languages, providing brief information on the labour rights of foreign workers. In addition, the Foreign Workers Manual lists all acts that are prohibited, including the signing of informal and fictitious contracts, forcing workers to engage in illegal activities as well as sexual assaults against employees. Another activity was the training of judges and public prosecutors on trafficking in persons. The Special Rapporteur was encouraged by the positive initiative of the Minister of Labour to hold regular meetings with foreign embassies to discuss matters including working conditions of foreign migrant workers. In 2004, the Task Force launched a campaign to sensitize employers on the Labour Law, and has also announced plans to tighten control on the issuing of visas.[7]

Protection

20. There are currently two shelters for domestic female workers run by the Embassy of the Philippines and the Migrant Workers Protection Society, a local non-governmental organization (NGO). The Special Rapporteur also visited the site being prepared for a State-run shelter for victims of abuse. She encourages the Government to open the shelter as soon as possible so that victims of abuse, including trafficked persons, would be able to find protection and assistance there. Moreover, she encourages the authorities to put in place a system of identification of trafficked persons in detention and deportation centres, so that, once identified, they may be transferred to the shelters to receive proper support and assistance. Meanwhile, she received with interest information that detainees may exercise the right to appoint lawyers and make phone calls. Embassies are also, in principle, allowed to visit their nationals. The Special Rapporteur is concerned however, that authorizations for such visits are reportedly difficult and long to obtain and that authorities do not systematically inform embassies when one of their nationals is being detained.

21. Other protection measures include the publication of labour rights brochures that list important phone numbers including those

of the different foreign embassies and official bodies. The Bahrain Ministry of Labour has also established a hotline for labour complaints and advertised its launch in English and Arabic in daily newspapers.

22. Moreover, with a view to encouraging abused and exploited workers to make formal complaints to the authorities, the Government is currently discussing the establishment of a witness protection programme that would allow victims to give their testimony through video conference and have their faces covered. Currently, interpretation services during court proceedings are possible, but not in all languages.

Punishment

23. Trafficking in persons is not a crime under Bahrain's Penal Code. However, Bahrain is currently in the process of drafting anti-trafficking legislation in order to integrate the Palermo Protocol. The Special Rapporteur learned with interest that the definition of trafficking in the draft law reflects the definition contained in the Palermo Protocol. Other interesting elements of the draft reportedly include the right of allegedly trafficked persons to remain in Bahrain pending legal disputes, the establishment of a fund for trafficked persons and the prohibition of criminal proceedings from being brought against them for illegal work they were being forced to carry out. She regrets that local NGOs and other members of the local civil society were not consulted in the drafting of this law.

24. Until this draft is made law, Bahrain relies on various articles of its Penal Code to punish acts related to trafficking. Concerning trafficking for sexual exploitation, the Penal Code prohibits assisting or using coercion, threat, or deceit to force a person to commit prostitution as well as pimping or establishing or operating a brothel or an establishment for prostitution purposes. Child pornography, prostitution, child labour, and abduction are also crimes. The Criminal Code further penalizes the withholding of workers' salaries, the withholding of their passports and other travel documents, forced labour and slavery as well as employing individuals, transporting them, and keeping them against their will.

25. The Special Rapporteur notes with interest information that the authorities were generally responsive to requests from foreign embassies to investigate foreign workers' complaints regarding unpaid wages and mistreatment.[8] She regrets, however, that labour complaints of migrant workers in the private sector were given less immediate attention than complaints concerning the public sector.

26. Despite the fact that the Special Rapporteur was provided with some information on investigations and prosecutions of a number of trafficking-related cases such as deprivation of liberty and illegal confinement of foreign workers, assault, accusations of theft, non-payment of wages and forced prostitution, she is concerned that the number of cases cited appear to be nonetheless insufficient and non-representative of the extent of the problem of trafficking in Bahrain as was reported to her.

2. Oman

Prevention

27. Oman's recently amended Labour Law of 2003 also provides a substantive legal framework for the protection of foreign workers' employment, again with the exception of domestic workers.

28. In addition to the requirements of a written contract providing details of the kind of employment, wages, hours of work, leave, etc., the Labour Law prohibits employers charging employees any fees, forcing them to engage in work which is fundamentally different to that agreed upon, and taking away their passports. The Special Rapporteur received with interest information to the effect that when workers did file complaints against their employers on confiscation of passports, they were largely successful in recovering their identity documents. Employees are moreover entitled to terminate their contracts if they can prove that their employer has assaulted them. This law further exempts workers from paying any court fees relating to a dispute arising from their employment. Before resorting to formal procedures, workers may raise employment concerns with worker representative committees. Decree No. 74/2006 to the Labour Law removed a previous prohibition of strikes.

29. The minimum age for employment for foreign workers is 21. The minimum age for camel jockeys was raised to 15[9] and all camel jockeys must personally register with the Omani Camel Racing Federation and submit a passport, photographs, and a birth certificate proving that they are at least 15 years old.

30. Compliance of contracts and generally the provisions of the Labour Law is stipulated by article 8 of the Labour Law, which provides certain officials with the right to act in the capacity of judiciary officers in enforcing its provisions, its regulations and executive decisions by inspecting places of work, as well as books and registers. In view of reports of non-compliance with the contracts and labour law provisions, the Special Rapporteur welcomes information from the Ministry of Labour that inspections of worksites will be increased.

31. Oman does not have a national action plan to combat trafficking in persons nor does it have a coordinating mechanism to oversee anti-trafficking efforts. Measures taken to combat trafficking and protect the human rights of trafficked persons are therefore dispersed, noncomprehensive, and are mainly carried out in connection with trafficking-related matters only and not for trafficking matters per se. The Special Rapporteur further notes that the authorities do not follow a common policy on trafficking and do not share a common understanding of its concept, which was particularly evident when some authorities recognized the existence of trafficking while others denied it entirely.

32. Examples of some measures that are being undertaken include awareness-raising programmes on labour standards and workers' rights disseminated, according to the Ministry of Manpower, in news programmes on television and in newspapers in Arabic. Copies of the texts of labour laws are distributed in Arabic and English at the airport in Oman. Moreover, in the absence of an adequate screening procedure to identify trafficked persons among detainees awaiting deportation, the Special Rapporteur welcomes the information that Oman has requested international assistance to develop such a comprehensive screening

programme.[10] The Special Rapporteur hopes that the nearly adopted women's national strategy and the establishment of a national plan of action for children will pay particular attention to the human rights of trafficked women and children.

33. Furthermore, in view of the risk illegal migration and human trafficking posed by Oman's 1,400 km-long borders, the Government has allocated resources to improve its control over both the maritime and the land borders, and in 2005, Oman military and police took special actions to patrol the borders and prevent illegal entry into the country. Special visa regimes for certain countries whose nationals are believed to come to Oman or are made to come to work in the sex industry have also been established.[11]

Protection

34. Oman does not run a shelter for victims of abuse and exploitation, nor is there a system to distinguish illegal immigrants from trafficked persons and to provide them with the assistance required under the Palermo Protocol. Foreign embassies are allowed to visit their nationals in detention centres and they, together with charitable organizations, provide trafficked persons with assistance. However this assistance is not systematic, and there is no referral system. Despite the lack of express measures to provide for the protection of trafficked persons, the Special Rapporteur was pleased to note information that authorities take complaints of abuse and exploitation of foreign workers seriously.

35. The Special Rapporteur reiterates the concerns expressed by the Committee on the Rights of the Child regarding the lack of research and data on the prevalence of national and cross-border trafficking, child prostitution and child pornography.[12] Concern was also expressed about the lack of a comprehensive procedure to identify potential child victims of trafficking and the absence of adequate recovery and reintegration services for these victims.

36. The Special Rapporteur welcomes the establishment of a task force to monitor the situation of children in camel racing. Meetings were held with race organizers and parties interested or involved in racing activities. She concurs with the Committee on the Rights of the Child in stressing the importance of measures to ensure that the prohibition of the use of child camel jockeys is effectively implemented and recommends that regular unannounced inspections in camel races are carried out to ensure that no children are used as jockeys.[13]

Punishment

37. Trafficking is not yet considered a criminal offence in Omani legislation. An Inter-Governmental Technical Committee, has, however, been set up with a mandate to review existing legislation and recommend whether there is a need for a separate law to be drafted to incorporate the Palermo Protocol. The Special Rapporteur regrets that civil society was not invited to participate in this Committee.

38. Pending such incorporation, Oman may still prosecute trafficking crimes under the Penal Code. The Criminal Code for example penalizes abduction with an aggravating element if the victim is forced into prostitution. Moreover, slavery and the slave trade are also criminal offences, as is child prostitution, manufacturing, acquiring or distribution of pornographic materials, and bondage. Decree No. 74/2006 to the Labour Law prohibits all forms of compulsory labour.

39. The Special Rapporteur regrets that information received shows very little effort made to detect, investigate and prosecute cases of trafficking in persons. In 2005, for example, despite reports of trafficked persons in Oman, no investigations or prosecutions were initiated against suspected traffickers, either by the Public Prosecutor or by the Ministry of Manpower, which has a mandate to investigate reports of labour abuse.[14]

3. Qatar

Prevention

40. The Qatar Labour Law of 2004 provides that the mandatory written contract for workers, excluding domestic workers, must specify, inter alia, the duration of contract, type of work, the provision of food and lodging, payment of overtime, etc. Furthermore, Decision No. 11 of 2005 of the Ministry of Civil Service Affairs and Housing regulates maximum working hours and overtime. The Labour Law also provides that the contract must be signed by the Ministry and by the relevant foreign embassy, which is a positive element in monitoring that contracts do not have terms conducive to exploitative working conditions. Moreover, Decision No. 8 of 2005 of the Ministry makes it difficult for employers to step out of line with their workers as it requires employers to deposit 25,000 Qatari Riyals to the Ministry for the duration of the foreign workers' licenses in order to guarantee that employees are provided with all their entitlements. Moreover, the Qatari Labour Department maintains a black list of companies that have violated labour laws or abused their workers. Finally, decision No. 12 of 2005 requires employers outside the cities to take their employees to health services at their expense.

41. Monitoring of compliance with these provisions is foreseen in Part 15 of the Labour Law, which provides work inspectors with extensive powers to enter places of work during working hours, day and night, without prior notification, to inspect registers, books, files or any other documents related to the workers, with a view to ensuring compliance with the law. Workers are further protected by their legal right to go on strike and to form trade unions and workers' associations. The Special Rapporteur regrets the information that implementation of the latter in the private sector was difficult because of the conditions of the law, requiring a minimum membership of 100 Qatari nationals.

42. The Special Rapporteur particularly welcomes the enactment of Law No. 22 of 2005 on Children and Camel Races, which prohibits the recruitment, employment, training and participation of children below 18 in camel racing. Violation of this law is punished

with 3 to 10 years' imprisonment and a fine of 50,000 to 200,000 Riyals. It further vests the Labour Directorate with a quasi-judicial role in investigating and bringing to justice individuals who are in violation of this legislation. Moreover, an Inter-Governmental Committee was established to follow up on the implementation of this law. The Committee carries out visits to camel racing courses and makes reports on these visits. The Special Rapporteur nevertheless remains concerned about reports that despite repatriation of a large number of children, some were retained as farm workers living in difficult conditions. She would therefore appreciate receiving information on the status of all the concerned children.

43. The Special Rapporteur commends the Government for the establishment in 2003 of a National Plan to address trafficking and the pursuant establishment of a National Coordinator on Trafficking, who reports directly to the Supreme Council for Family Affairs and collaborates with focal points in a number of other Government institutions, including the Attorney-General's office, the Ministry of Justice and the Ministry of Interior. The National Coordinator disseminates information, including the Qatar Labour Guide in five languages at the airport, foreign embassies, health centres and at the Ministry of Labour, organizes awareness-raising programmes on human rights and trafficking, holds social and recreational activities for trafficked persons, including special ones with recruiting agencies, and provides assistance for reintegration in the home countries or in the labour market. Plans are also under way for the National Coordinator to hold regular meetings with foreign embassies to discuss the various concerns on human trafficking. Trainings for judges, lawyers and the police were also organized, and the Directorate of Labour held meetings with businessmen and recruiting agencies to inform them of their obligations under the labour law.

44. Of additional value is the establishment of the Human Rights Unit in the Ministry of Interior, which has also been involved in efforts to combat trafficking, as well as National Human Rights Committee of Qatar, pursuant to which many positive steps have been taken to strengthen the human rights aspects of human trafficking. The Committee also has a mandate to receive individual human rights complaints. The Special Rapporteur was also encouraged to learn about the establishment of the Qatari Foundation for the Protection of Women and Children, which is also carrying out important work for the protection of the human rights of women and children, including foreign workers. In particular, this foundation runs three hotlines, and employs social workers, legal advisers, 42 liaison officers and 19 volunteer lawyers to defend women. The Special Rapporteur was also pleased to note that public officials attended international conferences on human trafficking and she had the pleasure of discussing with a member of its delegation at a conference in Belarus in November 2006.

Protection

45. The Special Rapporteur visited Qatar's House for Lodging and Human Care, which was established in 2005 for victims of abuse. At this shelter, victims are provided with social, legal, medical and psychological assistance, and cases are sometimes referred to the police, the courts and the Director of the Human Rights Unit in the Ministry of Interior. The shelter also assists victims' repatriation if so wished. She regrets that no system for identifying trafficked persons is in place.

46. The Special Rapporteur was concerned that large numbers of foreign workers are detained for prolonged periods in deportation centres pending the resolution of civil and labour disputes with their sponsors. In view of this information, the Special Rapporteur welcomes information that the Ministry of Interior, upon the recommendation of the National Human Rights Committee, set up a committee together with the Human Rights Department of the Ministry, with a mandate to minimize the number of persons held at the deportation centre by considering their particular situation, and to either release them or proceed with their repatriation. The committee will further cooperate with the general prosecutor's office and the courts in order to accelerate adjudication on disputes.[15] A women's committee was also specifically established to monitor the situation of women in detention. The Special Rapporteur encourages the Government to transfer any identified trafficked persons to the shelter to receive the necessary support and assistance.

47. Finally, the Special Rapporteur received with interest information about the Qatar Charity Foundation and its work in Sudan following the repatriation of 212 child camel jockeys to Sudan pursuant to the legal ban. The foundation follows up on the repatriation and rehabilitation of these children in Sudan, where it has opened schools and set up reintegration programmes.

48. The Special Rapporteur was informed that court proceedings provide interpretation assistance in some but not all foreign languages. The detailed labour guide for foreigners also contains a list of emergency numbers.

Punishment

49. Discussions are under way to ratify the Palermo Protocol. In the meantime, a specific anti-trafficking law is being drafted. Law No. 14/2004 (Penal Code) already specifically punishes human trafficking and applies universal jurisdiction to investigate and prosecute it. Prostitution and forcing others into prostitution and other forms of sexual exploitation is a crime.[16] Living off someone else's prostitution is considered as an aggravating factor. Abduction or detaining someone against their will as well as slavery and slavery-like practices are also prohibited. The exploitation or forcing another to work without pay is punishable with imprisonment of not more than six months and with a fine not exceeding 3,000 Riyals. The punishment is increased if the victim is less than 16 years of age. Moreover, Law 22/2005 bans the use of children in camel races.

50. The Special Rapporteur received with interest information that when workers file formal complaints against their employers, investigations are carried out and the necessary legal proceedings are initiated when appropriate. If domestic workers file complaints, the authorities allow the sponsor one week to respond to the complainant, after which such a sponsor is blacklisted. She was moreover informed about one case where the sponsor, who was found to have tortured his domestic worker, was sentenced to five years' imprisonment and the family of the victim received a monetary compensation and the Government paid for the worker's medical rehabilitation. The Special Rapporteur was further informed that two cases of abuse of foreign domestic workers by their sponsors took place in 2004, none in 2005 and eight cases of non-payment of salary were prosecuted in 2006, including the conviction of a sponsor to five years' imprisonment for charges of assaulting a domestic worker.

51. Despite this information and the relevant provisions on trafficking in the Criminal Code, the Special Rapporteur regrets information that although sponsors against whom complaints of sexual exploitation are made may be prosecuted, blacklisted and also have their licenses revoked, there remains a problem with the enforcement of decisions. Ultimately, the concern is that very few cases of human trafficking are being investigated and prosecuted despite reports describing that many foreign workers are suffering abuse and exploitation.

III. MANIFESTATIONS OF TRAFFICKING

52. Despite the legal and institutional framework described above, trafficking in persons exists in Bahrain, Oman and Qatar. In this section, the Special Rapporteur examines the process involved from the moment that the migrants contact a recruiting agency in the sending country to the moment they are in employment in the receiving country, and the elements which give rise to human trafficking in this context.

A. Recruitment, transportation, transfer, harbouring or receipt of persons and “deceit”

53. The recruitment process of foreign migrant workers is where the concerns begin. The way recruitment agencies function is monitored in the Bahrain Labour Law, and reflected in Oman’s Royal Decree 35/2003, (para. 2), and in Qatar’s Act No. 14 of 1992, which provide that all recruiting agencies must be registered and have a licence to operate, and that employers may, in principle, only enter into contracts with recruiting agencies that have such a licence. Qatar’s Act No. 14 moreover subjects recruiting agencies to official control. According to this Act, not only are those agencies prohibited from carrying out activities other than obtaining foreign workers for employment for third parties, but it also subjects them to official inspections, including of the documentation and premises used. Failure to respect these provisions is punishable with imprisonment not exceeding one month and to a fine of not less than 1,000 and not more than 6,000 Qatari riyals. Agencies may also be closed or have their licences suspended. Despite these and similar provisions providing for a legal framework to ensure that recruitment is carried out fairly and in full respect of the rights of foreign migrant workers, the Special Rapporteur was nevertheless informed that in several cases, the process of recruitment is what initiates the whole cycle of abuse and vulnerability of workers. It is moreover at this stage that the deception takes place.

54. Lured by the prospect of well-paid work and a better life, migrant workers are willing to pay the hefty fees often charged by agencies in the sending and receiving countries to find work in the receiving States. In Oman for example recruiting agencies have been reported to charge workers a fee of around US\$ 1,176 to initiate their process of employment in addition to the fee they would have already paid to the recruiting agency in their home country. In Qatar, Act No. 14 specifically forbids these agencies from charging migrants a fee for their placement and travel costs and specifies that the agency commission must be paid by the employer only.

55. Recruiting agencies in the sending States collaborate with recruiting agencies in the receiving States to find such employment. Once employers are interested in recruiting the workers, the recruiting agencies in the receiving States will arrange for the purchase of one-way tickets and process all applications and required documentation, including entry visas, residence and employment permits, at the expense of the employers who, once the contract is signed, become the workers’ sponsors and fully responsible for the residence of the workers in the receiving States. In some instances, no employer is identified, but the workers may still be sent to the receiving States with the assurance that the recruiting agencies will make the necessary arrangements until the workers are placed with an employer.

56. In some cases, the workers sign a first contract or are given information in the sending State of the kind of work and contract to expect. Once in the receiving country, however, migrants are given a second contract, either only in Arabic which they do not necessarily understand, or in some cases a translated copy is provided which does not necessarily correspond to the one signed in the sending State or with the conditions initially agreed upon. Article 20 of the Oman Labour Law further aggravates the situation by allowing for a possible scenario where a worker may be employed without being given a written contract. On the other hand, according to article 22, if the worker cannot understand Arabic, the contract must be authenticated by the relevant authority.

57. At the stage when the contract is presented to the workers, the migrants no longer really have the choice to refuse the offer, for various reasons they either depend on the sponsor to provide them with a return ticket and an exit visa, their passport might already have been confiscated by the agency or the sponsor, and in most cases they are already highly indebted to both recruiting agencies, or just simply do not have enough money to pay for their return home. They therefore prefer to accept to work for the money offered, even though it might be much less than what they were promised and that it might concern conditions different from those originally agreed upon. For all these reasons, they are often unwilling to report any deception, coercion or abusive treatment involved in the recruitment process.

58. Recruitment agencies have also been reported to physically, verbally and even sexually abuse migrant workers as a tactic to gain power over them and make them accept the employment and the conditions offered. Similar abuse is also reported in cases when the workers temporarily stay in lodging arranged for by the agencies or in the agencies’ premises, often in degrading and humiliating conditions, awaiting placement in employment. The whole process increases the vulnerability and helplessness of the migrants, forcing them to accept what is offered out of fear, inter alia, of further retaliation.

59. Once a medical examination confirms that a worker is fit for employment, the residence permit is confirmed. The contract is then signed and the agencies’ responsibilities end there, without any obligation to follow up on the welfare of the worker during employment, unless either employer or employee decide to terminate the contract during the initial probationary period. The agencies are then expected to provide the worker with an alternative employment, which is not always the case. It will then depend on the

sponsor's goodwill as to how the workers are treated.

B. Sponsorship system and revictimization

60. It is the sponsors who provide foreign workers with residence and work permits; it is the sponsors who may also decide to terminate such permits in accordance with the relevant laws. The vulnerability of foreign migrant workers is, in this way, further aggravated as they are placed in a position of extreme weakness vis-à-vis their sponsors on whom they depend entirely for their employment and the continued legality of their residence. An example of the abusive conditions of work which may result because of the sponsorship system concerns the Najmah area in Alharaj, Qatar, where, according to information received, it is not uncommon that foreign workers have to pay their sponsor a sum of around 200 to 300 Qatari riyals a month to ensure that the sponsor does not cancel their permit to stay and work in Qatar.[17] This dependence adds to their reluctance to report deceptive recruitment and abusive working conditions. It has been reported that such working conditions, depending on the behaviour of the individual sponsor, as well as the fact that the monitoring of compliance with the law is not always systematic, lead to slavery-like conditions.

61. With this system, an employee cannot leave an abusive sponsor for another employer. The Qatari Labour Law and its recent amendments that did not abolish the sponsorship system, as well as Bahrain's article 5 of the Ministerial Order No. 21 of 2001 and Oman's article 24 of the Executive Regulation of Law No. 16 of 1995, provide that foreign workers may only change employer and therefore sponsor if their sponsor agrees, and under certain conditions. The fact that approval is needed from the very person the worker wishes to be released from, possibly due to abusive and exploitative conditions, is clearly problematic. Moreover, domestic workers in Bahrain for example, do not even have such a right, unless it is within the probationary period. There again, reports indicate that recruiting agents are unwilling to find alternative employment for them and subject the workers to further abuse to force them to stay with their initial employers. The Qatari Director for Human Rights informed the Special Rapporteur that according to subparagraph 2, paragraph 1, article 19 of the Alien Entry and Residence Act, the Minister for Internal Affairs may transfer sponsorship of a foreign worker to another employer, if he considers that the interests of the country warrant such a step. According to the said Director, The National Committee for Human Rights and the Human Rights Department of the Ministry of the Interior did take action in many cases in the implementation of this article.

62. In Bahrain, another element of the sponsorship system that adds to the unequal distribution of power between employers and migrant workers and therefore to their susceptibility to abuse and exploitation, is the right given to the sponsors to blacklist workers who have run away from them. In this case, once deported, if they wish to return to Bahrain, appropriate certificates from the police and/or the Directorate of Immigration and Passports must be submitted to the concerned authorities at the Ministry of Labour and Social Affairs to obtain a work permit. They must also obtain a no objection letter from their previous employer, or wait for six months.[18] Knowledge of such conditions and how any discord with their employer can affect their present employment or any hope of a better employment with another employer in the future forces the workers to endure their difficult working conditions until the termination of their contract, when they can hope to at least obtain payment for their work and a return ticket home. Similarly, in Oman, article 20 of the Labour Law provides that if the employer may prove that the employee has not satisfied the conditions provided for in the contract, the employer may return the employee back to the place from which he/she was brought. Qatar, on the other hand, has provided an improvement to this system, whereby according to Law No. 2 of 1981, foreign workers whose contracts are terminated, again with the exception of domestic workers, are not obliged to leave Qatar.

63. The Special Rapporteur also learned during her visit that in all three countries there are distortions of the sponsorship system, which further enhance the workers' vulnerability to exploitation. According to the so-called "free visa" system or "casual labour" system, companies are created with the main objective of hiring foreigners and exploiting their work. These supposed sponsors obtain work permits and visas for workers. Once these workers are in the country, the sponsors charge commissions to the workers for facilitating their entry, and then leave it to them to find work. The employment relationship in these cases is purely fictitious. Subsequently, the workers' employment with their real employers is not protected by law, as they are not declared. In addition, if these workers are found working for a different sponsor than the one with whom they are legally tied, they are subject to arrest and deportation.

64. The Special Rapporteur strongly believes that this system is a main factor in fostering the demand for trafficking in Bahrain, Oman and Qatar, since it increases the possibility of migrant workers being abused and exploited for little money, despite the existence of legal protection and mechanisms to monitor working conditions. Because of this system, migrant workers are often reluctant to make formal complaints against their employers, in the fear, for example, of losing their permits and being sent home. In view of these concerns, the Special Rapporteur was interested to hear that the Bahrain Labour Law of 1976 is in the process of being amended with a view to abolishing the sponsorship system. The penalties for abuse of the sponsorship system have already been raised, and the Economic Development Board is currently discussing law reforms that would make it easier for employees to change employers. No such plans were made known to the Special Rapporteur concerning Oman and Qatar.

65. The Special Rapporteur was further informed that migrant workers fall victim to human rights violations at the hands of the authorities. One of the main reasons for this is that in all three countries, there is no system in place to differentiate and identify trafficked persons from illegal migrants. If migrant workers are found without legal papers - because these have been confiscated by the sponsor, or because sponsors do not promptly renew workers' residence and work permits - they will most likely be sent to a detention centre and have criminal proceedings initiated against them. They are treated as illegal immigrants and no effort is made to identify them as trafficked persons who should accordingly be provided with assistance. An example of this took place in Oman in 2006, when authorities arrested a number of persons alleged to be illegal immigrants, without screening them to identify who amongst them were in reality trafficked persons. Similarly, if they are found working as prostitutes, which is illegal in all three countries, criminal proceedings are immediately initiated against them and they are detained pending imminent deportation. Again, no attempt is made at identifying them as trafficked persons. Runaway domestic servants face the same fate.

66. Mandatory health examinations as a precondition for obtaining a residence and work permit further reduces the chances that trafficked persons are identified as such, since positive testing for certain diseases lead to their automatic deportation. Moreover,

deportation based on such tests violates their right to confidentiality. In Bahrain, however, if the disease may be treated then the worker is allowed to stay.

67. Other complaints generally concern the difficulties encountered by migrant workers in accessing the justice system and other official protection mechanisms, such as excessively long court proceedings, lack of interpretation assistance, difficult access to a lawyer, and not always being able to contact their respective embassies for assistance when in detention.

68. Discrimination has also been identified as a further element that fosters demand for certain forms of trafficking, making it more difficult for foreign workers to make a formal complaint against their employers for non-payment of wages or for sexual assault for example.[19] Foreign migrant workers are often seen by authorities and the general population as inferior citizens. Ingrained attitudes of discrimination and xenophobia against them, therefore, add to their revictimization. The Special Rapporteur was informed that migrants are subjected to humiliating and degrading treatment as well as physical and verbal abuse by authorities in police stations and detention centres, for no reason other than that of being migrants. Reports further describe how women are subjected to more violence both because of their status as women and because of their status as migrant workers.[20]

C. Exploitation - vulnerable groups

69. The main groups vulnerable to abuse and exploitation are domestic workers - mainly women and girls; other workers - mainly men, including minors, in the construction industry and in farm work; and children in the camel race industry in Oman and Qatar.

1. Female domestic workers

70. Details of exploitation and abuse of domestic workers were repeatedly corroborated during the Special Rapporteur's visit. Such treatment includes excessive working hours of up to 18 hours a day; being on call at night to tend to babies, for example; no leave; no payment for overtime; very little food and drink or merely leftovers; being locked up and otherwise having very restricted freedom of movement; no right to make phone calls and to have contact with the outside world; humiliating treatment such as unfair punishments; poor living conditions such as inadequate sleeping quarters not respecting the worker's intimacy; non-payment and reduction of wages as a form of punishment; denial of access to health services; confiscation of passports and other identity documents; and physical, psychological and verbal abuse, including of a sexual nature.

71. This group, whose plight is hidden behind the guarded walls of their employers' homes, is undoubtedly the category most susceptible to abuse and exploitation because over and above the debilitating effects of the sponsorship system and other reasons for revictimization, their vulnerability is exacerbated by the weak legal framework surrounding their working conditions, which reduces the official capacity to provide for their protection. This is because in Bahrain, Oman and Qatar, domestic workers are excluded from the purview of the labour laws and must rely solely on the provisions of the private contracts they sign with their employers for protection.

72. According to the relevant laws in the three countries, contracts must contain information, inter alia, concerning the duration of the contract and amount to be paid in wages. Contracts must allow for an initial probationary period during which both worker and employer may terminate the contract; it must also provide for leave. The contract must also place an obligation on the employer to cover medical services, provide food and housing, as well as a return ticket at the end of the contract. The contract must be written in Arabic and a translation may also be made in a language understood by the worker. In Qatar, the contract must provide an additional clause giving the employee the right to terminate the contract without providing one month's notice, as is generally required, in the event that the worker can prove that he/she has been harassed by the employer or that the employer has broken essential obligations stipulated by law. Any dispute regarding the employment of domestic workers will be mainly regulated by civil law. In Oman, the competent authority will first attempt to arrive at an amicable solution, before referring the case to court if this does not succeed. Article 3 of the Bahrain Labour Law of 1976 which regulates the authorization by the Ministry for Labour and Social Affairs for work permits, their duration, renewal procedures, prescribed fees, cases for suspending and renewal of permits, withdrawal of permits before expiry date and cases of exemption from the conditions of obtaining such permits, exceptionally also applies to domestic servants.

73. The contract does, therefore, provide a minimum framework of protection. There is, however, no system in place to monitor whether the terms of the contract are being respected. In fact, reports indicate that contracts are often not respected by the employers, but that abuse goes unnoticed as it happens behind closed doors. Authorities are reluctant to interfere in the contractual relationship between domestic workers and their employers as this relationship is viewed as a private family affair; any interference would be seen as impinging on the family's right to privacy. This lack of protection, however, impinges on the rights and freedoms of the workers.

74. Therefore, because they are often already in a vulnerable position because of the sponsorship system, these workers are scared in many cases to make a formal complaint against their employers. They are furthermore incapable of doing so because they most likely do not have the money to pay for a lawyer or the court fees. Moreover, they know that should they run away, they might risk being detained and deported, and hence neither receive their wages, nor be provided with a return ticket home. They often therefore choose to stay with their employers despite the conditions, or else find other employment illegally or turn to illegal means, including prostitution, as a means of survival.[21]

75. In view of these concerns, the Special Rapporteur welcomes the information that amendments to the Bahrain Labour Law of 1976 will include the category of domestic servants within its purview of protection. Similarly, she welcomes the fact that the Qatar National Coordinator on Trafficking is currently analysing the situation with a view to introducing a law specifically concerning domestic workers.

2. Women in the sex industry

76. The Special Rapporteur was informed that Bahrain, Oman and Qatar are also destination countries for trafficking in women, who are brought into these countries with entertainment or “artist/band” visas or in tourist groups, and promised work as waitresses or entertainers in bars and restaurants, for example, and then forced into prostitution. In some cases, women are brought in with normal working visas to work as domestic workers, and are then forced into prostitution and other forms of sexual exploitation. In Oman and Qatar, the Special Rapporteur was also informed of some cases of women forced or deceived into marriage for purposes of trafficking for sexual exploitation. For example, young Indian Muslim women were tricked into temporary marriages and then sold as servants or forced into prostitution in Qatar.

77. In Bahrain, legislation to establish measures to combat sexual exploitation of women is currently under discussion. In Oman, with a view to better monitoring the entrance of foreigners into the country, pursuant to reports of abuses of tourist visas, the Law on Residency of Aliens has banned tourist visas, and all foreigners entering Oman must now register with the authorities within seven days of their arrival. Moreover, hotels must provide the relevant authorities with daily reports with the names of all foreigners residing in their establishments. Furthermore, Oman has established special visa regimes applicable to certain countries to thwart the international sex trade.

78. Pending the adoption of legislation and other measures to address the vulnerability of these workers in the same way as that of other categories of foreign workers, sex workers are often subjected to various forms of abuse and exploitation at the hands of their sponsors. The Special Rapporteur was informed that the passports and other legal documents of these women are systematically confiscated. Their freedom of movement is also severely restricted and when allowed to leave work or housing premises, they are often accompanied. Moreover, apart from the inhuman and degrading treatment they are made to undergo when forced into prostitution, these women also suffer physical, psychological and verbal abuse at the hands of their sponsors. The Special Rapporteur also received reports indicating that the women are frequently moved from one place to another, or in some cases from one Gulf country to another. In Qatar, it is reported that many of the women who have been forced into prostitution were brought in through Saudi Arabia or the United Arab Emirates.

3. Child camel jockeys and children in other occupations

79. Having reportedly been a major destination country for trafficking of children for the purposes of being used as camel jockeys, the Special Rapporteur strongly welcomes the legislative ban on camel jockeys recently passed in Qatar. She personally attended a camel race in Doha and watched how robots are now being used instead of children in camel racing. In Oman, she welcomes the prohibition of using camel jockeys under the age of 15, and takes note of the fact that Oman does not rely on foreign children to be used as camel jockeys. The Special Rapporteur was informed that camel racing is not practised in Bahrain.

80. The Special Rapporteur was moreover informed that cases of trafficked children are found in all categories of vulnerable groups as defined in this report. This is reportedly facilitated by the falsification of children’s documents in order to obtain their visas and work permits. She also received specific information of cases of trafficked children in the informal sector, in agriculture, and in Oman also in fishing. Moreover, she received information on how legislation preventing the hiring of housemaids below a certain age is regularly flouted in these three countries.

4. Other workers

81. Information concerning men and women working in the private sector, particularly in factories, construction, farms and other industries, includes confiscation of identity documents, excessive working hours, dangerous working conditions, difficult living conditions not respecting minimum standards of safety and sanitation, no midday breaks or weekly rest and annual leave, limited freedom of movement, non-payment of wages or reduction in wages as a punishment. The workers are sometimes made to pay for their own medical services for example, and complained of lack of access to health services. Furthermore, despite the existence of a legal framework which is stronger than that existing for domestic workers, those migrant workers are victims of abuse and exploitation, mainly again as a result of the vulnerable status engendered by the sponsorship system and a lack of strict and regular monitoring mechanisms of employment regulations and conditions.

D. Alternative measures

82. Discussions with the various embassies of the major sending countries and members of the civil society confirmed the existence of trafficking in persons in the three countries and the need for certain legal amendments, including a more robust monitoring of the implementation and enforcement of relevant laws and measures.

1. Sending countries

83. Foreign embassies, with varying degrees, attempt to fill in the host Governments’ preventive and protective lacunae through the establishment of various mechanisms of their own. These range from educational and awareness-raising campaigns both in their territories before their citizens migrate as well as in the receiving countries (e.g. Bangladesh and Pakistan), inspections of worksites (e.g. Bangladesh, Egypt, and the Philippines), vetting of labour contracts (e.g. Bangladesh, Egypt, and Pakistan), setting minimum wages for their citizens (e.g. India, Indonesia, and the Philippines), blacklisting recruiting agencies in receiving countries (e.g. India, and the Philippines), advocating ratification of international instruments (e.g. Bangladesh), negotiating and mediating with sponsors and authorities (e.g. Bangladesh, Indonesia, Sri Lanka and the Philippines), visiting detention centres (e.g. Bangladesh, Egypt, India, Nepal, and Pakistan), providing medical, psychological, legal and financial assistance (e.g. Bangladesh and Egypt), and establishing shelters for victims of abuse and exploitation (e.g. Bangladesh, India, Indonesia, Sri Lanka and the Philippines).

84. Some countries have also imposed bans on women, or women of a certain age, from travelling to the receiving countries pursuant to numerous cases and reports of abuse and exploitation, particularly of a sexual nature (e.g. Bangladesh, India and Pakistan). The Special Rapporteur is concerned about these bans as they violate women's freedom of movement, and ultimately force women to migrate illegally, thus rendering them more vulnerable to abuse and exploitation, which in turn fosters the demand for trafficking.

85. The Special Rapporteur is concerned that some countries whose nationals have migrated in large numbers do not have a fully-fledged consular presence in the receiving country (e.g. Sri Lanka only has an honorary consul in Bahrain; Ethiopia has no presence at all in Bahrain and Qatar, and Indonesia is not represented in Oman).

86. Whilst commending and encouraging the sending countries for their activities, the Special Rapporteur wishes to reiterate her support for comprehensive bilateral agreements between sending and receiving countries. Bilateral agreements are desirable for the ends they augur but also for the process they trigger in reassessing and discussing the problems at hand by both parties. Bilateral agreements may play a significant role in, for example, expressing clear commitments to monitor the work of recruiting agencies in the home and host country as well as informing migrant workers about their rights. She therefore welcomes information that Oman, for example, is currently in the process of finalizing a bilateral agreement with India.

2. Civil society

87. The Special Rapporteur commends the work of all members of civil society she met with in Bahrain, Oman and Qatar. She particularly encourages the Migrants Workers Protection Society, an NGO in Bahrain, for its extremely important work in running a shelter for domestic abused female workers. Since April 2005, this shelter has assisted women from Bangladesh, Eritrea, Ethiopia, India, Indonesia, and Sri Lanka.

88. The Special Rapporteur stresses that civil society has a fundamental role in assisting the authorities in their efforts towards combating human trafficking and promoting and protecting the right of trafficked persons. It may also play a significant role in putting the necessary pressure on authorities to fulfil their international obligations to act with due diligence in this regard. She therefore encourages the Governments of Bahrain, Oman and Qatar to foster an environment conducive to an active civil society, and to this end invites the respective Governments to support initiatives taken by the civil society in combating trafficking in persons by, inter alia, entering into consultations with the organizations concerned as relevant.

IV. CONCLUSIONS

89. Bahrain, Oman and Qatar have, with varying degrees of commitment, recognized the existence of trafficking in persons within their borders. Various laws and measures to combat trafficking in persons and to provide for the protection of foreign migrant workers are in place and more are in the process of being elaborated. The respective Governments are, however, still falling short of fulfilling their international obligations to act with due diligence to prevent trafficking, prosecuting and punishing traffickers and to provide trafficked persons with the appropriate remedies and assistance.

90. Bahrain, Oman and Qatar are countries of destination for trafficking in persons for forced labour and sexual exploitation. The main victims are women and girls recruited as domestic workers and entertainers. Other workers, in particular men in the construction industry and in farm work, are also affected by this phenomenon albeit to a lesser extent. Recent legislation in Oman and Qatar concerning child camel jockeys has been effective in addressing the exploitation of children for this purpose. Close monitoring to completely bring an end to the trafficking of children for this purpose is nevertheless imperative.

91. The Special Rapporteur is particularly concerned with the sponsorship system and the climate of abuse and exploitation that this arrangement frequently engenders for migrant workers. Of further concern is the non-applicability of the respective Labour Codes and related laws to domestic workers. Access to justice for foreign migrant workers is inadequate since, for example, legal proceedings are extraordinarily lengthy and workers often have limited access to counsel and interpretation assistance.

92. More efforts are needed to clarify the concept of trafficking in persons to public officials with a view to ensuring that the current legislation is enforced. Sensitization of the general public is also essential in order to eradicate discriminatory attitudes and practices towards migrant workers.

93. The Special Rapporteur supports the adoption of the Gulf Cooperation Council Guiding Principles on combating trafficking and the stronger regional cooperation on trafficking in persons that this will encourage.

94. Finally, it is imperative that anti-trafficking and labour laws are respected and implemented and that decisions regarding violations of these laws are enforced.

V. RECOMMENDATIONS

95. The Special Rapporteur recommends that:

A. Prevention

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and relevant ILO Conventions including Convention No. 97 (1949) on Migration for Employment, and No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers be ratified. Qatar should seriously consider ratifying the Palermo Protocol;

(b) Domestic legislation be meticulously brought in line with the Palermo Protocol and all elements in the trafficking definition be thoroughly reflected;

(c) Labour laws be amended with a view to making them also applicable to domestic workers;

(d) The sponsorship system be abolished and migrant workers allowed to more easily change their employers;

(e) The relevant authorities inspect, in the presence of employers and workers, all migrant workers' contracts, including domestic workers and women who are brought in as entertainers, with a view to ensuring that conditions therein are not conducive to abuse and to ascertain that workers understand and willingly accept the conditions of their contracts. A translated copy of the contract in a language the worker understands should be obligatory;

(f) Governments seek to establish bilateral and multilateral agreements and cooperation programmes with countries of origin and transit to prevent trafficking of persons, especially women and children, and cooperate on investigations, convictions and extradition of criminals. In this framework of cooperation, the Governments could hold regular meetings with foreign embassies to review developments and share information;

(g) Governments seek the assistance and collaborate with specialized agencies including the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the International Organization for Migration and the International Labour Organization to obtain their expert advice on matters relevant to addressing the phenomenon of trafficking in persons, particularly on the human rights aspects of trafficked persons;

(h) Whilst commending Bahrain for its progress in this area, Governments respect their international obligations in creating an enabling environment in which civil society may operate to contribute to the fight against trafficking and the promotion and protection of the human rights of trafficked persons;

(i) All migrant workers receive an orientation session in the sending and receiving countries to inform them about their rights and obligations as employees and residents in the receiving countries, with special attention to the traditions and cultures of the host society;

(j) Recruitment agencies be properly monitored in both sending and receiving countries. Registration of these agencies could be made mandatory and regular and unannounced official on-site inspections be carried out;

(k) Relevant public officials and recruiting agencies be given training on the nature and existence of trafficking in persons, labour laws and the rights and freedoms of foreign migrant workers;

(l) Oman adopt a national plan of action and establish an independent national coordinating mechanism to coordinate inter-governmental discussions and enact measures to combat trafficking in persons and provide for the protection of trafficked persons. Civil society, international organizations and the international community should be consulted in this process.

B. Protection

(m) Screening and identification procedures of trafficked persons in detention centres be systematic. Alternative arrangements, other than deportation or detention centres, should be considered to safely house identified trafficked persons;

(n) Foreign workers be guaranteed the right to an accessible and fair system of justice. Court fees, if at all, should be reasonable, proceedings should be dealt with urgently, interpretation services and legal aid provided and special attention be given to the needs of women and children. Working permits of migrant workers should not be suspended pending legal disputes and the right to find alternative employment during such proceedings should be allowed. The necessary protection of witnesses and trafficked persons, including the right to confidentiality, should be respected;

(o) A comprehensive human rights framework providing for the promotion and protection of the human rights of trafficked persons be established and implemented with a view, inter alia, to encouraging trafficked persons to make formal complaints against their traffickers. The Governments should ensure that trafficked persons are provided with the necessary protection and assistance, including appropriate housing, legal assistance, medical, psychological and material assistance, the right to compensation for damages suffered, safe repatriation or social reintegration as desirable. States should respect their obligations of non-refoulement. Such protection and assistance should not be conditional to their acceptance to testify against the alleged traffickers;

(p) Given that the right to privacy is restricted by mandatory HIV/AIDS testing, public health, criminal and anti-discrimination legislation should prohibit mandatory HIV/AIDS-testing of targeted groups, including migrant workers. When tests are carried out, confidentiality of results must be ensured;

(q) Authorities ensure that embassies are systematically informed when their nationals are being detained, and visits by the relevant consular officials be facilitated. Sending countries should ensure that their embassies in the

receiving States have the necessary resources to carry out such visits, follow up on the cases and provide any necessary assistance;

(r) Mechanisms to monitor the working conditions and compliance of employment contracts of domestic workers in the households of their employers be established. Unannounced house visits and confidential interviews with domestic workers, including at the end of their probationary period, should be carried out;

(s) Mechanisms to monitor the working conditions of migrant workers whose employment is regulated by the Labour Codes, as well as inspection of labour sites, including venues where foreign workers are employed at night, be more systematically and strictly applied. Non-registered labour camps should be shut down or made to register;

(t) Special attention be paid to addressing the particular needs of women and children in the provision of protective measures. Such measures should not infringe on other rights and freedoms, including freedom of movement;

(u) Migrant workers in detention centres be informed of the reasons of their arrest in a language they understand, be provided with legal assistance if requested, be allowed to make a local or international phone call and have access to their embassies;

(v) Governments be extremely vigilant in ensuring that parents and guardians accompanying minors have not received payments or benefits to give their consent to allow minors under their care to be exploited. The best interest of the child should always guide the handling of such cases;

(w) Special attention be paid to detecting minors crossing borders and passing as adults with falsified documents. In such cases, necessary steps should be taken to provide the minors concerned with the necessary protection and assistance, including safe repatriation or social reintegration if repatriation is not in the interest of the minor;

(x) Bahrain no longer postpone the opening of the shelter identified for this purpose and encourages the Government to review the plans communicated to her to limit the migrant women's movement for their own protection. Alternative measures, such as being accompanied by social workers when leaving the shelter, could be envisaged. Oman should seriously consider establishing a shelter to provide trafficked persons with a place of refuge where they can obtain the necessary protection and assistance;

(y) Current discussions in Oman on camel racing will result in raising the minimum age to 18. Moreover, in line with the recommendations of the Committee on the Rights of the Child, the Special Rapporteur calls on the Governments of Oman and Qatar to carry out unannounced inspections at camel races and breeding farms to ensure the proper implementation of the relevant laws.

C. Punishment

(z) The Governments fulfil their international obligations in acting with due diligence to prevent, investigate and punish trafficking in persons in accordance with the provisions delineated in the Palermo Protocol;

(aa) The Governments compile comprehensive statistics on investigations and prosecutions of trafficking-related offences disaggregated by the type of offence, gender and age of victim;

(bb) In harmonizing national legislation with the Palermo Protocol, Bahrain and Oman ensure that all elements of trafficking in persons are defined as crimes;

(cc) The Governments ensure that court decisions and penalties be promptly and strictly enforced. Decisions and sentences concerning human trafficking should be made public;

(dd) The Governments enter into extradition agreements with neighbouring countries, including countries of origin and transit, to coordinate their efforts in combating human trafficking.

* El presente documento, que lleva la signatura del cuarto período de sesiones del Consejo de Derechos Humanos, será examinado por el Consejo en su quinto período de sesiones.

** El resumen del presente informe se distribuye en todos los idiomas. El informe completo que figura en el anexo del resumen se distribuye en el idioma en que se presentó y en árabe.

GE.07-12478 (S) 030507 070507

[1] Gender and Migration in Arab States: The Case of Domestic Workers, ILO, June 2004.

[2] Arab versus Asian migrant workers in the GCC countries, Expert Group Meeting on International Migration and Development in the Arab region: Challenges and Opportunities, Beirut, 15-17 May 2006 (UN/POP/EGM/2006/02).

[3] For links between trafficking in persons and the human rights of migrants, see, for example, E/CN.4/2002/94, paras. 32-40; A/58/275, paras. 10-24; E/CN.4/2005/85, paras. 43 and 44.

[4] The relevant rights include, inter alia, the entitlement of everyone to all the rights and freedoms as delineated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; the right of everyone to the enjoyment of just and favourable conditions of work which ensure remuneration which provides as a minimum fair wages and equal remuneration for work of equal value without distinction of any kind; the right to safe and healthy working conditions, rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays; and the right for no one other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory, or work permits.

[5] Bahrain and Oman have ratified the Convention on the Elimination of Discrimination against Women (CEDAW). They, as well as Qatar, have also ratified the Convention on the Rights of the Child and its two Optional Protocols, as well as the Convention on the Elimination of Racial Discrimination. Bahrain and Qatar have further ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Bahrain has acceded to the ICCPR. Qatar is also in the process of acceding to CEDAW and steps are being taken to study closer the ICCPR with a view to also acceding to that Convention.

[6] Bahrain, Oman and Qatar have ratified the Forced Labour Convention, 1930 (No. 29), the Labour Inspection Convention, 1947 (No. 81), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Bahrain has further ratified the Weekly Rest (Industry) Convention, 1921 (No. 14), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). Bahrain and Oman have ratified the Abolition of Forced Labour Convention, 1957 (No. 105). Qatar and Oman have further ratified the Minimum Age Convention, 1973 (No. 138). The Worst Forms of Child Labour Convention, 1999 (No. 182) has been ratified by all three countries.

[7] Trafficking In Persons Report, Department of State, United States of America, June 2005, p. 63.

[8] See also, Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labour, United States Department of State, 2005.

[9] Discussions are reportedly under way to raise the minimum age to 18.

[10] Trafficking In Persons Report, Department of State, United States of America, June 2006.

[11] Ibid.

[12] See CRC/C/OMN/CO/2, para. 65.

[13] Ibid., para. 62.

[14] See footnote 10 above.

[15] Annual Report on Human Rights and Activities of the Committee, National Human Rights Committee of Qatar, 2005, para. 31.

[16] Efforts of Qatar in Combating Trafficking in Persons, National Office to Combat Trafficking in Persons, Supreme Council of Family Affairs, October 2006, p. 4.

[17] Annual Report on Human Rights ... (see footnote 15 above), p. 54.

[18] Gender and Migration in Arab States ... (see footnote 1 above), p. 29.

[19] CERD/C/BHR/CO/7, paras. 14 and 15.

[20] See also Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect, Amnesty International, May 2005, p. 3.

[21] Annual Report on Human Rights ... (see footnote 15 above), p. 7.