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**MIGRANT WORKERS, PEOPLE TRAFFICKING,
XENOPHOBIA AND HUMAN RIGHTS**

***Report submitted by the co-Rapporteurs
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1. Humankind is faced with a colossal challenge: as the twenty-first century unfolds, the world's population totals over six billion, more than half of which lives in poverty. According to FAO, 800 million people are chronically undernourished. The number of people at risk of descending into poverty and hunger exceeds the number able to escape these twin evils.
2. Societies, particularly in Asia, Africa and Latin America, are witnessing the restriction of their current and future development by diseases such as HIV/AIDS, malaria and tuberculosis. There are also the potentially devastating effects of global warming and climate change to contend with. The damage to ecosystems through desertification and the depletion of water reserves have a particularly adverse impact on less developed regions and countries.
3. Humanity is facing a global crisis produced by deep-seated structural conditions of inequality and poverty that should have been addressed long ago. The expanding use and development of information and communication technologies (ICTs), coupled with the slow transfer of technology to the developing world exacerbate their victims' awareness of this lack of social justice.
4. Few of the United Nations Millennium Development Goals will be met by 2015. One of the reasons for this underachievement is that the fundamental problem of trade imbalance between the developed and the developing world has been avoided in world trade negotiations. Not all world leaders have shown the same levels of commitment to reaching these goals.
5. A major consequence of this global injustice is increasing migration, driven by poverty throughout the world – particularly from South to North.
6. Throughout history, humankind has moved from one place to another, exchanged goods and explored unknown territories and cultures. Much of today's migration stems from the fervent desire of millions of impoverished people to seek opportunities and a better life not available at home.

7. Migration is a response to inequality, poverty and marginalization. The pressures leading to migration are unlikely to diminish. In this context, the increasingly restrictive migration policies of destination countries risk creating exploitation and trafficking.

8. Migration can pose many challenges for those who leave their home country, whether forced to do so or simply in pursuit of a better life. It is important to remember that for many, migration is a successful, empowering experience. Highly-skilled migrants and key professionals, such as doctors, can do well for themselves, but at the cost of creating a shortage of these skills in source countries. Remittances from migrant workers – skilled and unskilled – can be extremely important both to the survival of their families in the source countries, and to the economies of those countries too.

9. However, the sad reality for others is that the migration process leads to gross exploitation and abuse. This is particularly true of migrants who have an undocumented or illegal status, for whom there is often either little legal regulation or poor enforcement of the regulations that do exist. Protection of their interests is dependent upon the goodwill of their employer. The challenge today is how to promote systems at the national level that ensure respect for the rights and human dignity of all migrants. Human rights are universal; the problem is all too often approached as a statistical analysis, without recognition that each and every migrant is an individual human being.

10. Consideration of migrants' human rights is very easily polarized between the perspectives of sending countries and receiving countries. It must be noted, however, that it is very difficult today to categorize countries as one or the other. Rather, in a globalized world, to a greater or lesser extent, all countries may be considered as sending, receiving or transit countries. Thus, all countries have an interest in ensuring that the human rights of migrants are respected and promoted.

11. The management of migration is inherently linked to the concept of State sovereignty. It can be said that States are sovereign, so they have the exclusive right to decide on migration matters, whether it be admission of non-nationals, their stay and employment in the country, or the detention and expulsion of migrants who are illegal or whose lawful authorization to stay has come to an end. This perception or belief is not fundamentally wrong: migration policy, legislation and enforcement remain largely within the sovereign domain of the State. But two aspects have to be highlighted.

12. The first is that many factors exist at the international level which impact both on the rights and duties of States in the field of migration, and on the rights and duties of migrants. There is an increasing number of norms regulating various aspects of migration, which impact on the discretionary power of States.

13. The second is that there is growing recognition of the need to develop cooperative approaches to migration management at the bilateral (common border), regional and international levels. An increasing number of States recognize that it is not sufficient to address individual aspects of international migration in isolation; they must be brought together within a comprehensive framework.

14. Poverty is the breeding ground for human exploitation. Weak legislation and institutions that fail to protect human rights accentuate the problem.

15. Trafficking in persons is the twenty-first century equivalent of slavery: a heinous crime against the dignity and human rights of its victims.

16. Xenophobia, racism and associated forms of intolerance follow in the wake of migration, and violate the human rights and liberties, welfare and dignity of migrant workers - abuses to which they are particularly vulnerable. These evils are present in all societies but are most often linked to rejection and ill-treatment of ethnic, religious or cultural minorities. Ignorance and fundamentalism have too often led to genocide and consequent human tragedies.

17. Although migration may be seen from multiple perspectives, it is generally understood to be a process involving the movement of populations - either within a country or from one country to another - and is a product of social and economic change - past and present - in both countries of origin and destination. Migration in turn leads to broader ethnic and cultural diversity, changing identities and breaking down traditional borders. Migration poses political and organizational challenges, but also creates new development opportunities for societies and economies around the world. In an era of globalization, the twenty-first century has seen the emergence of new incentives for migration. Points of origin, transit and destination for migration flows now coexist, simultaneously, in all of the world's regions.

18. The need to control migration flows has become an urgent political priority in many countries, and is usually addressed unilaterally, without considering the comprehensive, global perspective. Since migration is a continuing process, an effective migration policy requires a detailed analysis of cause and, effect and positive and negative aspects. Discriminatory migration policies - often based on exaggerations about the negative aspects of migration - contribute to xenophobia and expose migrants to severe risks.

19. In spite of the spirit, content, specificity, and precision of the many relevant international conventions and legal instruments, the problems associated with migration are still not fully understood.

20. Numerous conventions exist at the universal and regional levels on the rights of those involved in the migration process. These instruments are spread across various branches of law (for example, human rights and humanitarian law, migrant workers and refugee law). This dispersal of norms contributes to the widespread belief that there are important gaps in the protection of migrants and the regulation of migration. However, this is not true. While there are a handful of rights which are restricted to nationals only, such as the right to vote and stand in elections, the great majority of human rights outlined in the seven core human rights treaties apply to migrants: as far as the law is concerned, migrants are human beings who possess fundamental and inalienable human rights and freedoms. Human rights are also migrants' rights.

21. There is not a single unified instrument that governs the management of migration at the international level. The most comprehensive is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which came into force in July 2003. The Convention reaffirms and re-establishes basic human rights principles and attempts to embody them in an instrument applicable to migrant workers and their families. The Convention applies to all phases of the migration process, and covers both legal and illegal migrants. However, this Convention, although the most comprehensive, is not widely ratified. Currently, it has only 37 States Parties, the majority of whom are "sending" countries.

22. Politically, labour migration continues to be discussed as a sovereignty issue, isolating it from multilateral cooperation.

23. The weakening of borders as a consequence of globalization and large free trade areas raises a social and economic paradox, contrasting on the one hand the ease with which capital is moved (international trade and investments), and on the other, the restrictions placed on labour flows (migrant workers).

24. Many trade liberalization models are designed to expand economic integration processes but have notoriously excluded such topics as labour rights, legal migration, free movement of people and labour migration. Changing demographics in the developed world, with ageing populations and low birth rates, mean that migrants will increasingly be essential to these States' economic and social survival. It can be a mutually beneficial process. Too little consideration is given to the "demand" side of the migration equation.

25. Even though migrant workers contribute significantly to the economies of their countries of destination as well as of origin, their rights are often violated and their labour exploited.

26. The phenomenon of human trafficking, which takes a variety of forms, is first and foremost a criminal activity perpetrated against its victims. Human trafficking is a persistent, ever present violation of individual human rights, and has been categorized as the third most profitable criminal activity just after drugs and arm trafficking. Responses to human trafficking have been under serious consideration by international organizations over the past decade, resulting in the adoption of a number of international instruments, such as the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.

27. While there has been an apparent increase in the trafficking problem over the last two or three years, it remains difficult to make an accurate assessment of its scale. No data based on any scientific methodology exists, so there are no accurate figures available. Due to the clandestine and secretive nature of human trafficking - a form of organized crime - difficulties with data gathering will inevitably persist.

28. Trafficking should not be confused with "smuggling" of human beings. Although these two terms have been used interchangeably, there is a consensus now that they are different. First, trafficking is carried out with the use of coercion, deception, and/or other improper means, whereas smuggling is not - this is a voluntary act on the part of those smuggled. Second, trafficking entails subsequent exploitation of people, while the services of smugglers end when "smuggled" people reach their destination. Third, trafficking can take place both within and across national borders, whereas international movement is required for smuggling. Finally, entry into a State may be legal or illegal in the case of trafficking, whereas smuggling is characterized by illegal entry.

29. The theme of indebtedness runs throughout the techniques used by traffickers. This debt often arises under the pretence of recouping the travel costs incurred in trafficking. Acknowledging that many victims have entered their destination country legally is important, not only to ensure an appropriate response that accords with their entitlements, but also to prevent a misguided diversion into arguments about illegal migration.

30. There is a strong link between people trafficking and organized crime. Knowledge of criminal networks is becoming increasingly integral to understanding human trafficking. Criminal gangs tend to be remarkably resilient. In addition, there are also some indications of

more informal instances of trafficking – in sex trafficking, which often involves a boyfriend or partner figure. Trafficking in children for domestic service often involves a family member or community friend. The child may have been sold into debt bondage by his/her family, which raises serious problems with regard to returning the child to the country of origin. In other cases, cultural practices may prevail whereby a child lives with a relative and performs domestic duties in return for his/her education or food.

31. The methods of recruitment used by traffickers are also diverse, ranging from grooming and befriending through deception about the nature or conditions of work in the country of destination, to outright coercion and violence. A combination of these techniques may be deployed to recruit and maintain control over victims. While in some cases those who organize the victim's transportation continue to maintain direct control in the destination country, in other cases (usually where there is a more complex and organized network involved), victims will be "sold on" to another agent, who will exploit them.

32. One way of analyzing the problem of human trafficking is by examining the underlying purpose that the traffickers intend for a particular victim. The two themes of sexual and labour exploitation are particularly prominent, but it would be a mistake to conceive of the two as being mutually exclusive. Children who are trafficked, regardless of the purpose become extremely vulnerable to sexual exploitation, even though they may not have been trafficked with that as the original intent. Labour exploitation takes place across a range of sectors, notably agriculture, construction, contract cleaning and domestic work. There is also evidence of trafficking for the transplantation of organs and body parts.

33. ILO estimates confirm that trafficking into developed countries predominantly takes place for sexual exploitation, and that some 98 per cent of those involved in prostitution as a result are women. Victims of sexual exploitation often suffer the most horrific and brutal treatment. These are women who would not normally become involved in prostitution unless coerced or under duress; or who give their "consent" only as a consequence of other improper means, through the abuse of their vulnerability. Therefore, consent is irrelevant and is not a factor in identifying a victim of human trafficking.

34. There is also evidence that trafficking in males also occurs for sexual exploitation though less often. Recent studies have shown that forced labour usually takes place in the following sectors: construction, agriculture, contract cleaning and care sectors. In the case of construction, the victims involved are proved to be exclusively male. In agriculture, there is a mixture of men and women involved. In the domestic sector, victims are predominantly women. In the developing world, trafficking and forced labour occur in agriculture, mining and increasingly in manufacturing. While there is no doubt that girl children are trafficked for sexual exploitation, non-governmental organizations (NGOs) suggest that trafficking for the purposes of domestic servitude is also common.

35. Factors such as globalization, poverty, gender inequality and humanitarian crises all impact on the causes of human trafficking. The vulnerability of victims stems from these much broader issues of poverty, lack of opportunity and gender inequality in countries of origin. Trafficked children may come from source countries where civil unrest has orphaned them, so the issue of consent in these cases can be problematic. Debt bondage ensures that poverty persists in the destination country.

36. Drug use can also be a factor that increases victims' vulnerability. A victim of trafficking may be forced to take drugs, to aid the traffickers' control over the victim.

37. Human trafficking, as a form of transnational organized crime, requires bilateral, regional and international cooperation to both reduce it and eradicate it. Joint initiatives between governments and NGOs are needed to assist in the effective prevention and prosecution of traffickers, and the protection of victims.

38. Three key obligations are imposed upon all States, irrespective of their status as source, transit or destination countries: 1) to prohibit and prevent trafficking and related acts; 2) to investigate, prosecute and punish traffickers; and 3) to protect victims of trafficking.

39. Destination and transit countries are not limited to developed countries alone: a wealthy country may be a transit country; a poor one the target destination of traffickers.

40. Although awareness-raising campaigns in source countries can address the process of trafficking, many of them do not cover its causes, such as extreme poverty. These campaigns should aim to enhance people's opportunities, and encourage community action and education. Destination countries should work with local authorities and community organizations in source countries as they are better suited to assess local needs.

41. Awareness campaigns in destination countries should also target the demand for exploitation of human trafficking victims. Awareness-raising should also explain how to migrate legally, including the rights of migrant workers, who are more vulnerable to become victims of human trafficking in destination countries.

42. States should provide and require official registration of newborns free of charge. "Early warning" programmes for humanitarian crises, such as those issued by UNICEF in 2004 in response to the tsunami, are required.

43. Developed countries should provide greater technical assistance to law enforcement agencies in poorer countries so that they can detect and tackle trafficking and other organized crimes more effectively.

44. Restrictions on legal entry divert migration into illegal channels and therefore increase opportunities for traffickers. The development of lawful and managed migration channels, which recognize the essential role that migrant labour plays, is a vital part of any successful anti-trafficking strategy. This can prevent the involvement of traffickers and therefore violations of the human rights of victims.

45. The obligation of States to respect the principle of *non-refoulement* (non-return) extends to cases where persecution is attributed to traffickers if States are unwilling or unable to bring them to justice. The principle of *non-refoulement* also applies to cases where people are likely to face torture, or inhuman or degrading treatment perpetrated by non-State actors. Expulsion of persons to a State where they would be subjected to slavery or forced labour might raise certain issues under the obligation to prohibit torture.

46. Enforcement of the law against trafficking must always make the interests and the needs of the victims a primary consideration, and their protection should be at the heart of any law enforcement measures.

47. The protection of victims of trafficking should be incorporated into, and placed at the heart of, States' legislative frameworks. This requires governments to review immigration laws and policies in the context of impact on the victims of trafficking. The focus should be shifted from immigration control to the prevention of exploitation of migrants and workers, and care of victims. Promotion and protection of workers' rights through enforcement of laws on forced labour, working hours and minimum wages, for instance, reduces incentives for employers to exploit migrants and thus reduces the demand for trafficked people.

48. Bilateral and international programmes are key to the effective protection of victims of human trafficking. It is important to design and execute effective safe return and recovery programmes that involve governments and NGOs at the national and international levels.

49. Detailed measures of protection include, but are not limited to: secure accommodation, access to emergency medical assistance, translation and interpretation services, counselling and provision of information in victims' languages, assistance during judicial proceedings, and access to education for children. Victims lawfully residing in destination countries can receive wider protection than those residing there illegally. Such measures include additional medical assistance and access to employment, vocational training and education.

50. To protect child and adolescent victims of human trafficking, specialized rights-based protection and recovery programmes are needed.

51. Effective investigation into trafficking cases may be regarded as a form of redress for some victims. The right to equal treatment before national courts is established under international human rights law, so States must take positive steps to secure an effective right of access.

52. An integral part of this remedy is the right of victims to participate in investigations and judicial processes against their traffickers.

53. It is clearly of vital importance that strategies are developed to ensure that victims are properly identified. Identification is not only the first step towards generating better intelligence and securing the criminal prosecution of traffickers, it is also essential to ensuring that the human rights of victims are protected. If there are reasonable grounds to believe that a person is a trafficking victim, States should refrain from deporting that person until the identification process is complete. If the age of the victim is uncertain and there are reasonable grounds to believe that the victim is a child, then the authorities must proceed on the basis that it is a child and afford the special protection of the Convention on the Rights of the Child.

54. There are a number of reasons why victims may not wish to identify themselves as such to officials – clearly fear of reprisal from their trafficker or exploiter is significant. Victims who come from different cultural backgrounds may have a distrust of the authorities. Many victims do not want to go home to their source country, as this may involve their family and friends finding out what has happened; and a return to poverty with increased vulnerability, including to re-trafficking.

55. When identified, victims should be promptly informed of their rights. Such information should also be disseminated as widely as possible, in cooperation with human rights organizations and civil society, among those sectors of the population which may include trafficking victims, to encourage them to report cases with confidence.

56. If trafficking victims wish to return to their source countries, as is their right, then voluntary repatriation must be facilitated. Where victims do return to their source countries, destination countries are limited in the measures they can take to support them in their reintegration. They must work primarily through liaison with source countries, and NGOs. The risk of re-trafficking once a victim is returned to a source country can be serious.

57. In too many countries, levels of support to victims is far from adequate. Either through legislation or other means, effective protection of trafficking victims must be put on a far more reliable basis in order to meet human rights obligations. The twin concepts of reflection periods and residence permits are attractive guarantors of such protection and of other support measures. A recovery and reflection period of at least 30 days is needed where there are reasonable grounds to believe that a person is a victim of trafficking. This provides space to recover and decide whether to cooperate with a prosecution. The grant of a recovery and reflection period should not be conditional on a victim's cooperation with investigation or prosecution authorities. Renewable residence permits are an additional means to meet both victims' needs and also the requirements of law enforcement.

58. As destination countries introduce tighter restrictions on inward migration so do the risk of xenophobic reactions from host country populations increase.

59. Xenophobia, exploitation, trafficking and forced labour have risen with regard to the migrant population due to disregard of the importance of labour migration in destination countries.

60. This is in part caused by a fear of the unknown. Racism can be more apparent in homogenous societies than in ethnically diverse communities.

61. The host population may see migrant workers as competing with them for jobs, or through an increase in labour supply from migration, exerting downward pressures on labour conditions and pay.

62. Such fears are fed by unjustifiable and discriminatory immigration controls, particularly if the destination country does not also explain the benefits of migration to its people, such as the filling of gaps in the labour market which would otherwise impede growth or restrict services.

63. Xenophobia, racism and related intolerance exist throughout the world and severely undermine humanity. The results of intolerance and exclusion on the basis of race range from forced migration and relocation to genocide. Even without a system of indicators to quantify the number of victims of xenophobia and racial discrimination, there is sufficient evidence in every region of the globe to demonstrate that the problem is severe.

64. Xenophobia has been with us throughout history, with varying degrees of intensity and a diversity of social dimensions. The creation and activities of political parties and associations promoting racial discrimination and violence against minorities are a cause for serious concern. Xenophobia and racism spread rapidly when advocated by political parties and radical groups. Xenophobes and racists have been able to adapt and insert themselves in democratic institutions in positions of authority and as legitimate public authorities. Political attitudes based on xenophobia and racism help to perpetuate inequality within the social, political and economic structures of nations.

65. The global expansion of new communication technologies such as the Internet provides a platform enabling formerly less visible groups to expand xenophobic, intolerant and racist ideologies and attitudes.

66. Rejection of xenophobia is part of the modern human rights tradition, in which all human beings are equal, irrespective of religion, beliefs, sexual preference, ideas, political opinion or ethnic origin.

67. As a result of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, in 2001, new threats to low-income countries and disadvantaged groups have been identified.

68. The World Conference Declaration noted that the objectives of the "Three Decades for Action to Combat Racism and Racial Discrimination" had not been reached, even though the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance as well as the United Nations Year of Dialogue among Civilizations, both in 2001, had provided an opportunity to generate activity against these phenomena in 2001. Subsequent to the World Conference, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance reported increases in all forms of intolerance in virtually every region of the world.

69. Expanding the economic and social rights of migrants means adapting globalization to ensure equal rights for otherwise marginalized social groups. The objective should be to remedy the adverse consequences of trade liberalization, to make globalization "a positive force for all the world's people", as expressed in the United Nations Millennium Declaration.

70. In this context, the world needs a fresh perspective which takes into account the economic importance of migration and the migrant labour force in economic liberalization agreements so as to improve the living conditions of migrants around the globe.