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SPECIFIC GROUPS AND INDIVIDUALS:

MIGRANT WORKERS

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

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

[30 January 2003]

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

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VIOLATIONS OF MIGRANT WORKERS' RIGHTS

1. Human Rights Advocates (HRA) is concerned with various issues dealing with migrant workers. Of greatest concern are violations of the rights to life and health and work, as established by treaty law.

BORDER DEATHS AND UNIDENTIFIED BODIES

2. Despite increases in border resources and the militarization of border operations, illegal migration has not been deterred. Instead, the Immigration and Naturalization Service ("INS") continues to make record arrests along the U.S./Mexico border.¹ Apprehensions have increased 15% since September 2001.² The glaring contrast in economic opportunities between Mexico and the U.S. and U.S. demand for cheap labor give migrants stark incentive to migrate despite increasingly hazardous routes.

3. Undocumented immigrants continue to die at a rate of about one a day along the U.S. and Mexico border.³ The increase in Tucson, Arizona alone was 133% in 2002. Migrants are often subjected to abuse by smugglers through extortion, death by abandonment, kidnapping, rape and murder. Though we appreciate the observations and recommendations made by the Special Rapporteur with regard to migrant deaths, it is important to recognize deaths attributable to government policies which intentionally force migrants into treacherous terrain and their obligation to vigorously prosecute traffickers and border vigilantes.

4. Since May 2002, at least 427 Cubans have been intercepted on the high seas. Last year between May and August, the U.S. Coast Guard intercepted 1,650 Cubans. A 24-foot vessel, reported missing in August 2002, was built to hold no more than 8, but was believed to have had 20-25 Cuban migrants and is thought to be linked to 4 bodies found off Florida's East Coast. The loss of life could rival the worse Cuban smuggling disaster in history—the disappearance of 29 migrants in November 2001.⁴

5. Small, poorly built boats are routinely used to transport migrants from Haiti to the Bahamas or the U.S. In May 2002, the U.S. Coast Guard rescued a boat carrying about 100 Haitian migrants when it capsized 6 miles west of Great Inagua, Bahamas. The crew rescued 73 survivors, 13 deceased migrants were recovered. In 2003, the U.S. Coast Guard made 1,979 interdictions of migrants including persons from Haiti, the Dominican Republic, Cuba, China, Mexico, Ecuador and others.⁵

1 International Migration, Racism, Discrimination and Xenophobia, International Labor Organization, August 2001.

2 *Southwest Border Apprehensions*, Immigration & Naturalization Service website, www.ins.usdoj.gov/graphics/aboutins/statistics/msrsep02/SWBORD.HTM

3 Dane Schiller, *Death Still Stalks Those Crossing the Border*, San Antonio-Express, January 9, 2003.

4 Laurin Sellers, *Four Bodies Found at Sea May be Cuban Refugees*, Sun-Sentinel.com, August 30, 2002.

5 FY 2003 Maritime Migration Flow Statistics, www.uscg.mil/hq/g-o/g-opl/mle/amiostats1.htm#2000.

6. In Western Europe, 300,000-500,000 migrants from North Africa, Eastern Europe & Turkey arrive yearly via the Straits of Gibraltar.⁶ 730 people have been rescued in the Strait since 2000 and

several thousand people are likely to have drowned. Despite tougher immigration laws, the flood of immigrants increased by about 30% in 2002.⁷

7. In September, 2002, a small fishing boat packed with an estimated 130 migrants from Liberia sank off of Sicily. At least 30 died.⁸ In late November 2002, a shipping vessel bound for Italy sank off the Libyan coast leaving 12 dead, 56 missing.⁹

8. On January 16, 2003 at least 16 people drowned off the Tangierian coast while trying to enter Spain in an inflatable boat. Six other migrants were found dead off the Italian coast.¹⁰ Thirteen bodies washed up on the shore near Tarifa in August 2002 after traffickers forced their passengers to jump into the water some distance from the beach. All were Moroccan and sub-Saharan Africans.¹¹

9. In the last seven years, the numbers arrested by Turkish authorities for illegal entry and exit has increased 900%.¹² In one day, Turkish authorities found the bodies of 24 illegal migrants. Among them were nine children, found frozen to death with their family on the mountainous Turkish-Iranian border. On the same day, five Pakistanis were found drowned on the shore of Turkey's Aegean coast.

10. Northeastern Mali is the starting point for illegal migrants from all over Africa desperate to get to Europe and willing to risk crossing the hazardous Sahara Desert to do so. Once in the desert, they are at the mercy of drivers who threaten to abandon them if they don't hand over all their possessions. If vehicles break down, passengers usually die of thirst in the desert and their remains may be lost forever in the desert sands. In 2002, 17 young Nigerians were rescued from a stranded vehicle—many of their fellow travellers had died of hunger and thirst.¹³

VIOLATION OF WORKPLACE RIGHTS

11. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("Convention") provides migrant workers with various rights including protection from slavery; protection from threats and intimidation; hours of work, weekly rest, safety, and health; and the right to join unions. Many of these rights are also protected under the ICESCR and ICCPR and the ILO Conventions 97 and 143. While HRA welcomes the entering into force of the Convention, few countries have ratified it and many continue to leave migrants unprotected.

12. In the U.S. for example, there are few protections in place for migrant workers and migrants often risk deportation for exercising their rights. Migrants are often unprotected by domestic labor

⁶ Anton La Guardia, *Trade in Human Misery Worth 8 Billion Pounds, Afghan Refugees are Small Part of Huge Global Problem*, The Daily Telegraph (London), August 30, 2001.

⁷ Reuters, *Bodies of 12 Immigrants Found off Sicily, Raising Toll to 27*, New York Times, September 19, 2002.

⁸ Frank Bruni, *Off Sicily, Tide of Bodies Roils the Debate Over Immigrants*, New York Times, September 23, 2002.

⁹ Frank Bruni, *Perilous Immigrant Crossings Frustrate Italy*, New York Times, December 2, 2002.

¹⁰ *Migrants Die Trying to Reach Europe*, BBC News, January 19, 2003.

¹¹ Spain to Use Radar to Stop Immigrants, Reuters, August 14, 2002.

¹² Dorian Jones, *Turkey's Booming People Trade*, BBC News, June 5, 2002.

¹³ Joan Baxter, *Mali's Dangerous Desert Gateway*, BBC News, June 25, 2002.

and employment laws, leaving them virtually defenseless against violations of basic rights and deportations, and with no alternative but to accept low wages and appalling working conditions.

13. Employers are increasingly fighting unionization campaigns by firing or threatening undocumented workers, thwarting labor organizers and defying immigration law. Meanwhile, retaliatory firings increase, as unions aggressively recruit immigrants and the economy employs more undocumented workers. The U.S. Supreme Court recently approved of this practice by employers by holding that undocumented migrant workers could be fired for unionization efforts without liability to the employer.¹⁴ This decision violates Article 22 of the ICCPR and enables employers to exploit migrant workers and fire them once they begin to demand better working conditions.

14. Agriculture is one of the most hazardous occupations in the U.S. The death rate among workers is 20.9 workers per 100,000 workers, compared to the average for all industries of 3.9 workers.¹⁵ About 1.8 million workers work directly on crops that are treated with pesticides.¹⁶ Exposure to some pesticides causes both acute and long-term effects. Living conditions compound health problems. At least 800,000 farm workers across the country lack adequate shelter and camp in parking lots, cars, trailers, garages, tool sheds, caves, and tents.¹⁷ Fines issued to U.S. farms violating laws dealing with pesticide abuses are few and ineffective, as they are very low and employers can afford to continue violations. Enforcement of laws is weakest in areas of high pesticide use.

15. Migrant sweatshop workers both in the U.S. and abroad are subjected to violations of workplace rights. Seven-day work weeks, extremely low wages and eighty-hour working weeks are common.¹⁸ The health and safety of workers, mostly women, is constantly undermined. Women are discriminated against and harassed, sometimes sexually, and there is evidence of bonded and child labor in many countries.¹⁹

16. Canada's guest-worker program, though highly regarded, has received complaints of harsh treatment of migrants and poor living conditions. Mexican farmworkers are forced to spray pesticides without protection, live in overcrowded buildings, and put in long hours and 6 ½ workweeks without overtime pay. Additionally, Mexican officials say that some workers' paychecks and tax refunds, totaling millions, were never received.²⁰ The guest-worker program is understaffed and the task of protecting workers falls mostly to Mexico. Some Canadian unions have taken up the workers' cause, but are hindered by Canadian laws which do not offer labor protections to agricultural workers.

14 Hoffman Plastic Compounds, Inc. v. National Labor Relations Board, 535 U.S. 137; 122 S. Ct. 1275 (2002).

15 Californians for Pesticide Reform et al., *Fields of Poison: California Farm workers and Pesticides*, (1999).

16 United States General Accounting Office, *Pesticides: Improvements Needed to Ensure the Safety of Farm workers and Their Children*, (2000).

17 Californians for Pesticide Reform et al., *Fields of Poison: California Farm workers and Pesticides*, (1999).

18 UNITE, Stop Sweatshops Campaign. Available at <http://www.uniteunion.org/sweatshops/whatis/whatis.html>

19 Clean Clothes Campaign, available at: <http://www.cleanclothes.org/>

20 Diane Lindquist, *Abuses cited in Canada's Guest-Worker Program*, Copley News Service, July 16, 2001.

17. In the Dominican Republic, Haitian sugar-cane cutters work in conditions comparable to slavery.²¹ Cane cutters are victims of an array of abuses by authorities including abusive treatment, massive expulsions, exploitation, deplorable living conditions, and failure to recognize labor rights.²²

18. To accommodate the shortage of labor caused by the removal of Palestinians from the labor force, Israel has become more dependent on overseas workers. About 12 percent of Israel's workers are not citizens.²³ One of the primary controls on foreign labor makes work permits the property of the employer, making workers illegal aliens if they quit their jobs. This leads to greater exploitation of workers. Recently, there have been reports of slavery-like conditions, failure to pay workers for work performed and of beatings by employers in 30 Chinese manpower companies operating in Israel.²⁴

RECOMMENDATIONS

19. Human Rights Advocates recommends that the Commission continue to work toward saving the lives of migrants and addressing workplace violations of rights by asking the Special Rapporteur to::

- Continue to focus on the individual rights of migrants to life, health and the various workplace rights guaranteed in the Convention.
- Work with governments to address the issue of trafficking by encouraging governments to increase penalties and allocate more resources to this issue, as well as assess what policies are putting migrants in harms way.
- Encourage governments to implement the rights and duties set out in the Convention and other treaties.
- Work with the Sub-Commission with regard to the transnational corporation code of conduct, the role of government in protecting migrant worker rights and policies that do not encourage development in sending nations.

21 Marie Kennedy & Chris Tilly, *Haiti in 2001: Political Deadlock, Economic Crisis*, Dollars & Sense, November 1, 2001.

22 Inter-American Commission on Human Rights, *Country Report: Dominican Republic*, Chapter IX (1999).

23 Joshua Mitnick, *Israel's Foreign Laborers Become an Issue as Unemployment Rises*, Bloomberg News, August 30, 2001.

24 Ruth Sinai, *Chinese Worker Alleges Beating, Work Without Pay*, Ha'aretz, July 8, 2002.