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SPECIFIC GROUPS AND INDIVIDUALS

Written statement*/ submitted by Human Rights Watch,
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.

[5 January 2001]

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

Migrants and migrant workers

Western Europe

Migrants escaping persecution and poverty in their home countries are routinely subjected to discrimination in the administration of justice, employment, education, and health care in Western Europe.

Debates about immigration and asylum policy in Western Europe have been characterized by anti-immigrant political rhetoric and accompanied by a troubling rise in incidents of racist and xenophobic violence targeting migrants and asylum seekers. Undocumented migrants, in particular, suffer grievous abuses as a result of both government policy and neglect. Due to their irregular status and fear of deportation, undocumented migrants rarely seek recourse for acts of violence committed against them, guaranteeing impunity for those responsible for racist violence.

Undocumented migrants awaiting deportation are often held in appalling conditions in special detention centers for foreigners. In Greece, for example, undocumented migrants are held for months—with no certainty when they will be released—in severely overcrowded facilities with inadequate sleeping accommodations, inadequate food, no access to fresh air or exercise, and limited access to health care. Detainees are also subject to physical abuse in the process of deportation. Such conditions—coupled with lengthy periods of detention—can amount to cruel, inhuman, or degrading treatment.

Western European countries routinely deny undocumented migrants and their children access to education and health care or require staff to report to the police when undocumented migrants do seek such services. These laws violate the 1989 Convention on the Rights of the Child and can seriously threaten the right to life and health of migrants requiring hospital care. Migrants with valid documentation often face years of waiting and numerous bureaucratic obstacles before they can be reunited with their families. These policies violate the internationally recognized right to family life.

Due to many countries' "zero immigration" policies—in direct conflict with Western Europe's admitted need for migrant labor—migrants and asylum seekers seeking access to European Union (E.U.) countries often resort to clandestine means of entering, leaving themselves vulnerable to trafficking and smuggling rings. Women migrants, in particular, suffer double discrimination as victims of trafficking, often for forced prostitution. As undocumented migrants they are automatically subject to deportation for entering a country illegally and many suffer physical and sexual violence at the hands of traffickers and their networks. Women migrants who work as domestics in households often endure abusive conditions that include severe isolation, round-the-clock working hours, little or no pay, and verbal and physical abuse, including sexual violence. E.U. governments now view human trafficking and smuggling as two of the most serious aspects of transnational crime. Efforts to curb these practices, however, emphasize controlling migration and keeping people out, rather protecting human rights and upholding the right to seek and enjoy asylum.

Labor rights violations against migrants are common in Western Europe. Migrants with valid work permits often suffer discrimination in employment practices in violation of international and E.U. standards. Undocumented migrants endure dangerous work conditions, low wages, and long hours in labor sectors where nationals refuse to work. They have little recourse to challenge labor law violations as a result of their irregular status, thus employers abuse undocumented migrants with impunity.

Human Rights Watch urges all U.N. member states to ratify without delay the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Human Rights Watch also urges that the promotion and protection of migrant and refugee rights be a focus of the 2001 U.N. World Conference Against Racism.

Middle East and North Africa

Migrants in the Middle East and North Africa enjoy few internationally recognized workers' rights, particularly in states in the Persian Gulf where large numbers of foreigners are employed. According to the annual report of the International Labour Organization released in May 2000, Oman, Saudi Arabia, and the United Arab Emirates are among the few countries in the world that explicitly prohibit any kind of labor organizing, while Bahrain and Qatar allow only committees or councils "whose freedom of action is tightly constrained and which therefore do not have attributes of independent workers' organizations."

In Saudi Arabia, about 69 percent of the workforce of 7.2 million is composed of foreigners, including 1.2 million Egyptians and 1.2 million Indians. Undocumented workers include those who remain after the expiration of work visas or after entering the Kingdom to perform the haj or umra. Migrants have long been subjected to restrictions such as the surrender of passports to Saudi sponsors, limitations on freedom of movement, prohibitions on trade union organizing, and lack of access to legal representation in cases of arrest. Following the beheading of an Indonesian domestic worker, Warni Samiran Audi, on June 19, 2000, without officially informing the Indonesian embassy, nongovernmental organizations in Indonesia pressed the government for a three month hiatus in sending women workers to Saudi Arabia. In August 2000, twenty-two groups demonstrated at the Manpower Ministry in Jakarta, demanding that the government educate women about their rights prior to their leaving the country, and reach an agreement with Saudi authorities that would guarantee protection for the workers against abuse and the availability of legal remedies.

In the United Arab Emirates (UAE), foreigners comprise about 70 percent of the population of 2.76 million and 90 percent of the labor force. Workers do not have the right to organize trade unions, to strike, or to bargain collectively, and face deportation if they carry out such activities. Domestic and agricultural workers are excluded from protection under the labor law, and there are continuing reports of physical abuse of women domestics and withholding of their wages. Migrant workers also face corporal and capital punishment following unfair trials. UAE Labor and Social Affairs Minister Humaid al-Tayer announced in September 2000 that employment visas would be issued "only to those who possess at least secondary education." The new measure is expected to affect adversely mainly South Asians, who comprised the largest number of unskilled workers in the Emirates.

In Kuwait, over one million foreign workers have little legal protection against abusive practices of employers, and women domestic workers are excluded from the labor law, increasing their vulnerability to physical and sexual abuse. In March 2000, the Indian government stopped issuing immigration clearances for domestic workers in Kuwait due to reported abuses.

Protection of refugees and asylum seekers in Western Europe

Fifty years after the establishment of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the 1951 Convention Relating to the Status of Refugees (Refugee Convention), those western states primarily responsible for setting up the international refugee protection regime are now trying to dismantle it. Governments in Western Europe have led the charge to weaken international refugee protection, erecting a barrage of barriers that obstruct the right to seek and enjoy asylum and diminish the quality of protection for those who do reach Western Europe. The harmonization of E.U. asylum and immigration policy over the past ten to fifteen years has resulted in a lowering of refugee protection towards the lowest common denominator, with diminishing regard for the human rights of refugees and asylum seekers.

Through a series of restrictive policies, including visa requirements for nationals of common refugee-producing countries; carrier sanctions imposing heavy fines on airlines and other transport companies who transport undocumented asylum seekers and migrants; and the posting of immigration officers to assist airlines in pre-departure checks in refugee-producing countries, E.U. governments have systematically obstructed the right of any individual to leave their country freely and seek asylum.

Western European governments have also sought to shift responsibility for asylum seekers onto third countries through so-called “safe third country” policies, whereby any E.U. state can refuse to consider the asylum application of an individual who has transited through a presumed “safe” country en route to their country of destination. Governments have signed readmission agreements with common transit countries in order to return asylum seekers. In a further retraction on their protection obligations for refugees, E.U. governments have given only cursory consideration to asylum applicants from nationals of countries whom they consider to be “safe” – this includes all E.U. member states as well as a number of other countries with well-documented human rights problems. The so-called “safe country of origin” policies severely compromise the protection of refugees. Without a substantial review of their applications, asylum seekers could be returned to countries where their life and freedom is threatened in violation of the fundamental principle of *non-refoulement*.

Finally, Western European governments have weakened their obligations under the 1951 Refugee Convention through overly restrictive interpretations of the refugee definition that have excluded many people in need of refugee protection; by the substitution of full refugee convention protection with subsidiary forms of protection; and most recently with proposals by several governments, including Austria and the United Kingdom, to revise the Convention in order to make it “more relevant” to modern day migration challenges.

Human Rights Watch calls on the Commission to urge member states to use the opportunity of the fiftieth anniversary of UNHCR and the 1951 Refugee Convention to reaffirm their commitment to protecting refugees and upholding their obligations under the Refugee Convention and to reverse the negative trends in refugee protection of the past years.
