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COMMISSION ON HUMAN RIGHTS
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Agenda item 14 (a)

SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

**Algeria*, Argentina, Armenia, Bangladesh*, Bolivia*, Bosnia and Herzegovina*,
Brazil, Burkina Faso, Chile*, Ecuador, Egypt, El Salvador*, Ethiopia,
Guatemala, Honduras, Indonesia, Kenya, Mexico, Morocco*, Paraguay, Peru,
Philippines*, Senegal*, Serbia and Montenegro*, Sri Lanka, Tunisia*, Turkey*,
Ukraine, United Republic of Tanzania* and Uruguay*: draft resolution**

2005/... Human rights of migrants

The Commission on Human Rights,

Reaffirming the Universal Declaration of Human Rights, which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Recalling its resolution 2004/53 of 20 April 2004, taking note of General Assembly resolution 59/194 of 20 December 2004 and recalling Assembly resolution 40/144 of 13 December 1985, by which it approved the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live,

* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Considering that every State party to the International Covenant on Civil and Political Rights must ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and that every State party to the International Covenant on Economic, Social and Cultural Rights has undertaken to guarantee the exercise of all rights enunciated in that Covenant without discrimination of any kind, including in particular on the basis of national origin,

Reaffirming the provisions concerning migrants adopted by the World Conference on Human Rights, the International Conference on Population and Development, the World Summit for Social Development, the Fourth World Conference on Women and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and expressing its satisfaction at the important recommendations made for the development of international and national strategies for the protection of migrants and for the design of migration policies that fully respect the human rights of migrants,

Recalling the renewed commitment made in the United Nations Millennium Declaration to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in all societies and to promote greater harmony and tolerance,

Recalling also the judgement of the International Court of Justice of 27 June 2001 and advisory opinions OC 16/99 of 1 October 1999 and OC 18/03 of 17 September 2003, issued by the Inter-American Court of Human Rights, on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law and on the Juridical Condition and Rights of Undocumented Migrants, respectively,

Taking note of the judgement of the International Court of Justice of 31 March 2004 in the *Avena and Other Mexican Nationals* case (*Mexico v. United States of America*) and recalling the obligations of States reaffirmed therein,

Aware of the increasing number of migrants worldwide, and bearing in mind the situation of vulnerability in which migrants and their families frequently find themselves, owing, inter alia, to their absence from their States of origin and to the difficulties they encounter

because of differences of language, custom and culture, as well as the economic and social difficulties and obstacles to the return of migrants, especially for those who are undocumented or in an irregular migratory situation, to their States of origin,

Concerned at the large and growing number of migrants, especially women and children, who attempt to cross international borders without the required travel documents, which places these migrants in a particularly vulnerable situation, and recognizing the obligation of States to respect the human rights of these migrants,

Deeply concerned at the manifestations of violence, racism, racial discrimination, xenophobia and other forms of intolerance and inhuman and degrading treatment against migrants, especially women and children, in different parts of the world,

Concerned also that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has indicated the appearance of new forms of discrimination targeting migrants, among other groups,

Recognizing the increasing participation of women in international migration movements,

Recognizing also the positive and diverse contributions that migrants make to host and origin societies, and the efforts that some host countries undertake to integrate migrants and their families,

Highlighting the importance of creating conditions that favour greater harmony, tolerance and respect between migrants and the rest of society in the countries in which they find themselves, in order to eliminate manifestations of racism and xenophobia against migrants and members of their families,

Bearing in mind the mandate of the Special Rapporteur on the human rights of migrants contained in its resolution 1999/44 of 27 April 1999,

Encouraged by the increasing interest of the international community in the effective and full protection of the human rights of all migrants, and underlining the need to make further efforts to ensure respect for the human rights and fundamental freedoms of all migrants,

Emphasizing the global character of the migratory phenomenon, the importance of international, regional and bilateral cooperation and the need to protect human rights of migrants, particularly at a time in which migration flows have increased in the globalized economy and take place in a context of new security concerns,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, as well as the full respect of human rights and fundamental freedoms of migrants,

Resolved to ensure respect for the human rights and fundamental freedoms of all migrants,

1. *Strongly condemns* the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, and urges States to apply the existing laws when xenophobic or intolerant acts or manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts, and calls upon States to implement fully the commitments and recommendations relating to the promotion and protection of human rights of migrants contained in the Durban Declaration and Programme of Action through, inter alia, the adoption of national plans of action, as recommended by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;

2. *Also strongly condemns* all forms of racial discrimination and xenophobia related to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public;

3. *Welcomes* the active role played by governmental and non-governmental organizations in combating racism and xenophobia and assisting victims of racist acts, including migrant victims;

4. *Calls upon* all States to consider reviewing and, where necessary, revising immigration policies with a view to eliminating all discriminatory practices against migrants and their families and to provide specialized training for government policy-making and law

enforcement, migration and other concerned officials, including in cooperation with non-governmental organizations and civil society, thus underlining the importance of effective action to create conditions that foster greater harmony and tolerance within societies;

5. *Requests* States effectively to promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their migratory status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, which may include the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and other relevant human rights instruments, norms and standards;

6. *Requests* all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon and to give the necessary relevance to international, regional and bilateral cooperation in this field, with a view to addressing, in a comprehensive manner, its causes and consequences and granting priority to the protection of human rights of migrants;

7. *Reaffirms emphatically* the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, particularly with regard to the right of foreign nationals, regardless of their migratory status, to communicate with a consular official of their own State in the case of detention, and the obligation of the State in whose territory the detention occurs to inform the foreign national of that right;

8. *Expresses concern* about the legislation and the measures adopted by some States that restrict the human rights and fundamental freedoms of migrants;

9. *Welcomes* immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious and tolerant environment, and encourages States to consider the possibility of adopting these types of programmes;

10. *Calls upon* States to facilitate family reunification in an expeditious and effective manner, with due regard to applicable laws, as such reunification has a positive effect on the integration of migrants;

11. *Encourages* all States to apply a gender perspective in developing international migration policies and programmes in order to adopt the necessary measures to better protect women and girls against dangers and abuse during migration;

12. *Encourages* States of origin to promote and protect the human rights of those families of migrant workers that remain in the countries of origin, paying particular attention to children and adolescents whose parents have emigrated, and encourages international organizations to consider supporting States in this regard;

13. *Requests* all States, in conformity with national legislation and applicable international legal instruments to which they are party, firmly to prosecute violations of labour law with regard to migrant workers' conditions of work, inter alia those related to their remuneration and conditions of health, safety at work and the right to freedom of association;

14. *Encourages* all States to remove unlawful obstacles that may prevent the safe, unrestricted and expeditious transfer of earnings, assets and pensions of migrants to their country of origin or to any other countries, in conformity with applicable legislation, and to consider, as appropriate, measures to solve other problems that may impede such transfers;

15. *Urges* all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants and to take actions to prevent and punish any form of illegal deprivation of liberty of migrants by individuals or groups;

16. *Urges* all States to promote and adopt effective measures to enforce their immigration laws and border controls only by means of duly authorized and trained government officials and to prevent private persons or groups from carrying out conduct reserved for such government officials, as well as to prosecute and punish those violations of the law that may result from such conduct;

17. *Calls upon* States to observe national legislation and applicable international legal instruments to which they are party when enacting national security measures, in order to respect the human rights of migrants;

18. *Requests* States to adopt concrete measures in order to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants and their families respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants and their families, inter alia, arbitrary detention, torture and violations of the right to life, including extrajudicial executions during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

19. *Encourages* States that have not yet done so to enact domestic legislation and to take further effective measures to combat and prosecute international trafficking and smuggling of migrants, which should take into account, in particular, trafficking and smuggling that endanger the lives of migrants or entail different forms of servitude or exploitation, such as any form of debt bondage, slavery and sexual exploitation or forced labour, and also encourages States to strengthen international cooperation to combat such trafficking and smuggling;

20. *Also encourages* States, in cooperation with non-governmental organizations, to undertake information campaigns aimed at clarifying opportunities, limitations and rights in the event of migration, so as to enable everyone, in particular women, to make informed decisions and to prevent them from becoming victims of trafficking and utilizing dangerous means of access that put their lives and physical integrity at risk;

21. *Calls upon* States to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, ensuring that the best interests of the children are a primary consideration, and underlines the importance of reuniting them with their parents, when possible, and encourages the relevant United Nations bodies, within the framework of their respective mandates, to pay special attention to the conditions of migrant children in all States and, where necessary, to put forward recommendations to strengthen their

protection, especially against sexual abuse, sexual exploitation, threat or use of force or other forms of coercion, including coercion into begging, drug dealing, in particular by national or transnational organized crime groups;

22. *Encourages* States to consider participating in international and regional dialogues on migration that include sending and receiving countries, as well as countries of transit, and invites them to consider negotiating bilateral and regional agreements on migrant workers in the framework of applicable human rights law and designing and implementing programmes with States of other regions to protect the rights of migrants;

23. *Calls upon* States and intergovernmental and non-governmental organizations to observe on 18 December of each year International Migrants Day, proclaimed by the General Assembly, by disseminating, inter alia, information on the human rights and fundamental freedoms of migrants and on their economic, social and cultural contributions to their host and home countries, and by sharing experiences and adopting measures to ensure their protection and to promote greater harmony between migrants and the societies in which they live;

24. *Decides* to extend for a period of three years the mandate of the Special Rapporteur on the human rights of migrants;

25. *Takes note with appreciation* of the report of the Special Rapporteur on the human rights of migrants (E/CN.4/2005/85 and Corr.1 and Add.1-4) and her interim report to the General Assembly (59/377), both submitted pursuant to Commission resolution 2004/53 of 20 April 2004, especially regarding the work she has undertaken, including on the aspect of migrant domestic workers, and takes note of her observations and recommendations;

26. *Requests* all relevant mechanisms to cooperate with the Special Rapporteur;

27. *Encourages* States to consider the implementation of the recommendations contained in the report of the Special Rapporteur, to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, give serious consideration to her requests to visit their countries, and notes with appreciation that some Governments have already invited the Special Rapporteur;

28. *Encourages* the Special Rapporteur to continue to examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights of persons belonging to this large vulnerable group, including obstacles to and difficulties for the return of migrants who are undocumented or in an irregular situation, taking into account bilateral and regional initiatives and arrangements that aim at addressing, inter alia, the return and reinsertion of those migrants, in conformity with her mandate as contained in Commission resolution 1999/44;

29. *Requests* the Special Rapporteur, in carrying out her mandate and within the framework of the Universal Declaration of Human Rights and all other international human rights instruments, to request, receive and exchange information on violations of the human rights of migrants, wherever they may occur, from Governments, treaty bodies, specialized agencies and the special mechanisms of the Commission, as well as from intergovernmental organizations, other competent organizations of the United Nations system and non-governmental organizations, including migrants' organizations, and to respond effectively to such information, as well as to continue, as part of the Rapporteur's activities, her programme of visits, which contribute to improving the protection afforded to the human rights of migrants and to the broad and full implementation of all the aspects of her mandate;

30. *Also requests* the Special Rapporteur to report to the General Assembly at its sixtieth session and to the Commission at its sixty-second session and to include in her annual reports a chapter on the impact of the legislation and the measures adopted by some States that restrict the human rights and fundamental freedoms of migrants;

31. *Requests* the United Nations High Commissioner for Human Rights and her Office, as well as the Special Rapporteur, to ensure that the perspective of human rights of migrants is included in the ongoing analysis on migration and development within the United Nations system, including at the high-level dialogue that will be held during the sixty-first session of the General Assembly, pursuant to resolution 58/208 of 23 December 2003;

32. *Requests* the Secretary-General to give the Special Rapporteur all the necessary human and financial assistance for the fulfilment of her mandate;

33. *Encourages* States parties to implement fully the United Nations Convention against Transnational Organized Crime and the two additional protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and urges States that have not done so to consider ratifying them;

34. *Decides* to examine this question further at its sixty-second session under the same agenda item;

35. *Recommends* the following draft decision to the Economic and Social Council for adoption:

“The Economic and Social Council, taking note of Commission on Human Rights resolution 2005/... of ... April 2005, approves the decision of the Commission to extend the mandate of the Special Rapporteur on the human rights of migrants for a period of three years.

“It also endorses the Commission’s request to the Secretary-General to give the Special Rapporteur all the necessary human and financial assistance for the fulfilment of her mandate.”
