**UN General Assembly Thematic Report October 2016:**

**“FOAA for Workers - The People Left Behind”**

**Expert Consultation – 5-6 May 2016, Kenya**

# Concept Note

## A. Introduction and Background

The globalization of the world economy in the past half-century has contributed to a dramatic rise in the power of large multinational corporations and has concentrated wealth in fewer hands. State power to regulate these business entities, meanwhile, has been simultaneously eroded and co-opted by elite economic actors themselves.

Unconstrained power – whether public or private in origin – is now, more than ever, a critical threat to the protection of human rights. International trade and investment agreements have promoted the deregulation of labor markets, particularly in export processing zones, and the labour protections in some of these agreements have been largely ineffective in guaranteeing these rights in practice.

This power shift has created a challenging environment for civil society and the enforcement of human rights in general, as Special Rapporteur Maina Kiai has documented in his two most recent reports to the United Nations. Activists working on issues surrounding natural resource exploitation, for example, often face severe challenges to the exercise of their rights to freedom of peaceful assembly and of association (FOAA rights). This is due not only to the economic might of the corporations they oppose, but also the extent to which States favor these corporations and the lack of an international human rights instrument that binds businesses to respect human rights.

For his next report to the UN General Assembly (October 2016), the Special Rapporteur plans to explore a new dimension of this power shift: its effect on the rights to freedom of peaceful assembly and of association of workers. Specifically, the Special Rapporteur plans to focus on how corporate-led globalization – and the resulting concentration of political and economic power – has created structural barriers to the realization of workers’ FOAA rights. This global lack of access to remedies means disenfranchisement, and for workers, freedom of association and assembly are the means through which once isolated and exploited individual working people can come together and challenge their conditions—and improve them.

The Special Rapporteur is particularly interested in the links between the political, social, and economic exclusion of workers, their associations and trade unions, as expressed in:

1. the limitation and/or criminalization of FOAA in law and in practice (and acquiescence of the state when FOAA breached by state or private actors);
2. the strategy to informalize formal work for the purpose of limiting or excluding workers from the rights of FOAA;
3. the exclusion of workers in the informal economy from legal frameworks recognizing FOAA;
4. the lack of effective global governance of migration, which has led to the exploitation of migrant workers, including trafficking for forced labor; and its special impact on FOAA rights for non-citizens, irregular workers, and vulnerable workers;

The UNSR will explore the interplay between the lack of FOAA rights for workers – particularly vulnerable workers – and the health of FOAA rights within a society as a whole; as well as the gender and racial dimensions of the issue. For example, discrimination against women and gender-based violence occur throughout societies, including at the workplace, and has a chilling effect on FOAA.[[1]](#footnote-1)

**B. The Report**

The UNSR’s report will map the ways in which this power shift has globally undermined workers’ FOAA rights. He acknowledges that in many parts of the world, trade unionists in general – regardless of their sector of work – are at risk of harassment by State and non-State actors simply because of their union activities. In this report, however, he plans to focus on specific categories of people who are even more vulnerable, including:

1. Global Supply Chain (GSC) workers. Global supply chains employ millions of workers and yet are nearly entirely unregulated. Employment is typically contingent and exploitative and their expansion has frequently undermined the exercise of FOAA. In many cases, companies look to cut costs to compete and to maximize profits, putting downward pressure on wages and working conditions, and encouraging corporate actors to seek poorly or unregulated countries and markets, particularly in labour-intensive sectors. Cost pressures from global buyers mean that GSC-related employment is often insecure, involving poor working conditions and frequent rights violations. In Thailand, for example, strict limits on FOAA rights have left workers in the export fishing industry with virtually no recourse for the blatant disregard of employment contracts and wage cuts without explanation. And in Kenya, Kenya Airways has increased the practiced of outsourcing crew and staff, making it more difficult for them to unionize or strike.
2. The increasing number of people performing “Informal Work”. Alarmingly, informal workers are the *majority* of the world’s adult workers and a majority are women. They are also the most excluded workers in virtually every country. Informal work is typically characterized by insecurity, low wages and poor working conditions. Working almost entirely outside the purview of constitutional or labor law protection leaves these workers without basic social benefits such as health care, vacation or sick leave, and pensions -- and without the agency to change or hold accountable those who have power over them.

Employers also use ‘precarious’ forms of work (short-term contracts, outsourcing, and misclassification) to weaken or eliminate the legal relationship between worker and employer ultimately undermining trade union rights, namely the right to freedom of association (including the right to strike) and the right to collective bargaining.

Yet, FOAA rights are a vital tool to challenge inequality of wealth and dysfunctional democracies. For example, In the United States, two of the largest groups of workers historically excluded from important FOA protections in US labor laws are domestic workers and agricultural workers. These are sectors directly implicated in the country’s legacy of slavery and ending their exclusion from FOA protection is an important component of eradicating the enduring legacy of American slavery and its systems of exclusion.

1. Migrant workers. Migrant workers are often concentrated in the informal labor market, while many others migrate legally for work under guest worker programs. In most cases they face especially severe economic exploitation and political disenfranchisement. The vulnerability of migrant workers is exacerbated among women migrants, who are predominant in the informal economy, face multiple layers of discrimination and often have no access to institutional safety nets.

According to the ILO, approximately 150 million people migrate across borders for work each year through legal channels. Hundreds of thousands of “guest workers” in the United States work in such systems, which have been described as ‘close to slavery”. At the same time, millions of foreign workers in the Gulf Cooperation Council (GCC) countries working under the “kefala system” suffer systemic forced labor conditions, as do vulnerable Burmese and Cambodian migrant workers on fishing boats in Thailand, Nepalis working construction projects in Malaysia, and low wage Zimbabwean agricultural workers in South Africa.

Migrant workers within all of these systems face significant obstacles to exercising basic rights, including FOAA rights. They are also often subject to abuse, arrest, and threat of deportation and retaliation for exercising such rights.

1. Domestic Workers. Situated at the intersections of gender, race, migration, and informality, domestic workers are by and large excluded from most labor protections and social welfare benefits. They are also particularly vulnerable to gender-based violence, forced labor and trafficking, while not historically benefiting from TU representation. In contexts where legal protection for FOAA rights do exist, such protection often does not take into account the structural hurdles to the realization of these rights.

**C. Issues for discussion**

1. **Introduction and framing the scope of the report**

* Framing the problem of FOAA rights for workers, and defining the socio-cultural and political/legal/structural barriers to realization of these rights
* Identify the areas of focus in the report
* Explain the significance of these rights to overall UN goals, instruments, and processes; Relate/distinguish FOAA rights in ICCPR and ICECSR, in ILO Conventions in view of para 5(g) of Res 15/21, in Convention on Migrant Workers, etc.
* Describe the obligations of key players in an FOAA context (states, corporations [multinational, local, supply chain companies] under UN norms (broadly); also role of unions/CSOs and other key players (multilateral organizations and donors) in a FOAA context.

1. **Analyzing specific thematic challenges to the exercise of FOAA rights in law, practice, and perception: for informal workers, migrant workers, women and domestic workers.**

*State role:*

* What are the distinct legal approaches/trends to FOAA in particular regions/countries, in context of the challenges presented by globalization?
* Which actors/workers are included or excluded from the right to FOAA in national law? In international law? What obligations do states have to ensure the exercise of FOAA rights for all workers? Should states have positive obligations to take special measures to overcome barriers to FOAA rights in particular contexts? What would these special measures look like?
* In what ways are non-standard employment relationships preventing the exercise of FOAA? Is there any justification for recognizing a new class of worker/work relationship?
* How should the state fulfill its duty to protect individuals from human rights violations by non-state actors in global value chains? What are the barriers to states holding corporations accountable for transnational harms – in the host country – in the home country? How can they be overcome?
* How does closing civic/democratic space in many countries impact the exercise of FOAA rights for workers, and how does the absence of FOAA for workers impact space for civil society as a whole? What can be done to reverse this trend?
* What role does the lack of policy coherence at the national level play in frustrating the exercise of FOAA? Do other areas of law pose risks for the exercise of FOAA?

*Practice and the role of non-State actors:*

* How do FOAA rights for workers function in practice, both where FOAA formally exists and where there is the absence of formal recognition for particular categories of workers, including migrant, domestic worker, informal economy workers, export processing zones. etc.?
* How does the absence of FOAA rights contribute to conditions of income inequality and employment discrimination to worsen, particularly among the most vulnerable sections of the population?
* How should non-state actors best respect FOAA? How do non-state actors fulfill due-diligence responsibilities with regard to FOAA?
* To what extent does the concentration of political and economic power affect the exercise of FOAA?

#### Global role:

* What role does the lack of policy coherence at the international level play in frustrating the exercise of FOAA?
* What role is there, if any, for multi-stakeholder initiatives? What can be learned from initiatives like the Bangladesh Accord for FOAA in supply chains?
* How do we better govern global migration to ensure that migrant workers have access to remedy for human rights violations? How do we best protect workers from retaliation in seeking a remedy? Are there ways of strengthening existing mechanisms to defend FOAA along with consideration of new remedies to address the global disenfranchisement of workers or do we need to set up new, supranational mechanisms? Are special mechanisms at the national and international levels required to protect vulnerable groups?
* What should multilateral institutions do to better protect and promote FOAA for workers?
* How does the global prevalence of barriers to the exercise of FOAA rights impact on international aspirations and hopes for peace, justice, and democracy?

1. **Recommendations**

* Legal framework
* freedom of peaceful assembly
* freedom of association
* Practice
* freedom of peaceful assembly
* freedom of association

1. For example, over 90% of women in Kenya’s export processing centers, and tea and coffee sectors reported experiencing or observing sexual abuse. Ninety-five percent of those who had suffered sexual abuse feared retaliation. In addition, the vast majority noted that promotions were related to some form of sexual relationship with a supervisor. [↑](#footnote-ref-1)