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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement* submitted by Human Rights Advocates (HRA),
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.

[18 February 2008]

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

THE HUMAN RIGHTS OF MIGRANTS

1. With an estimated 200 million migrants worldwide comprising 3% of the global population, there is a pressing need to address the wide-ranging issues that stem from this massive international movement.¹ In particular, the dialogue must focus on the human rights of migrants, since persons traveling outside the borders of their home countries are particularly vulnerable to abuse. Human Rights Advocates would like to call the attention of the Council to violations of the right to life, the right to be free from arbitrary interference with privacy and family, the prohibition on inhumane conditions of detention, and core labor rights.

The Right to Life

2. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”² Article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states that “[t]he right to life of migrant workers and their families shall be protected by law.”³ At its last two sessions, the UN General Assembly adopted a resolution on protection of migrants in which they requested that States “adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including...at borders and migration checkpoints...and to prosecute...violations of the right to life.”⁴
3. Beginning in 1993, the United States changed its border policy by increasing Border Patrol presence at more populated and easily crossed areas of the U.S.-Mexico border.⁵ The Secure Fence Act of October 2006 authorized the construction of 850 miles of additional border fencing.⁶ The flow of migration has adapted by shifting to the more remote areas of the Arizona desert, where migrants are exposed to extremely harsh conditions.
4. There have been more than 4,000 reported migrant deaths at the border since 1993.⁷ Most of these migrant deaths are the result of exposure to extreme conditions or territorial hazards encountered while crossing. Others have been

¹ International Organization for Migration, statistics available at: <http://www.iom.int/jahia/Jahia/pid/254>.

² GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

³ GA res. 45/158, UN GAOR, 45th Sess., UN Doc. A/45/49 (December 18, 1990, entered into force July 1, 2003).

⁴ A/RES/61/165 (23 February 2007), A/C.3/62/L.40/Rev.1 (27 November 2007).

⁵ U.S. Department of Justice, Background to the Office of the Inspector General Investigation, available at: <http://www.usdoj.gov/oig/special/9807/gkp01.htm>.

⁶ 8 U.S.C. §1101.

⁷ Immigrant Solidarity Network, *Fact Sheet on U.S.-Mexico Border*, available at:

<http://www.immigrantsolidarity.org/Documents/DWN/6.%20Real%20Deal%20fact%20sheet%20on%20border.pdf>

killed by violent vigilante groups which have formed in border communities in increasing numbers since 11 September 2001.⁸

5. Violations of the right to life are not limited to the United States. In the EU, a high-technology surveillance system combined with numerous sea patrol operations has forced migrants to take longer and more dangerous routes to access popular EU entry points including the Canary Islands, Lampedusa, Malta, and Samos.⁹ According to an international press review, at least 11,756 migrants have died trying to enter the EU since 1988.¹⁰ East African migrants escaping to Yemen are forced to jump into the Red Sea to avoid security forces' deterrent fire, and it is reported that more than 200 have died en route to Yemen since September 2007.¹¹

Immigration Raids

6. Article 9(1) of the ICCPR states that “[e]veryone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention.” Furthermore, Article 17(1) proclaims that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence....”¹²
7. In General Recommendation XXX specifically addressing discrimination against non-citizens, the Committee on the Elimination of Racial Discrimination clarified that although some differential treatment based on citizenship is permissible, such treatment will constitute impermissible discrimination if it is not in pursuit of and proportionate to a legitimate aim. The Committee went on to recommend that States ensure that non-citizens are not subject to collective expulsions and that States avoid expulsions that would result in disproportionate interference with the right to family life.¹³
8. Under an initiative known as “Operation Return to Sender,” U.S. Immigration and Customs Enforcement rounded up roughly 2,179 non-citizens in a period of 7 weeks in 2006,¹⁴ but the total number of ICE arrests to date is closer to

⁸ For more information on U.S.-Mexico border deaths, see HRA's report to the 4th session of the Human Rights Council, *Migrants and the Right to Life*, available at:

<http://www.humanrightsadvocates.org/UN%20interventions%20list1.htm>.

⁹ Yasha Maccanico, *EU/Africa: Carnage Continues as EU Border Moves South*, available at:

<http://www.statewatch.org/news/2006/sep/Immigration-analysis.pdf> (September 2006).

¹⁰ Fortress Europe, *L'elenco documentato di 11.756 Migranti Morti alle Frontiere UE dal 1988 al 2007*, available at: http://www.infinitoedizioni.it/fileadmin/InfinitoEdizioni/rapporti/pdf_rassegna_1988_2007.pdf

¹¹ Francois-Xavier Trégan, *Yemen: The Silent Calvary of African Migrants*, *Rue89*, 16 December 2007; See also BBC News Online, *African migrants drown off Yemen*, <http://news.bbc.co.uk/2/hi/africa/7147412.stm> (17 December 2007).

¹² GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967)

¹³ U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004).

¹⁴ U.S. Department of Homeland Security, *ICE Apprehends More than 1,000 Criminal Aliens, Gang Members, Fugitives, and Other Immigration Violators in Nationwide Interior Enforcement Operation*, 14 July 2006, available at: http://www.dhs.gov/xnews/releases/press_release_0926.shtm

23,000.¹⁵ Not only are these raids carried out in a discriminatory fashion by targeting Hispanics, they are further tainted by physical violence and theft by ICE officers.¹⁶

9. The raids occur without warning to families or social service agencies, separating families and resulting in citizen and non-citizen children being left without proper care, sometimes overnight. According to a recent study, of the 500 children affected by raids that resulted in 900 adult arrests, a large majority were U.S. citizens under 10 years old. These children are traumatized and left without psychological or economic support, often in the care of relatives who are fearful of contacting the authorities.¹⁷
10. Invasive raids of this kind have also taken place elsewhere in the world. In the Dominican Republic, the murder of a Dominican woman by a person believed to be an undocumented Haitian resulted in the summary deportations of approximately 2,000 dark-skinned people living in the area, including at least 50 Dominican citizens. When documented migrants and Dominican citizens attempted to show their papers to immigration officials, the papers were either confiscated, ignored, or destroyed. Pregnant women, children and persons over 60 were piled into buses like animals, and parents were separated from their children.¹⁸

Conditions of Detention

11. Article 10 of the ICCPR requires that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁹ Article 37(b) of the Convention on the Rights of the Child states that “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child...shall be used only as a measure of last resort and for the shortest appropriate period of time....”²⁰
12. Once migrants have been arrested, they are sent to detention centers such as the T. Don Hutto detention center in Taylor, Texas prior to deportation. Since most of these facilities are housed in former prisons, conditions of detention are highly restrictive. Children as young as 1 year old, who have fled their home countries in fear of persecution, are detained in small cells while they await the

¹⁵ Jessie McKinley, *San Francisco Bay Area Reacts Angrily to Series of Immigration Raids*, The New York Times, (28 April 2007).

¹⁶ Nina Bernstein, *Immigration Raids Single Out Hispanics, Lawsuit Says*, The New York Times, (21 September 2007).

¹⁷ Antonio Olivo, *Immigration Raids Harm Children, Report Says*, The Chicago Tribune, (1 November 2007).

¹⁸ Amnesty International, *No better life for Haitians in the Dominican Republic*, The Wire, Vol. 36, No. 11, December 2006.

¹⁹ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967)

²⁰ G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.

resolution of their parent's asylum claims.²¹ Sixty-two immigrant detainees have died in ICE custody since 2004, many from poor health care, including a pregnant woman, an AIDS patient, and a man suffering from epileptic seizures who was denied his medicine by the detaining authorities.²²

13. In the Canary Islands, emergency facilities, opened in response to the arrival of hundreds of unaccompanied migrant children, are overcrowded and rife with violence. Children do not enjoy access to education, recreation time is severely limited, and they are undernourished. Beatings by staff have been reported.²³ At another Spanish detention center, in Malaga, the trade of sexual relations for favorable treatment between the detainees and the officers has been reported.²⁴

Labor Rights

14. The International Labor Organization's Conventions 87 and 98 protect the rights to freedom of association, to organize, and to bargain collectively.²⁵ Article 22(1) of the ICCPR²⁶ and Article 8 of the ICESCR guarantee the protection of these rights for migrant workers irrespective of immigration status.²⁷
15. The decision of the United States Supreme Court in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*²⁸ eliminated the remedy of backpay for undocumented workers whose labor rights have been violated. This holding has been expressly condemned by the Inter-American Court and the ILO as being in violation of international labor and human rights standards.²⁹
16. The *Hoffman* decision effectively eliminates legal bargaining rights for the 8 million undocumented workers in the United States.³⁰ Work conditions are very

²¹ American Civil Liberties Union, *Landmark Settlement Announced in Federal Lawsuit Challenging Conditions at Immigrant Detention Center in Texas*, available at: <http://www.aclu.org/immigrants/detention/31469prs20070827.html> (27 August 2007).

²² Darryl Frears, *Three Jailed Immigrants Die in a Month*, The Washington Post, 15 August 2007.

²³ Human Rights Watch, *Unwelcome Responsibilities: Spain's Failure to Protect the Rights of Unaccompanied Migrant Children in the Canary Islands*, available at: <http://hrw.org/reports/2007/spain0707/> (26 July 2007).

²⁴ Yasha Maccanico, *EU/Africa: Carnage Continues as EU Border Moves South*, <http://www.statewatch.org/news/2006/sep/Immigration-analysis.pdf> (September 2006).

²⁵ Convention Concerning Freedom of Association and Protection of the Right to Organize, ILO Convention No. 87 (1948); Convention Concerning the Application of the Principles of the Right to Organize and Bargain Collectively, ILO Convention No.98 (1949); available at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

²⁶ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

²⁷ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966); 993 UNTS 3; 6 ILM 368 (1967).

²⁸ *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002).

²⁹ *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03 (Inter-Am. Ct. H.R. Sept. 17, 2003), available at: http://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf; ILO: 332nd Report of the Committee of Freedom of Association, Governing Body, 288th Session, Geneva, November 2003, GB.288/7 (Part II), Case No. 2227.

³⁰ See Connie de la Vega and Conchita Lozano-Batista, *Advocates Should Use Applicable International Standards to Address Violations of Undocumented Migrant Workers' Rights in the United States*, HUMAN

poor in many of the industries which rely on migrants to supply their workforce. Many migrants do not speak fluent English. Without protection of their labor rights and remedies for violations thereof, migrant workers are placed in a void where they are vulnerable to employer abuse.

17. Violations of core labor rights are not limited to the United States. It is reported that in the United Arab Emirates, migrant workers suspected of organizing strikes have been deported, and the government has refused to allow workers to organize trade unions or bargain collectively. Migrants perform hazardous construction work on high-rise buildings without assurance that employers will cover their health care needs.³¹

Recommendations

18. In order to promote and protect the human rights of migrant workers worldwide, Human Rights Advocates urges the Council:
- a. To continue the mandate of the Special Rapporteur that he may continue to consider violations of migrant workers' rights;
 - b. To recommend Member States:
 - i. Ratify the Convention on the Protection of the Rights of All Migrant Workers and Their Families;
 - ii. Align domestic immigration policy and labor legislation with international treaty obligations and customary international law;
 - iii. Educate border communities on the global forces that drive migration flows and the need to embrace the developmental benefits of transnational migration;
 - iv. Commit to a non-discriminatory, rights-based labor policy providing sanctions for abusive employers and full remedies for violations of core labor standards, regardless of immigration status; and
 - v. Enforce immigration law in a way that protects the rights of migrants and their families.

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