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SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

**Written statement* submitted by Human Rights Advocates,
a non-governmental organisation 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.

[12 February 2006]

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

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THE RIGHTS OF MIGRANT WORKERS

1. International migration is linked to globalization. The growth of trade in goods and services between nations cannot be maintained without flows of migrants.¹ The International Labour Organization (ILO) estimates there are 86 million migrant workers worldwide², earning more than US\$100 billion annually.³ Migrants live in a situation of legal and social inequality, which makes a distinction between nationals and migrants.⁴
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.”
3. Migrant workers around the world, however, frequently suffer human rights violations in receiving countries. These violations can take the form of arbitrary detention, physical violence, discrimination, and death. Migrant workers are often denied access to legal services, health care, social security, and other health and safety protections.⁵ Recognizing that migrant workers are a vulnerable population, this written statement emphasizes that Member States should maximize efforts to respect and ensure the rights of migrant workers.

Migrant Workers and the Right to Life

4. After the United States changed its border policy in 1994, entry points in major cities closed and migrants were forced to cross the U.S.-Mexico border in remote areas like the Sonoran desert. During the past year alone, the U.S. Customs and Border Protection agency reported that some 464 migrants had died as of September 30, 2005, most of whom perished from the extreme temperatures of the Arizona desert.⁶ This policy change did not have the desired effect of curbing the flow of illegal immigrants, however. Despite the harsh conditions faced by migrant workers, many continue to risk their lives crossing the arid landscape hoping to obtain better opportunities for their families.
5. Following the September 11, 2001 terrorist attacks on the United States, there was an increase in the number of militia-like groups forming along the U.S.-Mexico border, some of which have gained the support of white supremacists. Vigilante groups formed and started hunting, detaining, beating, and sometimes killing

¹ Special Rapporteur of the Commission on Human Rights on the human rights of migrants, Jorge Bustamante, Report to the General Assembly, A/60/357, para. 5.

² Amnesty International, “Protecting Migrant Workers’ Rights,” *The Wire*, http://web.amnesty.org/wire/December2004/migrant_workers (Dec. 2004).

³ International Organization for Migration, *Valuing Migration*, http://www.iom.int/Documents/Governing/en/IC_2004_5.pdf (2004).

⁴ A/60/357, para. 5.

⁵ December 18, *Worldwide Respect for Migrants’ Rights*, www.december18.net/web/docpapers/doc2155.doc (2004).

⁶ Ginger Thompson, *World Briefing Americas: Mexico: Migrant Deaths at Record on U.S. Border*, N.Y. TIMES, October 5, 2005, at A6.

immigrants. The high number of migrant deaths is attributed to both the change in U.S. border policy and the violence of vigilante groups.⁷

6. Vigilante groups do not have the training or authority to determine who should be allowed to enter the United States. Members of such groups operate outside the law and interfere with the U.S. Border Patrol's ability to perform its job. Members of militia-like groups are often not aware of migrants' protected rights, and thus, frequently violate them.
7. A similar situation has recently developed in Morocco, where dozens of African migrants attempting to cross the border fence from Morocco to the Spanish enclaves of Ceuta or Melilla have been brutally treated or killed by law enforcement officials.⁸ African migrants view Ceuta and Melilla as a gateway to Europe, a wealthy region where they can earn higher wages. It is imperative that border guards know that the rights of migrant workers are protected under international law.
8. The situation involving Spain and Morocco is one example of the recent surge in violent attacks against migrants. Wherever migrants suffer abuse, government officials should take immediate steps to ensure that the violence ceases.

Labor Rights for Migrant Workers

9. The right to freedom of association, the right to organize, and the right to collective bargaining are essential to ensure basic labor standards. The ILO recognizes these rights as fundamental human rights,⁹ without which migrant workers are more vulnerable to discrimination, slavery, arrests, exploitation, and abuse.
10. These core labor standards are guaranteed for all workers regardless of immigration status in Article 22(1) of the ICCPR, Article 8 of the International Covenant of Economic, Social, and Cultural Rights, and Convention 87 and Convention 98 of the ILO.¹⁰
11. Many countries are violating their international and regional treaty obligations prohibiting discrimination on the basis of immigration status with respect to the rights and remedies provided in their national labor laws. Migrant workers are particularly vulnerable, for example, in the electronics sector in Malaysia, in the

⁷ Nick Madigan, *Police Investigate Killings of Illegal Immigrants in Arizona Desert*, N.Y. TIMES, Oct. 23, 2002, at A15.

⁸ Craig S. Smith, *Spain's African Enclaves Are Migrants' Portals to Europe*, N.Y. TIMES, November 5, 2005, at A8.

⁹ 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 RIGHTS AND REFUGEES, INTERNALLY DISPLACED PERSONS AND MIGRANT WORKERS: ESSAYS IN HONOR OF JOAN FITZPATRICK AND ARTHUR HELTON, Bayefsky, Anne F. ed. (2005).

¹⁰ ILO Convention 87 Concerning Freedom of Association and Protection of the Right to Organise and ILO Convention 98 Concerning Right to Organise and Collective Bargaining (ILOLEX).

post-*Hoffman* United States, in the domestic sector in the Gulf States, and in the seasonal agriculture sector in Europe.¹¹

12. Malaysia conducted mass deportations of its undocumented migrant workforce in 2002,¹² sending them first to worker detention camps, where they were forced to live in harsh, overcrowded conditions, falling prey to illness or even death.¹³
13. The 2002 U.S. Supreme Court case *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*¹⁴ removed the traditional back pay remedy for undocumented workers whose rights have been violated under the National Labor Relations Act,¹⁵ effectively eliminating any association, organizing, and bargaining rights for these workers. Without these rights, undocumented migrant workers have little incentive to report workplace abuses, which in turn decreases the accountability of employers who exploit the migrant workforce. Many employers in the United States have attempted to use the *Hoffman* decision as a way to deteriorate other workplace protections for migrant workers.¹⁶ The Inter-American Court of Human Rights and the ILO's Committee on Freedom of Association have issued opinions stating that the *Hoffman* decision violates the country's international and regional treaty obligations.¹⁷
14. Foreign workers have restricted trade union rights in many of the Gulf States, including Jordan, Kuwait, Lebanon, Oman, Israel, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen, despite the large migrant workforces in these countries.¹⁸ In the United Arab Emirates, for example, employers have deported foreign workers for trying to organize unions or going on strike.¹⁹ Migrant domestic workers are particularly vulnerable to human rights violations, due to the lack of coverage in labor legislation of domestic work, unchecked practices of unscrupulous recruitment agents, the withholding of passports of domestic workers, strict employee-tied residency rules, and slavery-like working and living conditions.²⁰ In Saudi Arabia, for example, there have been numerous reports of

¹¹ Kristina Zinnen, *To Protect the Human Rights of Migrant Women and Children, National Labor Laws Must Not Discriminate on the Basis of Immigration Status*, HUMAN RIGHTS ADVOCATES, <http://humanrightsadvocates.org/UN%20interventions%20list1.htm> (Feb. 21, 2005).

¹² Human Rights Watch, *Malaysia: Mass Expulsion Puts Migrants at Risk*, <http://hrw.org/english/docs/2004/11/19/malays9704.htm> (Nov. 23, 2004).

¹³ Associated Press, *Malaysia: Government Denies Role in Kids' Deaths*, ASIAN HUMAN RIGHTS COMMISSION (Aug. 28, 2002).

¹⁴ *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002).

¹⁵ National Labor Relations Act, 29 U.S.C. §§ 151-169.

¹⁶ De la Vega and Lozano-Batista, *supra* note 9.

¹⁷ *Case No. 2227 (United States)*, ILO Committee on Freedom of Association, 332nd Report of the Committee on Freedom of Association, GB.288/7 (Part II) (November 2003). *Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18*, 17 September 2003, Inter-Am. Ct.H.R. (Ser. A) No. 18/03 (2003) at 2.

¹⁸ International Confederation of Free Trade Unions [hereinafter ICFTU], *Annual Survey of Violations of Trade Union Rights*, <http://www.icftu.org/survey2004.asp?Language=EN> (2004).

¹⁹ *Id.* at 292-293.

²⁰ Migrant Rights International, *Putting the Migrants at the Center*, http://www.migrantwatch.org/IMDRelease_MRI_18Dec2004a.htm (Dec. 2004).

abuse towards domestic migrant workers, including restrictions on movement, forced confinement, lack of food, physical and sexual assault, and murder.²¹

15. HRA commends Spain for granting amnesty to 700,000 migrants last year.²² However, the Basic Act on the Rights and Freedoms of Foreigners in Spain continues to deny the right to freedom of association, the right to organize, and the right to collective bargaining to undocumented migrant workers.²³

Recommendations

16. In order to protect migrant workers' right to life as it is defined in the ICCPR, greater attention must be drawn to border violence occurring around the world. Countries must assess the ways their immigration policies increase violence at their borders, and should eliminate racist regulations. Documented and undocumented workers must be given the same protection with respect to national labor laws, irrespective of national immigration policies. Thus, HRA urges the Commission on Human Rights to recommend Member States:

- a. Initiate a process of harmonizing their national labor legislation and public policies with their international treaty obligations and international labor standards and treaty obligations by guaranteeing to all workers, regardless of immigration or employment status, the right to freedom of association, the right to organize, and the right to collective bargaining, and complete remedies for violations of these rights;
- b. Prevent private persons or groups from enforcing immigration laws and border controls, and prosecute violations of the law that result from such conduct;
- c. Report to the Special Rapporteur on the Human Rights of Migrants regarding their progress in this area;
- d. Comply with decisions of intergovernmental organizations and regional bodies regarding migrant workers; and
- e. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

17. HRA urges the Commission to recommend the Special Rapporteur on the Human Rights of Migrants:

²¹ ICFTU *Annual Survey*, *supra* note 18, at 291.

²² Giles Tremlett, *Spain Grants Amnesty to 700,000 Migrants*, THE GUARDIAN INTERNATIONAL, <http://www.guardian.co.uk/international/story/0,3604,1479385,00.html> (May 9, 2005).

²³ *Case No. 2121 (Spain)*, ILO Committee on Freedom of Association, 327th Report of the Committee on Freedom of Association (2002).

- a. Educate Member States, particularly border communities, on the human rights of migrants and make recommendations on how to decrease violence along state borders;
- b. Make available to all Member States his analysis of the real demand for migrant workers in Member States and data on the number of unionized and non-unionized migrant workers, by sectors of the economy, as outlined in his programme of work,²⁴ and follow up that analysis with recommendations to Member States on how to harmonize their national labor legislation and public policies with their international treaty obligations and international labor standards in order to protect the human rights of migrant workers; and
- c. Follow up on the recommendations made by the previous Special Rapporteur, including her recommendations that:
 - i. Member States train officials responsible for enforcing legislation on migration to ensure its fair implementation throughout the State.²⁵
 - ii. Government officials carry out impartial investigations into reports of human rights violations made by migrant workers. Migrants who claim to have been abused should have access to reporting mechanisms.²⁶
 - iii. More decisive action be taken against employers that hire migrants under false pretenses and subject them to conditions of slavery,²⁷
 - iv. Government authorities pursue trade negotiations so that the human rights of migrants become a priority.²⁸

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²⁴ A/60/357, para. 11.

²⁵ E/CN.4/2004/76/Add.2 at para. 86(c); E/CN.4/2003/85/Add.3 at para. 62.

²⁶ E/CN.4/2003/85/Add.3 at para. 61.

²⁷ *Id.* at para. 65.

²⁸ *Id.* at para. 68.