



General Assembly

Distr.
GENERAL

A/HRC/4/NGO/5
2 March 2007

ENGLISH AND SPANISH ONLY

HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Written statement* submitted by Human Rights Advocates, Inc. (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.

[19 February 2007]

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

The rights of migrant workers

1. Migration is a corollary of globalization. It occurs as the result of push and pull factors which include a lack of viable employment in sending countries and a demand for hard laborers in receiving countries. Migrants are treated mostly as a workforce or in economic terms rather than as human beings who are entitled to rights.¹
2. There are 191 million migrant workers worldwide.² The important role played by migrant workers in the global economy and the rich contributions migrants make to receiving societies must be recognized by ensuring the protection of migrants' human rights. Nonetheless, these rights are being violated worldwide, and HRA would like to emphasize to the Council the importance of ensuring their protection. HRA will focus its comments on two basic rights: the right to life and core labor rights.

The Right to Life

3. Article 6 of the International Covenant on Civil and Political Rights 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 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."⁴
4. 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 to these policy changes by shifting to the more remote areas of the Arizona desert, where migrants are exposed to extremely harsh conditions.
5. There have been more than 3,000 reported migrant deaths at the border since 1994.⁷ In fiscal year 2006, 432 migrant deaths were reported. In the El-Paso-New Mexico region, these figures show a 100% increase in migrant deaths from 2005.⁸ Most of these migrant deaths are the result of exposure to extreme conditions or territorial hazards encountered while crossing. Others have been killed by violent vigilante

¹ Louise Arbour, U.N. High Commissioner for Human Rights, Interview by December 18 for International Migrants' Day, <http://www.radio1812.net/en/node/273> (2006).

² International Organization for Migration, <http://www.iom.int>.

³ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

⁴ GA res. 45/158, UN GAOR, 45th Sess., UN Doc. A/45/49 (December 18, 1990, entered into force July 1, 2003).

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

⁶ 8 U.S.C. §1101.

⁷ Border Network for Human Rights, *2006 Report on Migrant Deaths at the U.S.-Mexico border*, <http://www.immigrantsolidarity.org/> (November 2006).

⁸ Id.

groups which have formed in border communities in increasing numbers since 11 September 2001.

6. A similar policy has had similar results in Spain. A high-technology, far-reaching surveillance system, combined with numerous sea patrol operations, has effectively extended the EU border and resulted in migrants taking longer and more dangerous routes to access the Canary Islands and the Spanish enclaves of Ceuta and Melilla in order to enter the EU.⁹ In April 2006, 34 migrants from Mauritania died in a shipwreck en route to the Canary Islands. In May 2006, a boat with the same destination was found in Barbados with 11 corpses and documentation of 26 missing persons. Twenty-one more persons died and 9 went missing when another boat sank en route to the Canary Islands in July 2006.¹⁰ These examples are illustrative but not exhaustive, and boats continue to make the perilous journey to circumvent the border patrols.
7. A three-dimensional net has been added to the border fence in Melilla to capture would-be fence climbers, three of whom died in that attempt in July 2006. The migrant detention center in Malaga is rife with human rights abuses, including the trade of sexual relations for favorable treatment between the detainees and the officers.¹¹
8. Migrant workers' rights to life are being violated as a direct result of these border policies. By making access to receiving countries dangerous and difficult, governments have not curbed the flow of migration but have increased the risks of migration in an attempt to discourage it. It is not necessary to the implementation of a restrictive immigration policy to endanger human life. Instead, governments must act immediately to protect the rights of migrants, most importantly the right to life.

Core Labor Rights

9. The International Labor Organization's fundamental Conventions 87 and 98 protect the rights to freedom of association, to organize, and to bargain collectively.¹² Article 22(1) of the ICCPR¹³ and Article 8 of the ICESCR guarantee the protection of these rights for migrant workers irrespective of immigration status.¹⁴
10. The decision of the United States Supreme Court in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*¹⁵ eliminated the remedy of backpay for

⁹ Yasha Maccanico, *EU/Africa: Carnage Continues as EU Border Moves South*, <http://www.statewatch.org/news/2006/sep/Immigration-analysis.pdf> (September 2006).

¹⁰ Id.

¹¹ Id.

¹² 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>.

¹³ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

¹⁴ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966); 993 UNTS 3; 6 ILM 368 (1967).

¹⁵ *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002).

undocumented workers whose labor rights have been violated. After being illegally fired for union organizing, the Court held that an undocumented worker was not entitled to the traditional backpay remedy because of his immigration status. 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.¹⁶

11. The effect of this decision is to leave undocumented workers in the United States unprotected with regard to core labor standards, exposing them to widespread abuses by employers. Questions of immigration status have no bearing on the merits of labor violation claims, yet employers frequently treat an undocumented worker's status as leverage to prevent him or her from filing claims, reporting health and safety violations, or claiming discrimination.¹⁷ Work conditions are very poor in many of the industries which rely on migrants to supply their workforce, such as the meat and poultry industries. 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.
12. These human rights abuses are not limited to the United States. In the Limpopo province of South Africa, it is reported that police and immigration officials assault, extort money, and detain Zimbabwean workers without verifying immigration status or identity for long periods of time in poor conditions. Zimbabwean farm workers, even those who are documented, are not being paid the minimum wage and unlawful deductions are being taken from their wages. There are also obstacles to collecting workers' compensation, even when legally entitled. South African immigration law also makes no provision for collecting unpaid wages or the transfer of personal belongings prior to deportation.¹⁸
13. It is also reported that in the United Arab Emirates, there is a "custom" of confiscating passports and withholding the first 2 months' wages, which are already low compared to the average per capita income for the country (USD\$175/month vs. USD\$2,196/month.) 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.¹⁹ In January 2007, it is reported that 2 workers were killed and dozens injured in a fire in a high-rise under construction in Dubai.²⁰
14. As migration has increased in correlation with globalization, what was once a male-dominated phenomenon now includes a burgeoning population of migrating female domestic workers. The labor rights of these women and girls are being violated

¹⁶ Human Rights Watch, *Immigrant Workers in the United States Meat and Poultry Industry*, <http://www.hrw.org/backgrounder/usa/un-sub1005/>, (December 15, 2005).

¹⁷ *Id.*

¹⁸ Human Rights Watch, *Unprotected Migrants: Zimbabweans in South Africa's Limpopo Province*, http://hrw.org/reports/2006/southafrica0806/3.htm#_Toc142188100, (August 8, 2006).

¹⁹ Human Rights Watch, *Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates*, <http://hrw.org/reports/2006/uae1106/>, (November 12, 2006).

²⁰ BBC News Online, *Workers Die in Dubai Tower Fire*, http://news.bbc.co.uk/2/hi/middle_east/6274981.stm, (January 18, 2007).

similarly to those of male migrants, but females are exposed to further violations including physical and sexual abuse, forced confinement, and excessive working hours with no rest. These abuses persist in receiving countries such as Thailand²¹ and the United States,²² and the particularly vulnerable position of domestic workers must be immediately addressed.

15. Human Rights Advocates commends the Philippines for the positive example provided by its Philippines Overseas Employment Administration, which issues standard contracts to Philippine migrant domestic workers guaranteeing a minimum wage and one day per week of rest.²³ However, there is a need for receiving countries to work in conjunction with sending countries to ensure these contracts are being enforced.
16. Deprivation of these fundamental labor rights adversely affects not just migrant workers but the global economy as a whole. Without protection of these rights or meaningful remedies for violations thereof, undocumented workers have no incentive to self-report, meaning employers will be likely to continue hiring and abusing undocumented workers and wages will be driven down. Migrants will be able to contribute best to the development of host societies only if they are fully integrated into them and not discriminated against on the basis of their immigration status.²⁴

Recommendations

17. In order to promote and protect the human rights of migrant workers around the world, Human Rights Advocates urges the Council:
 - a. To continue the mandate of the Special Rapporteur so 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,

²¹ International Programme on the Elimination of Child Labour, *The Mekong Challenge - Underpaid, Overworked and Overlooked: The situation of young migrant workers in Thailand*, <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/newpublication-showcase.htm>, (December 13, 2006).

²² American Civil Liberties Union, *Trafficking and Exploitation of Migrant Domestic Workers by Diplomats and Staff of International Organizations in the United States*, <http://www.aclu.org/womensrights/humanrights/28034res20070117.html> (January 17 2007).

²³ Human Rights Watch, *Domestic Workers Abused Worldwide*, <http://hrw.org/english/docs/2006/07/26/singap13804.htm> (July 27, 2006).

²⁴ Louise Arbour, U.N. High Commissioner for Human Rights, Interview by December 18 for International Migrants' Day, <http://www.radio1812.net/en/node/273> (2006).

- iii. Educate border communities on the global forces driving migration flows and the need for a paradigm shift toward embracing the developmental benefits of transnational migration, and
- iv. Commit to a nondiscriminatory rights-based labor policy providing sanctions for abusive employers and full remedies for violations of core labor standards regardless of immigration status.
