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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, 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.

[21 May 2009]

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

The Arbitrary Detention Of Migrants

1. Under the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, every migrant has the right to liberty and security of person and the right to be free from interference with privacy, family, or correspondence. States Parties are obligated to ensure that migrants, a vulnerable population, are protected when they leave their countries of origin. In nations all over the world, however, migrants' basic human rights are being violated at an alarming rate.

2. Though they have committed no crime, migrants are treated like criminals when they are housed in jails, prisons, and other detention facilities, often for lengthy periods of time without regular access to legal counsel or communications. Families are separated and housed in different cells. Overcrowding and poor conditions at facilities contribute to the misery felt by those detained. In many different countries, the trend toward privately-owned detention facilities exacerbates each of these issues. Human Rights Advocates submits this statement outlining the rights violations experienced by migrants with recommendations for increasing protection for their human rights.

Detention of Migrants Generally

3. Over 30,000 immigrants were detained each day in the United States in 2008.¹ Detained immigrants have travelled to the United States for a variety of reasons; some are escaping violence or persecution in their home countries, while others are looking for increased economic or educational opportunities. Asylum seekers arriving in the United States "are held in facilities that are actual jails or are operated like jails. They are often brought in handcuffs and sometimes shackles to these facilities, where they wear prison uniforms, are guarded by officers in prison attire, visit with family and friends only through glass barriers, and have essentially no freedom of movement within the facilities."²

4. Detained migrants in the United States are too often treated like criminals. This is a violation of Article 9 of the ICCPR, which prohibits all people from being subjected to arbitrary arrest or detention. The United States ratified the ICCPR in September 1992, so its government is obligated to ensure that migrants are not arbitrarily detained for the civil (and not criminal) violation of United States immigration law. Detention should only be used as a last resort; far too often, it is part of routine deportation proceedings.

5. The criminalization of migrants continues to be a problem in other nations, as well. When Special Rapporteur on the Human Rights of Migrants Jorge Bustamante visited Mexico from 9-15 March 2008, he noted that "questions about the criminalization of irregular migration remain

¹ Amnesty International, *Jailed Without Justice: Immigration Detention in the USA*, April 2009, available at <http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf>.

² Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison*, April 2009, available at www.humanrightsfirst.org.

a concern. Reports suggest that there is an unknown number of migrants in prison, including in federal, state and municipal prisons, as well as unofficial or clandestine prisons.”³

6. Special Rapporteur Bustamante also stated that “reports from civil society indicate that detained migrants in many cases are not adequately informed of their rights, lack access to a lawyer, that no interpretation is offered in the case of non-Spanish-speaking migrants and that registration of migrants is not systematic.”⁴ As another State Party to the ICCPR, Mexico is violating migrants’ rights to liberty and security of person by failing to consistently provide migrants with access to attorneys and offer interpretation services so that access is meaningful. Mexico is also a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which offers migrants protection from arbitrary arrest and detention under Part III, Article 16.

Family Separation

7. Under Article 17 of the ICCPR, the United States has failed to protect migrants’ right to be free from interference with privacy, family or correspondence. In the T. Don Hutto Residential Center, a detention facility located in the state of Texas, migrant families are separated and placed in different cells. For minor children and their parents, this interferes with their ability to maintain family bonds. Visits at the Hutto facility are no-contact, meaning that family members cannot touch each other. This severely impairs migrant families’ ability to communicate with one another.

8. In addition, detained migrants have reported being held at facilities that are extremely far from family members, sometimes thousands of miles. This makes communication and visits difficult and can negatively impact migrants’ mental health and their relationships with their families.⁵

Conditions at Detention Facilities

9. Articles 6, 7, and 10 of the ICCPR guarantee migrants’ rights to medical care and security of person. The very basic right to be safe and healthy is one that has often been violated when States Parties arbitrarily detain migrants. For example, unaccompanied children arriving at the Canary Islands from Africa were housed for indefinite periods of time in overcrowded and poor conditions. They reported being subjected to beatings, with restrictions placed on their movement in the facilities.⁶ The Spanish ombudsman assigned to review the situation in 2007 found that ill-treatment was still prevalent a year later. This treatment violates provisions in both the ICCPR and the Convention on the Rights of the Child, treaties that Spain is party to.

³ UN Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante: addendum: mission to Mexico (9-15 March 2008)*, 24 March 2009, A/HRC/11/7/Add.2., available at <http://www.unhcr.org/refworld/docid/49e88e952.html>.

⁴ *Id.*

⁵ Amnesty International, *Jailed Without Justice: Immigration Detention in the USA*, April 2009, available at <http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf>.

⁶ Human Rights Watch, *Spain: Migrant Children at Risk in Government Facilities*, 26 July 2007, available at <http://www.hrw.org/ru/news/2007/07/26/spain-migrant-children-risk-government-facilities>.

10. Migrants detained in French territories also face ill-treatment. Amnesty International reported in December 2008 that “men, women, children and infants are piled on mats in overcrowded cells. Food is strewn all over the kitchen and the toilets are overflowing. Children dig in rubbish bins. Yellow biohazard bags are piled high just outside the door, suggesting serious medical issues and there’s no sign of proper medical facilities.”⁷ Photographs and video footage of the Pamandzi center in Mayotte, an overseas territory of France that is located between Madagascar and northern Mozambique, revealed these conditions faced by irregular migrants. The Pamandzi center only has the capacity to hold sixty people, but sometimes holds as many as 220. There are no beds for migrants to sleep on, and children and families are afforded no space that is age-appropriate.⁸

11. The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, visited France from 21-23 May 2008 and reported on several issues pertaining to the treatment of migrants in that country. Commissioner Hammarberg noted that France has made efforts to improve the reception and accommodation conditions for detained migrants, but that living conditions at certain facilities “are still difficult.”⁹ At the Vincennes center, there were numerous complaints, petitions, suicide attempts, self-mutilation, and hunger strikes, all indicating that detained migrants suffered from substandard living conditions. This treatment violates France’s obligations under the ICCPR.

12. Health care provided to detained migrants in the United States is often sub-standard when provided at all. Staffing shortages and failure to use interpreters contribute to this problem. According to Immigration and Customs Enforcement (ICE), a division of the Department of Homeland Security, 74 people have died while in immigration detention during the past five years.¹⁰ One of these deaths was that of Boubacar Bah, a detained migrant from Guinea, who collapsed and struck his head on the floor after being ill for two days. Detention facility staff did not provide a doctor during that time, and Bah’s condition worsened until he was unresponsive and foaming at the mouth. He later entered a coma and died four months later.¹¹

Privately-owned Detention Facilities

13. An increasing number of countries have been increasing their use of for-profit detention facilities.¹² The business of detaining migrants does not easily co-exist with the protection of migrants’ human rights. When the underlying goal of an endeavor is profit, it is in the best interest of its owners to work toward that goal in the least costly way possible. This has resulted

⁷ Amnesty International, *French detention centre highlights mistreatment of migrants*, 18 December 2008, available at <http://www.unhcr.org/refworld/docid/494b62fec.html>.

⁸ *Id.*

⁹ Council of Europe: Commissioner for Human Rights, *Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008. Issues reviewed: human rights protection arrangements, prisons, juvenile justice, immigration and asylum, and Travellers and Roma*, 20 November 2008, available at <http://www.unhcr.org/refworld/docid/492a6da72.html>.

¹⁰ Amnesty International, *Jailed Without Justice: Immigration Detention in the USA*, April 2009, available at <http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf>.

¹¹ *Id.*

¹² See for example, Geo Group which runs numerous facilities in the United States and has expanded its operations to South Africa and Australia. <http://www.thegeogroupinc.com/global.asp>

in the violations of a number of rights of migrants in the United States.¹³ Providing medical care, interpretation services, and access to communications methods costs money and works against the goal of privately-owned enterprises.

14. Migrants must be able to access the full range of their guaranteed rights in any facility in which they are detained, whether it is operated by a private corporation or a government.

RECOMMENDATIONS

15. States Parties should not detain migrants for violations of domestic immigration law. If some supervision is required, alternatives to detention should be utilized. If detention is found to be absolutely necessary, then States Parties should place migrants in facilities that do not resemble jails and prisons. Migrants should be provided access to attorneys and interpretation services prior to being placed in detention facilities.

16. If migrants are detained, families should not be separated. Families should be able to communicate freely, to touch one another, and to have contact visits with non-detained relatives.

17. Conditions in detention facilities must be improved. Medical care must be provided in a timely and appropriate manner. Adequate staffing and interpretation services must be available at each facility that detains migrants.

18. The operators of privately-owned detention facilities must not violate migrants' human rights, especially when they are providing a service traditionally performed by governments.

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¹³ See, Written statement submitted by Human Rights Advocates, A/HRC/10/NGO/46 (2009), documenting violations of the right to health, life, and family by private detention centers.