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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 December 18 vzm,
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.

[23 May 2008]

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

A renewed and consolidated Special Rapporteur on the human rights of migrants is necessary for the protection and the promotion of the rights of migrants and their families.

Since the creation of the mandate of Special Rapporteur on the human rights of migrants by the Commission on Human Rights in 1999, December 18 has followed with great interest the work carried out by the mandate holders. Along the years, we have witnessed the rise in migrants' rights violations the Rapporteurs were able to reveal and condemn; the issues they analysed and explained in a comprehensive way in annual reports; their role in putting forward the rights of migrants and countering misconceptions and hypocrisy in this field.

At a time when migration is even more a universal concern than when the mandate was created, and as the reluctance of some Governments to recognise the rights of migrants as human rights is getting stronger, we believe that all stakeholders interested in human rights mechanisms should be reassured that the Human Rights Council greatly values this mandate. As we celebrate the 60th anniversary of the Universal Declaration of Human Rights, it is important that a population often discriminated against, whether in a documented or undocumented situation is not left out of the protection umbrella afforded by international human rights norms and standards.

At the end of 1990s, when the Commission on Human Rights created the mandate of the Special Rapporteur on the human rights of migrants,¹ there were around 176 million migrants in the world. Migration was not a recent phenomenon and had been an important component of the economic, social and cultural life of many countries and regions in the World for decades. However, States and the international community only started to give attention to the issue of the human rights of migrants in the last two decades of the twentieth century. Although the rights of migrants had been a transversal issue in the human rights field, it was considered as a specific item only recently. Indeed, in 1994, the Special Rapporteur on violence against women included in her preliminary report four pages on "violence against migrant women". Since then, many NGOs started to send information on violations of the human rights of migrant women, but also about the vulnerability of migrants in general and their critical situation.² Four years later, the issue of the human rights of migrants was included in the Commission on Human Rights' agenda, giving birth to a Working Group of intergovernmental experts on the human rights of migrants.³ This eventually led to the creation of the mandate of the Special Rapporteur on the human rights of migrants.

Today, there are an estimated 200 million migrants worldwide, and the challenge to ensure the respect for their human rights and fundamental freedoms is stronger than ever. There is a growing awareness about the challenges and opportunities that come with the worldwide

¹ Resolution E/CN.4/RES/1999/44

² GRANGE Mariette and d'AUCHAMP Marie, "*Role of civil society in campaigning for and using the Convention*", *Migration and Human Rights*, UNESCO, forthcoming, 2008

³ Resolution E/CN.4/RES/1997/15

increase of migration. With the entry into force in 2003 of the International Convention on the Protection of the Human Rights of All Migrant Workers and Members of Their Families,⁴ the international protection regime was strengthened. The Convention is a crucial component of the international framework for a comprehensive rights-based approach to migration. However, in view of the low level of ratification of this Convention, the mandate of the Special Rapporteur remains of pivotal importance as it contributes to the promotion and protection of the rights of migrants: it provides an avenue for the reporting of alleged abuses and allows for country visits.

Inter alia, the Special Rapporteur plays an important role in raising awareness about the Migrant Workers Convention and in calling for universal ratification of this core human rights treaty. On 6 August 1999, when the first Special Rapporteur was appointed, 12 countries had ratified the Convention during the nine years since its adoption by the United Nations General Assembly in 1990. Three years later, nine more countries had ratified it, with two thirds being GRULAC⁵ countries. The work of the Special Rapporteur alone cannot explain this increase, but there is arguably a correlation between these ratifications and the origin and working language of the first Special Rapporteur⁶ in place during that period.⁷ The Special Rapporteur should continue to call on States to ratify the Migrant Workers Convention either on the occasion of country visits or in public speeches/statements. The fact that during the first two sessions of the Universal Periodic Review many States from the “South” emphasised the need for “Western” States to ratify the Convention sends a strong message in this respect.

The mandate of the Special Rapporteur on the human rights of migrants is to gather information on the situation of migrants’ rights in any country that is a United Nations member state, regardless of its international obligations. Indeed, the Special Rapporteur shall base his/her work on the Universal Declaration of Human Rights, which universality encompasses foreigners of a country, regardless of their legal status. The work of the Special Rapporteur therefore *de facto* contributes to the protection of the basic and fundamental human rights of all migrant workers and members of their families.

In particular, the Rapporteur’s mandate to receive and act upon communications of alleged migrants’ rights violations has greatly benefitted migrants’ rights: this mechanism allows the Rapporteur to urgently request a State to take all necessary actions to stop violations. The addendums to the Rapporteur’s annual reports detailing all communications to Governments since 1999 show that:

- 1) migrants’ rights violations are diverse and concern all aspects of their lives

⁴ Often referred to as the Migrant Workers Convention.

⁵ The GRULAC group of the former Commission on Human Rights and new Human Rights Council is composed of countries from Latin America and the Caribbean.

⁶ Ms Gabriela Rodríguez Pizarro, Special Rapporteur from August 1999 to August 2005, is from Costa Rica.

⁷ For instance, the Special Rapporteur’s visit to Peru in September 2004 coincided with, and is thought to have influenced, the signature of the Convention by Peru on 22 September 2004, and its ratification in 2005.

- 2) though migration is a global phenomenon, only 67 countries have been concerned by the Rapporteur's communications.⁸
- 3) the approach taken is one that focuses specifically on issues that appear to be major concerns in most countries.⁹

Within the United Nations human rights system, the Rapporteur is complementary to other mechanisms: he/she collaborates with the Committee on Migrant Workers, with other thematic special procedures (including on issues of trafficking, violence against women, health, racism and discrimination, detention etc.), visits countries that are not parties to the Migrant Workers Convention¹⁰ and makes recommendations to these countries on ways to improve the situation of migrants.¹¹ In addition, the creation of the Human Rights Council and its Universal Periodic Review is another opportunity for the Special Rapporteur to contribute to the improvement of migrants' rights worldwide. The very existence of the Special Rapporteur's mandate generates both visibility and focus on the issue of migrants' rights within the United Nations machinery, therefore contributing to the mainstreaming of the issue. The Human Rights Council should support this by encouraging the Special Rapporteur to be more active, and make more use of the existing corpus of international human rights law which includes many provisions applicable to non-nationals and designed to counter all kinds of discriminatory treatment.

Beyond the Human Rights Council, and the broader United Nations system, the Special Rapporteur has a particular role to play in the context of the debates on migration and development, and in particular on migration management policies at regional and global levels. In these forums, the Special Rapporteur gives an official voice to the rights-based approach to migration that is often side-lined, if not entirely absent. For example, in December 2006, the Special Rapporteur was invited to the High Level Dialogue on International Migration and Development held at the U.N. General Assembly, where he was in his capacity as an expert on the rights of migrants.

The Special Rapporteur's mandate is a unique mechanism on the international human rights scene that can interact with a broad variety of actors and is able to understand all facets of the migration phenomenon. S/he receives information from a variety of stakeholders, from all countries and regions, providing her/him with a global yet detailed and concrete picture of the situation of migrants in the world. Privileged observer and actor of many events – celebrations, conferences, forums, etc. -, an efficient, committed and authoritative Special Rapporteur is key in promoting the rights-based approach to migration: developing analyses on specific issues; sharing views and understanding with others; and reminding

⁸ More efforts are needed to encourage civil society actors from sending, transit or receiving countries to send information to the Special Rapporteur.

⁹ For example: The human rights of migrants deprived of their liberties, E/CN.4/2003/85; The human rights of migrant domestic workers, E/CN.4/2004/76; and lately Criminalization of irregular migration, A/HRC/7/12.

¹⁰ Previous visits include Canada, the US southern border region, Spain, Iran, Italy, South Korea, and Indonesia.

¹¹ Such a role is even more developed, and in a comprehensive way, by the Committee on Migrant Workers, but its mandate is limited to the State Parties to the Migrant Workers Convention.

many that migrant rights are human rights and that all migrants enjoy basic human rights that must be respected.

In revising the mandate of Special Rapporteur on the human rights of migrants, the Human Rights Council should reaffirm the former Commission's desire to give adequate support, visibility and tools to the promotion and protection of the human rights of migrant workers and their families - a growing category of persons in need of protection and particularly vulnerable to abuse as they live outside their country of origin. The Members of the Human Rights Council must renew and consolidate the mandate the Special Rapporteur on the human rights of migrants, and strongly reaffirm their commitment to the human rights of migrants.
