
Advance unedited version

Distr.: General
13 September 2016

Original: English

Human Rights Council**Thirty-third session**

Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and Reports of the Office of the United Nations
High Commissioner for Human Rights and the Secretary-General**

**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

**Report on the promotion and protection of the human rights
of migrants in the context of large movements****Summary*

The present report is submitted pursuant to Human Rights Council resolution 32/14, in which the Office of the United Nations High Commissioner for Human Rights was requested to submit to the Council before its thirty-first session a report on the promotion and protection of the human rights of migrants in the context of large movements.

The report seeks to analyse the human rights situation of migrants in the context of large movements. Looking ahead to the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, the report concludes with a set of recommendations addressed to States and other stakeholders as relevant.

* The present document was submitted late so as to include the most up-to-date information possible.

Contents

	<i>Page</i>
I. Introduction.....	3
II. Background.....	3
III. Promoting and protecting human rights in the context of large movements.....	4
A. Ensuring that human rights are at the centre of the response to large movements, and guaranteeing monitoring and accountability.....	4
B. Understanding the vulnerability of migrants in the context of large movements.....	5
C. Confronting xenophobia against migrants.....	6
D. Guaranteeing access to justice for migrants.....	7
E. Protecting the lives and safety of migrants in distress.....	8
F. Ensuring that all border governance measures protect human rights.....	8
G. Ensuring that all returns are lawful and sustainable.....	9
H. Protecting migrants from all forms of violence and exploitation.....	9
I. Upholding the right to liberty of migrants.....	10
J. Ensuring the widest protection of the family unity of migrants.....	11
K. Guaranteeing the human rights of all children in the context of migration.....	11
L. Protecting the human rights of migrant women.....	12
M. Ensuring the right of migrants to the highest attainable standard of physical and mental health.....	12
N. Safeguarding the right of migrants to an adequate standard of living.....	13
O. Guaranteeing to migrants the right to work, in just and favourable conditions.....	14
P. Protecting the right of migrants to education.....	14
Q. Upholding migrants' right to information.....	15
R. Respecting and supporting the activities of human rights defenders and others working to rescue and provide assistance to migrants.....	15
S. Improving the collection of disaggregated data on the human rights situation of migrants in the context of large movements.....	16
T. Promoting international cooperation to ensure a human rights-based approach in the response to large movements.....	16
IV. Conclusions and recommendations.....	17

I. Introduction

1. In paragraph 14 (b) of resolution A/HRC/32/14 on Protection of the human rights of migrants, strengthening the promotion and protection of the human rights of migrants including in large movements, which was adopted on 1 July 2016, the Human Rights Council requests the Office of the High Commissioner for Human Rights to submit to the Human Rights Council before its thirty-third session a report on the promotion and protection of the human rights of migrants in the context of large movements, in consultation with States and other relevant stakeholders, including regional organizations, civil society organizations and national human rights institutions, and to transmit the report to the General Assembly at its seventy-first session.

2. Accordingly, on 22 July 2016, OHCHR addressed a note verbale to Member States and intergovernmental and non-governmental organizations seeking their views and information on the issue. Written submissions were received from States, intergovernmental organizations, non-governmental organizations and individual experts.¹

II. Background

3. The New York Declaration for Refugees and Migrants² (hereafter ‘the New York Declaration’) asserts that “large movements” may be understood to reflect a number of considerations, including: the number of people arriving; the economic, social and geographical context; the capacity of a receiving State to respond; and the impact of a movement which is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another.” (para.6)

4. Around the world, many millions of women, men and children are in a precarious human rights situation in the context of large movements. Everyone who moves in this perilous manner is in need of some form of protection; whether in the form of international refugee protection, the protection accorded to victims of torture, trauma or trafficking, or protection of specific human rights in the course of their journeys and at borders. As the High Commissioner for Human Rights has asserted, such movement is rarely entirely ‘voluntary’ in the true sense of that term.

5. The present report seeks to analyse the human rights situation of migrants in the context of large movements. In developing this analysis, a link is made with the guidance being developed by the Global Migration Group’s Working Group on Human Rights and Gender Equality on the human rights protection of migrants in a vulnerable situation within large and/or mixed movements.³ Further, the most relevant elements of the New York

¹ Submissions were received from Australia, Argentina, Chile, Colombia, Cuba, the European Union, Italy, Lithuania, Mexico, Montenegro, Morocco, Qatar, Saudi Arabia, Serbia, United States of America — many of which highlighted good practices — as well as from United Nations agencies and non-governmental sources. The submissions can be found on the migration page of the OHCHR website at <http://www.ohchr.org/EN/Issues/Migration/Pages/LargeMovements.aspx>.

² Draft outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/70/L.61, 30 August 2016.

³ Note that in its 32nd session the Human Rights Council requested the High Commissioner “To continue to develop, as co-chair of the Global Migration Group Working Group on Migration, Human Rights and Gender, principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms, and to report thereon to the Human Rights Council at its thirty-fourth session (A/HRC/32/14,

Declaration are highlighted in each section, to demonstrate the commitments made and the continuing importance that the international community has attached to these human rights challenges.

III. Promoting and protecting human rights in the context of large movements

A. Ensuring that human rights are at the centre of the response to large movements, and guaranteeing monitoring and accountability

6. We reaffirm, and will fully protect, the human rights of all refugees and migrants, regardless of status; all are rights holders. (New York Declaration, para 5)

7. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind (Universal Declaration of Human Rights, Article 2)

8. Every individual in these large movements – whether defined as a migrant⁴, a refugee⁵, or any other category of person - is entitled to enjoy his or her human rights. The international bill of rights (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) makes exceptions between nationals and non-nationals in respect of only two rights, and only then in limited circumstances.

9. There are important commonalities in the human experience of individuals in the context of large movements, with equally significant human rights implications. Forced migration can often be better represented by a continuum than by a dichotomy.⁶ Asylum seekers and irregular migrants alike suffer discrimination, violence and extortion at border posts, they suffer injury and death in crowded trucks and leaky boats, they languish together in immigration detention, and in many countries they toil side by side in dangerous jobs in the informal economy. Xenophobic violence and hate speech target all foreigners and outsiders because of what they look like, where they come from, how they worship. They are all subjects of international human rights law. In such circumstances, it makes little sense to condition the response to such violations on the basis of separate categories of people. Human rights standards on the prevention of racial discrimination or the right to health apply equally to all human beings. International human rights law provides the

para 14(a)). Further, in para 51 of the New York Declaration, Member States have taken note of this initiative.

⁴ In the absence of a universal, legal definition, OHCHR has defined an “international migrant” as “any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence.” See OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders (2014) chap. I, para. 10.

⁵ Refugees are entitled to specific protection under international refugee law, including protection from return to persecution under Article 33 of the 1951 Refugee Convention, and non-penalization for irregular entry (Article 31).

⁶ The Declaration has acknowledged that “Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms. They also face many common challenges and have similar vulnerabilities, including in the context of large movements.” (para. 1.6) OHCHR is of the view that the treatment of refugees and other migrants under international law is governed by distinct but overlapping legal frameworks, recognising that all people on the move are entitled equally to the protection of human rights law, which includes protection from refoulement (for instance under the provisions of the ICCPR, the ICESCR and the CAT).

bedrock of protection for all people on the move, regardless of their subsequent categorisation into more specific groups with more precisely defined entitlements.

10. Indeed, human rights are universal, inalienable, indivisible and interdependent. The international human rights framework is clear that in order to give effect to these rights the unique and individual circumstances of each person must be taken into account and they must be recognised as active participants rather than only as passive recipients of services. Human rights attach to the person, not to the place. This in turn implies the obligation of the duty-bearer to respect, protect, and fulfil their rights at every stage of their movement.

B. Understanding the vulnerability of migrants in the context of large movements

11. We recognize, and will address in accordance with our obligations under international law, the special needs of all people in vulnerable situations who are travelling within large movements of refugees and migrants (New York Declaration, para. 23)

12. Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection (International Convention on the Rights of All Migrant Workers and Members of their Families (ICRMW), Preamble)

13. As stated above, the intention of this report is to shed light on the specific human rights situation of those migrants who may not qualify as refugees under the 1951 Refugee Convention, yet who are in vulnerable situations and thus in need of protection. Consequently, in the remainder of the report, the term ‘migrant’ will be used to refer to such individuals. Within this broad group of people, however, it is important to be aware of the differentiated rights and needs of particular individuals and groups such as trafficked persons, migrant workers, smuggled migrants, older persons, children, women at risk, persons with disabilities, as well as asylum seekers who have been unsuccessful in their claim.⁷ The specific rights of many of these groups have been recognised in particular international legal instruments.⁸

14. Migrants in these large movements are often vulnerable or in precarious situations, and in need of specific protection interventions.⁹ Analysing and exploring the parameters and limits of this vulnerability presents an opportunity to understand the diversity of migratory experiences that are evident in contemporary large movements, and to bring more clarity to the concept of a ‘migrant in a vulnerable situation’.

⁷ Following a final rejection in a fair and effective asylum procedure.

⁸ Such as, for instance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities or the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

⁹ See in this regard the view of the Special Rapporteur on the Human Rights of Migrants, who has stated that “when speaking generally of migrants, [he] has come to use the word “precarious” which refers more to the situation they are in, constructed as it often is rather than the word “vulnerable” which connotes more their intrinsic characteristics.” A/71/40767, para. 60.

15. The vulnerability of migrants in the context of large movements may be understood along the following lines.¹⁰ These factors are often intersecting, can co-exist simultaneously and can compound one another:

(a) Vulnerability related to the reasons for leaving countries of origin: The drivers for ‘non-voluntary’ precarious movements are multiple and often intertwined, and should be assessed on an individual basis. They can include poverty, discrimination, lack of access to fundamental human rights, including education, health, food and water, decent work, as well as violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family. The New York Declaration highlights in addition that “many move, indeed, for a combination of these reasons” (para 1).

(b) Vulnerability related to the situation encountered by migrants en route, at borders and in the context of reception: People are often compelled to utilise dangerous means of transportation in hazardous conditions, and to resort to the use of smugglers and other types of facilitators which can place them in situations of exploitation, at risk of trafficking and other abuse. This journey can be marked by hunger, deprivation of water, a lack of personal security as well as of access to medical care. Many migrants can spend long durations in transit countries, often in irregular and precarious conditions, unable to access justice and at risk of a range of human rights violations and abuse. The inadequate and often harsh conditions in which they are received at borders can also violate rights and further exacerbate vulnerabilities.

(c) Vulnerability related to a specific aspect of a person’s identity or circumstance: As they move, some people are inherently more vulnerable than others due to their persisting unequal treatment and discrimination based on factors including age, gender, ethnicity, nationality, religion, language, sexual orientation or gender identity or migration status. Certain people such as pregnant women, persons with poor health conditions including those with HIV, persons with disabilities, older persons, or children (including unaccompanied or separated children) are more vulnerable due to their physical and/or psychological conditions.

C. Confronting xenophobia against migrants

16. We strongly condemn acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against refugees and migrants, and the stereotypes often applied to them, including on the basis of religion or belief. (New York Declaration, para 14)

17. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms (International Convention on the Elimination of Racial Discrimination (ICERD), Article 2)

18. Although there is no universal legal definition of the term, xenophobia can be understood as attitudes and behaviour specifically based on the perception that the other is foreign to or originates from outside the community or nation.¹¹ The Special Rapporteur on

¹⁰ A thorough understanding of vulnerability will usually require an individual and situation-specific analysis. For a related discussion, see UNODC, Issue Paper – Abuse of a position of vulnerability, 2012, p. 14.

¹¹ See International Labour Office (ILO), International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR), in consultation with Office of the

Racism has recently asserted that “In the current era of increased mobility, manifestations of xenophobia are both myriad and alarmingly on the rise.” Such manifestations can include overt physical violence, hate speech and hate crimes, but also intentional, implicit or structural discrimination against migrants. Widespread misperceptions about the scale and nature of migration can contribute to xenophobia. In addition to overt efforts to exclude migrants from territorial borders, xenophobia may also be manifest in efforts to exclude migrants from particular areas of a city or from accessing public or private services, institutions or resources.

19. An increasing message of xenophobia has permeated political movements and media in many countries and has resulted in a climate of exclusion of, heightened anxiety about, and rising violence against migrants, as well as against ethnic and religious minorities, fuelled in several cases by government policies and practices. There has also been a rise in the widespread use of demeaning and commodifying language to describe migrants - ‘illegal’, ‘economic migrant’ or ‘bogus asylum seeker’; of threatening or disaster imagery to describe migration - floods, swarms, invasions, hordes; the false attribution of criminality or of negative social characteristics; or even more problematic and violent language that could directly incite hatred against migrants.

D. Guaranteeing access to justice for migrants

20. We will take measures to improve [migrants’ and refugees’] integration and inclusion, as appropriate, and with particular reference to ... access to justice ... (New York Declaration, para 39)

21. [E]veryone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (International Covenant on Civil and Political Rights (ICCPR), Article 14)

22. Migrants in large movements are often faced with a range of barriers to access justice, including in national courts, tribunals, and monitoring and complaints mechanisms. Such barriers can include lack of local language skills, limited information about their rights and means of redress as well as restrictions on movement, fragmentation of different rights across various judicial and non-judicial mechanisms; a lack of guarantees for due process; lack of access to a competent lawyer or interpreter; and a lack of legal aid.¹²

23. Migrants’ fear of detection, detention and deportation if they assert their right to access justice, including to access community police actors, is also a key barrier. Many will not report crimes, including hate crimes, for fear of repercussions. Even when migrants do bring complaints, existing justice processes may be ineffective because of linguistic and cultural barriers. In many countries, migrants face discrimination and unequal treatment in the justice system. They may be more exposed to biased law enforcement, harsher sentencing, custodial segregation and discriminatory decision-making.¹³

United Nations High Commissioner for Refugees (UNHCR), *International Migration, Racism, Discrimination and Xenophobia*, August 2001, p. 2.

¹² For more detail, see Report of the Special Rapporteur on the Human Rights of Migrants report A/71/40767, para. 80.

¹³ UNODC and IFRC, *Combating violence against migrants: Criminal justice measures to prevent, investigate, prosecute and punish violence against migrants, migrant workers and their families and to protect victims*, March 2015, p. 4.

E. Protecting the lives and safety of migrants in distress

24. We are determined to save lives. (New York Declaration, para 10)

25. Every human being has the inherent right to life (ICCPR, Article 6)

26. Increasingly tough controls at external borders, coupled with a critical lack of regular migration channels have escalated the risks and raised the stakes of irregular movement, compelling migrants into dangerous modes of travel. In the first eight months of 2016, the International Organisation for Migration (IOM) reported that 4,226 people had lost their lives along migratory routes. This figure is almost certainly a significant under-counting.¹⁴

27. In deserts and other land borders, thousands of migrants have perished due to exposure to the elements, dehydration or asphyxiation in overcrowded trucks. Thousands more have died at sea because their boats capsized and sank, because they were compelled to travel below deck in overheated engine rooms without water or ventilation, or because they have been forced overboard by smugglers or coast guards in dangerous interception operations.

28. The bodies of those who lose their lives will often remain lost or unidentified, and families will often not know if missing relatives are dead or alive. Also largely uncounted are the many migrants who suffer serious injuries in the course of their journey.

F. Ensuring that all border governance measures protect human rights

29. Recognizing that States have rights and responsibilities to manage and control their borders, we will implement border control procedures in conformity with applicable obligations under international law, including international human rights law and international refugee law. (New York Declaration, para 24)

30. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. (ICCPR, Article 12(1 and 2))

31. Preoccupation with border control and surveillance has escalated dramatically in recent years spurred by concerns about ‘uncontrolled’ migration overwhelming destination states, fears – albeit largely unfounded – about links between migration and transnational crime or terrorism.

32. Border management functions have become increasingly spatially detached from territorial borders, with control processes extending into the countries of origin of migrants, in the context of onerous visa requirements or carrier sanctions. Interception methods in transit countries or on the high seas have been criticised for their disproportionate use of force, or the arbitrary manner in which they are applied. Such measures can also deny people on the move access to an individual assessment of their circumstances, including access to fair and effective asylum procedures.

33. Migrants in the context of large movements are often unable to access adequate and non-discriminatory screening and individual identification at borders, including vulnerability assessments for issues such as trauma, pregnancy, or disability as well as identification of victims of trafficking and exploitation. Authorities often prioritise

¹⁴ IOM, Missing Migrants Projects. See <http://missingmigrants.iom.int/methodology>.

administrative and security procedures over the provision of necessary immediate assistance.

34. At borders, concerns have been raised about a lack of oversight and justice mechanisms which can encourage a culture of impunity to flourish amongst border guards and immigration officials. Border management functions are today also often carried out by private actors who can operate without adequate government oversight, and without taking human rights imperatives into account.

G. Ensuring that all returns are lawful and sustainable

35. Any type of return, whether voluntary or otherwise, must be consistent with our obligations under international human rights law and in compliance with the principle of non-refoulement ... Particular attention should be paid to the needs of migrants in vulnerable situations who return, such as children, older persons, persons with disabilities, and victims of trafficking. (New York Declaration, para 58)

36. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (Convention against Torture, Article 3(1))

37. Migration policies and practices are increasingly focused on preventing entry and on returning migrants as rapidly as possible as a deterrence measure. Readmission agreements are also engaging transit countries in the border control of destination states.

38. Migration policies which are premised on deterrence can lead to violations of the fundamental principle of non-refoulement, which is a peremptory norm of international human rights law applicable to any form of removal or transfer of persons, regardless of their status, to torture or other irreparable harm.¹⁵ Migrants can also be subject to arbitrary and collective expulsion. In some cases, migrants are unable to exercise free and informed consent in regard to return that is characterised as 'voluntary'.

39. The 'rush to return' that is increasingly characterising migration policy, in a situation where people are seeking to escape dire conditions and are unable or unwilling to return, has meant that returns are often unsustainable for the migrants concerned.¹⁶ This is in turn resulting in repeated cycles of precarious migration, and a perpetuation of the human rights violations and abuses to which migrants are exposed.

H. Protecting migrants from all forms of violence and exploitation

40. We will combat with all the means at our disposal the abuses and exploitation suffered by countless refugees and migrants in vulnerable situations. (New York Declaration, para 10)

41. [States parties undertake to guarantee] the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. (ICERD (Article 5(b)))

¹⁵ CAT, Article 3; Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, (2004), para 12.

¹⁶ In cases concerning returnees in the Balkan states, the Committee on Economic, Social and Cultural Rights (CESCR) has defined sustainable return to include "equal enjoyment of covenant rights, especially in the field of social protection, health care, education and employment." CESCR, Concluding Observations on Bosnia Herzegovina, U.N. Doc. E/C.12/BIH/CO/2 (2013), para 11.

42. Migrants are insufficiently protected from violence, torture, abuse and exploitation during their journeys, in transit (including where they have become stranded *en route*) and in the context of reception in destination countries.

43. They can be subjected to disproportionate and unlawful force by security forces, police officials and border authorities. Non-state actors can also exploit and abuse migrants in the context of large movements, where such migrants are particularly at risk of being trafficked¹⁷ and of being exploited by unscrupulous employers. Migrants can be kidnapped and tortured by criminals seeking to extort money.

44. Gender-based violence is a matter of extreme concern for migrants in the context of large movements. Girls and women are especially at risk of violence at the hands of a variety of actors, including fellow migrants, border authorities, police officers, detention guards and other officials. Sexual violence against men and boys is also prevalent. Gender-based violence is often not reported – where any complaints mechanisms exist or are accessible - because of the associated stigma.

I. Upholding the right to liberty of migrants

45. [W]e will consider reviewing policies that criminalize cross-border movements. We will also pursue alternatives to detention while these assessments are underway (New York Declaration para 33)

46. We affirm that children should not be criminalized or subject to punitive measures because of their or their parents' migration status (New York Declaration, para 56)

47. Everyone has the right to liberty and security of person (ICCPR, Article 5(1))

48. Recent years have seen a worrying trend towards the detention of migrants in breach of international human rights principles. Despite the drastic impact of the deprivation of liberty, migrants in the context of large movements are frequently subjected to administrative detention, which in some cases can be mandatory or even indefinite. Immigration detention can take place in inhuman and degrading conditions, including chronic overcrowding, unsanitary conditions, lack of access to adequate nutrition, and high levels of violence. Long-term administrative detention is linked to mental health issues, partly owing to lack of access to mental health care and services.

49. In the case of children even short-term stays in detention can have a detrimental impact on their mental health. Children in immigration detention will often be traumatized and have difficulty understanding why they are being “punished” despite having committed no crime.¹⁸ Children in immigration detention are five times as likely to be subjected to a substantiated incident of sexual violence, are much more likely to witness or experience other forms of violence, including physical harm by facility staff members, and are also more likely to commit suicide or engage in other forms of self-harm when housed in adult facilities.¹⁹

¹⁷ See Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, A/HRC/29/38, paras 11-13.

¹⁸ Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, A/HRC/15/29, para 51.

¹⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/28/68.

J. Ensuring the widest protection of the family unity of migrants

50. We will consider facilitating opportunities for safe, orderly, and regular migration, including, as appropriate ... family reunification (New York Declaration, para 57)

51. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State (ICCPR, Article 23(1))

52. Migrants may be compelled to move away from their countries of origin without their families, their reason for moving may be an effort to reunite with their families, or they may be separated from their families en route and at destination. Restrictive family reunification policies result in migrants, including children, having to access dangerous irregular channels to join their parents and other family members. Migrants may face difficulties when trying to register family representatives, including because of stereotyped assumptions about the composition of a family.

53. Migrants who are separated from their families are denied its most fundamental functions, namely protection, physical care and emotional support. This is especially the case when migrant children are unaccompanied or separated from their families. Isolation from their family, in addition to worry about the well-being of family members who remain behind, can affect the physical and mental health of migrants. This can hinder their ability to cope with other situations, including the strains of the journey. The effects of social isolation are exacerbated where communication with the family is limited, an immediate social support network is absent, where migrants face xenophobia and discrimination, or where they become destitute or stranded.

K. Guaranteeing the human rights of all children in the context of migration

54. We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child (New York Declaration, para 32)

55. In all actions concerning children [...] the best interests of the child shall be a primary consideration (Convention on the Rights of the Child, Article 3(1))

56. Children travelling in large and/or mixed movements can be at particular risk of abuse and exploitation, whether they are alone or together with their families or caregivers. Support and protection services, including access to a legal guardian as well as legal representation where relevant, are often denied to children on the move and especially to those travelling unaccompanied or separated from their families.

57. Very often, policy responses towards children on the move are premised on inaccurate assumptions, rather than a reasoned assessment of the views, needs and best interests of the child. Immigration enforcement policies can frequently prevail over child rights in contravention of international legal standards. In the context of large movements, children can lack access to meaningful information that will enable them to take decisions concerning their own well-being.

58. When they move in irregular situations, children are less likely to be able to access education and health care, including timely vaccinations, and may lack shelter, food and clothing. They are often subjected to severe human rights violations, including forced labour, trafficking, sexual exploitation and violence, extortion and kidnapping.

59. Despite the fact that the assessment of age can be the key to being protected as a child, many migrant children can be subject to inappropriate age determination techniques,

which can interfere with their right to privacy and violations of their human dignity. A false belief in the reliability and precision of such techniques can lead to serious errors and can place children at risk of refoulement, detention and denial of essential services.

L. Protecting the human rights of migrant women

60. We will ensure that our responses to large movements of refugees and migrants mainstream a gender perspective, promote gender equality and the empowerment of all women and girls, and fully respect and protect the human rights of women and girls. (New York Declaration, para 31)

61. States Parties condemn discrimination against women in all its forms. (Convention on the Elimination of All Forms of Discrimination Against Women (Article 2)

62. While gender-based discrimination, inequality and violence are drivers of large-scale and precarious migration, many migrant women continue to experience similar violations of their rights during their journey and at destination at the hands of a variety of actors, including their own families, social networks, employers, state officials, public or private providers of service and assistance, as well as traffickers and abusive smugglers. Women at particular risk in the context of large movements include pregnant women, new or breastfeeding mothers, lesbian, gay, bisexual, transgender and intersex (LGBTI) women, older women and persons with disabilities.

63. At the same time, migrant women can also take on different roles and responsibilities during the course of their journey and at destination, either because they are traveling alone or with their children, or because they have started to work independently or outside the home in transit situations.

64. Migrant women can lack access to gender-sensitive services, such as sexual and reproductive health including specialised psychosocial services for survivors of rape, and can be rendered more vulnerable by the shortage of personnel and the lack of gender-sensitive infrastructure. Migrant women can also lack access to obstetric and maternal health services while they are on the move, as well as care for newborns and infants.

65. Migrant women can have limited access to information related to their rights and the migration process, and are often excluded from decision-making processes at the national, local and community or family level. In the absence of access to justice, survivors of such acts can isolate themselves from their surrounding for fear of retaliation and further violations.

M. Ensuring the right of migrants to the highest attainable standard of physical and mental health

66. We encourage States to address the vulnerabilities to HIV and the specific healthcare needs experienced by migrant and mobile populations. (New York Declaration, para 30)

67. [States Parties recognise] the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12)

68. Migrants in the context of large movements can lack access to their right to health at all stages of the journey. The conditions in which migrants are compelled to travel, their living and working conditions in transit, and the circumstances of their reception often

deprive them of essential underlying determinants of their right to health, and can also lead to poor health outcomes.

69. The health issues associated with long, traumatic and exhausting journeys include accidental injuries, hypothermia, burns, dehydration as well as untreated infections, injury and violent trauma due to violence suffered en route. Vulnerable individuals, especially children, are prone to respiratory infections and gastrointestinal illnesses because of poor living conditions, suboptimal hygiene and nutritional deprivation during their movement. The effect of precarious movements on the mental health of migrants is often dramatic, with up to half of all migrants in large movements suffering from post-traumatic stress disorder.

70. However, accessing necessary and appropriate treatment is often complicated by factors such as legal barriers, cost, stigma and cultural and linguistic issues. When they are in an irregular situation, migrants can be denied access in law or practice to healthcare. The difficulties of providing treatment to mobile populations, including for mental health issues and chronic conditions, will mean that many migrants in large movements are forced to self-medicate or to rely on informal alternatives.

N. Safeguarding the right of migrants to an adequate standard of living

71. We also recall our obligations to respect [migrants' and refugees'] human rights and fundamental freedoms fully, and we stress their need to live their lives in safety and dignity. (New York Declaration, para 10)

72. [State Parties recognise] the right of everyone to an adequate standard of living [...] including adequate food, clothing and housing, and to the continuous improvement of living conditions (ICESCR, Article 9)

73. In stark contrast to international standards which uphold the inherent dignity of every human being, migrants in the context of large movements can often be compelled to live without proper housing and sanitation, frequently lacking adequate access to food and drinking water. Skin diseases related to poor hygiene and overcrowding, such as mycosis and dermatitis, are often prevalent, and there is often an increased risk of communicable diseases.

74. Migrants who are in an irregular situation en route and when they arrive at destination are often compelled, by law or circumstance, to live in segregated, run-down and poorly maintained residential areas, with poor services and facilities.²⁰ The criminalization of irregular migration can mean that migrants are unable to rent private property of good quality and this can compel them to live in shacks, derelict buildings or even in the open-air. They are often prohibited in law or by administrative regulation from making improvements to these structures.

75. In many countries, irregular migrants are prohibited from accessing homeless shelters, or will not use these shelters because of rules that oblige shelters to report their clients to immigration authorities. Migrants can also be vulnerable to forced evictions, which can in turn increase their vulnerability to homelessness, destitution, detention and forced return.

²⁰ OHCHR, *The Economic, Cultural and Social Rights of Migrants in an Irregular Situation*, 2014, pp. 64-65.

O. Guaranteeing to migrants the right to work, in just and favourable conditions

76. We will pay particular attention to the application of minimum labour standards for migrant workers regardless of their status. (New York Declaration, para 57)

77. [States Parties recognize] the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts [...] The States Parties recognize the right of everyone to the enjoyment of just and favourable conditions of work (ICESCR, Articles 6(1) and 7))

78. While in transit, many migrants are compelled to seek employment in order to survive and to be able to fund further travel. More often than not, migrants in such circumstances are restricted to working in the informal sector, often in hazardous and exploitative conditions. They are particularly vulnerable to forced labour and servitude, including debt bondage. Protection of migrants' labour rights in the context of large movements is often extremely challenging as many migrants are unable to access justice for work-related abuses including because of their irregular status or because they fear retaliation from employers. Their isolation and social exclusion can compound their vulnerability to abuse, particularly as migrants can be barred from joining trade unions and lack access to other forms of association.

79. Migrant children in the context of large movements often have to contribute to the family income or, if they are travelling on their own, will need money to survive and move onwards. Many are subjected to hazardous working conditions as well as maltreatment and abuse. Migrant women are often restricted to gendered and informal occupations where legal protection of their labour rights is limited, and where they may be subjected to exploitation.

P. Protecting the right of migrants to education

80. We will take measures to improve [migrants' and refugees'] integration and inclusion, as appropriate, and with particular reference to access to education ... (New York Declaration, para 39)

81. States Parties to the present Covenant recognize the right of everyone to education (ICESCR, Article 13(1))

82. Migrant children are often unable to enjoy their right to education in the context of large movements. Education may not be seen as a priority by families who are keen to move on to their intended destination, and in many countries migrant children in an irregular situation will be barred in law from accessing education. Even in countries where the universal right to education is recognized by national law, migrant children may be unable to go to school because of discriminatory attitudes and behaviour. Moreover, parents can be reluctant to send their children to school for fear of xenophobic violence or detection and deportation. On arrival, migrant children in the context of large movements may have to spend months or even years in 'reception' facilities with inadequate access to education.

83. Other barriers to accessing education include requirements to produce specific documentation, including evidence of identity and residency, birth and medical records. In some cases, migrant families are required to pay high school fees. Migrant children may also have to work to afford a living or pay for their journeys and will not go to school.

84. Migrants, including adult migrants, will often be unable to obtain recognition of their diplomas and qualifications or to transfer educational achievements.

Q. Upholding migrants' right to information

85. We will take measures to inform migrants about the various processes relating to their arrival and stay in countries of transit, destination and return. (New York Declaration, para 42)

86. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds (ICCPR, Article 19(2))

87. For many migrants in the context of large movements, a chronic lack of information about their situation and their rights exacerbates their vulnerability to human rights violations and abuse. Upon arrival in destination countries, the lack of information on their rights, entitlements and prospects can cause uncertainty and aggravate mental health issues and social stresses. Lacking knowledge of how to navigate unfamiliar and often complex procedures, migrants may be unable to access essential channels for protection and assistance.

88. As they move, migrants may lack information about their entitlement to health services and where to find medical care, legal services, options for housing and accommodation, as well as the possibility to access complaints mechanisms in cases of abuse. In detention, migrants may lack information on how to challenge their detention, and how to exercise their rights, such as to contact their lawyers, families or consular officials.

89. Information campaigns have been used to try to deter irregular migration or promote return, and warn of the dangers of unsafe migration, including in the context of large movements. While there is little systematic evaluation of such campaigns, evidence indicates that they generally have a limited effect on migrants' decisions to move, and the channels they decide to use, which tend to be shaped by the reality of conditions in countries of origin or transit and the availability (or not) of regular channels, as well as reports from trusted social networks. Information campaigns can operate at a relatively superficial level of 'awareness raising' rather than community engagement.

90. Information that is provided directly to migrants in the context of large movements, such as in reception facilities, can also be of limited use if it is not translated into relevant languages, is not appropriate for people who cannot read, or is not presented in a child-friendly and gender-sensitive manner.

R. Respecting and supporting the activities of human rights defenders and others working to rescue and provide assistance to migrants

91. [R]ecognizing the contribution of civil society, including non-governmental organizations, to promoting the well-being of migrants and their integration into societies, especially at times of extreme vulnerable conditions. (New York Declaration, para 61)

92. Everyone shall have the right to freedom of association with others (ICCPR, Article 22(1))

93. Individuals and organisations work to promote and protect the rights of migrants, by providing humanitarian assistance, rescuing migrants in distress, providing education, legal support and other protection services, undertaking advocacy, and training or supporting victims of human rights violations. Many provide specific support to migrants in the context of large movements.

94. At the same time they are often harassed, attacked and criminalized for their work. They can be subjected to arbitrary detention and arrest, threats, confiscation of rescue

equipment such as boats, verbal, physical and sexual harassment and violence by individuals or by public authorities, such as police. They may face charges of ‘migrant smuggling’ or facilitating irregular entry as well as other criminal or administrative charges.

S. Improving the collection of disaggregated data on the human rights situation of migrants in the context of large movements

95. We will make efforts to collect accurate information regarding large movements of refugees and migrants. (New York Declaration, para 25)

96. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 65(1))

97. Critical lack of data and research on the human rights situation of migrants in the context of large movements represents a major obstacle to the formulation of effective, sustainable and rights-based policy responses.

98. Much of the existing migration-related data does not shed light on the human rights situation of individual migrants and particular groups of migrants in vulnerable situations. For instance, despite the increasing number of people embarking on perilous journeys in search of safety and dignity, there is still a lack of disaggregated data on the number of migrants killed, injured, or victims of crime while attempting to cross maritime, land or air borders and in the context of large and/or mixed movements. Understanding the nature and extent of violence faced by migrants is severely hampered by the lack of data available. The fact that migrants in irregular situations may not be officially recorded means that their victimization is unlikely to be reflected in surveys.

99. There is also a lack of disaggregated data on the number and type of abuse, exploitation and violence to which migrants are subjected. Other issues for further research and disaggregated data include the human rights impact of smuggling and immigration detention in transit, or the exclusion from basic services of particular groups of migrant. For example, there is little data on the school enrolment of migrant children in an irregular situation.

T. Promoting international cooperation to ensure a human rights-based approach in the response to large movements

100. Large movements of refugees and migrants have political, economic, social, developmental, humanitarian and human rights ramifications which cross all borders. These are global phenomena which call for global approaches and global solutions (New York Declaration, para 7)

101. [States Parties shall] consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families (ICRMW, Article 64(1))

102. The governance of migration is often considered as an issue which is solely defined by national sovereignty, which is in turn generally equated with national security. The common framework provided by universal human rights principles is often disregarded in discussions of migration governance.

103. However, there is now an emerging understanding that enhanced international cooperation is a central element of any successful response to the large-scale, irregular and

precarious movement of migrants and refugees, and that the United Nations, in accordance with its Charter, has a key role to play as a forum for international cooperation in this regard.

104. Nevertheless, as the present report has made clear, there continue to be serious gaps in the human rights protection of the significant numbers of migrants who are in a vulnerable situation within large movements, but who may not qualify as refugees. Much more needs to be done collectively to address the drivers of forced migration, such as extreme poverty as well as climate change and environmental degradation, and to respond to the human rights protection needs of migrants who are moving in these precarious ways in transit and at destination.

IV. Conclusions and recommendations

105. **We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status at all times (New York Declaration, para 41)**

106. **We pledge our support to those affected today as well as to those who will be part of future large movements (New York Declaration, para 11)**

107. **There is an urgent need for timely, concerted and joined-up action by States and other stakeholders to protect, respect and fulfil the human rights of all migrants and refugees in the context of large movements, many of whom are in grave danger on migratory routes on land or at sea, or are stranded in precarious transit or border locations.**

108. **It is recommended that States and other stakeholders as relevant should:**

(a) **Recognise that every person in the context of large movements is a rights-holder, and commit to full protection of their human rights and fundamental freedoms, regardless of status or other circumstance;**

(b) **Acknowledge that criminalising people for crossing or attempting to cross borders is a disproportionate measure, and therefore pledge to end immigration detention by establishing a presumption against immigration detention in law, and pledge also never to detain children;**

(c) **Promise to confront violence, stigmatisation, discrimination, social exclusion and other manifestations of xenophobia against migrants and refugees, and in this context support the efforts of the United Nations Secretary General to initiate a global campaign to confront xenophobia, recognising that there is an urgent need to counter rising intolerance, violence and social exclusion of such groups;**

(d) **Ensure that the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, as well as its follow-up processes to develop multilateral agreements on responsibility-sharing for refugees and on safe migration, safeguard the human rights of all migrants and refugees without discrimination, and support States to establish human-rights-based, coherent and comprehensive migration and asylum policies at the national, regional and international levels;**

(e) **Devote specific attention to migrants in a vulnerable situation, and in this regard continue to support the development by the Global Migration Group Working Group on Human Rights and Gender Equality of the Principles and practical guidance on the human rights protection of migrants in a vulnerable situation within large and/or mixed movements, and commit to build the State-led**

process to develop guidelines for vulnerable migrants on the strong normative foundation provided by the abovementioned principles and practical guidance;

(f) Premise the global compact on safe, regular and orderly migration on protection of the human rights of all migrants, and ensure that it is firmly based in international human rights law and other relevant normative standards. Include in the compact specific actions to ensure human rights-based governance of migration such as addressing the drivers of precarious migration, enhancing safe and regular pathways, and taking measures to regularize the status of irregular migrants. Ensure that all relevant stakeholders, including OHCHR, the United Nations human rights mechanisms and civil society including migrants' groups, are fully involved in the elaboration of the compact.
