



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

In Search of Dignity

Report on the human rights
of migrants at Europe's borders



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of migrants at Europe's borders



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Nei titoli di coda
c'è gente che lavora
GRAZIE RAGAZZI!

Opti Air

Alesio

CARTONI
BROCCOLI

ROYAL

ΚΗΦΕΥΤΙΚΑ ΚΡΗΤΗΣ

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EXECUTIVE SUMMARY



During 2016, the High Commissioner dispatched small teams of his staff to transit and border locations in Greece, Italy, Bulgaria, the former Yugoslav Republic of Macedonia and France in order to monitor and identify the human rights challenges and protection gaps faced by migrants,¹ with a view to better assisting States in implementing human rights-based migration governance measures. The High Commissioner appreciates the willingness of the above-mentioned countries to receive the teams, and extends his gratitude for their support and cooperation during the missions.

¹ For the purposes of this report, “migrant” is used as a neutral umbrella term to cover the categories of refugee and asylum seeker, as well as international migrants in an irregular situation, trafficked persons, smuggled migrants, and other categories of non-citizens, unless specified otherwise. In the absence of a universal legal definition, OHCHR defines 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”.

This report details the common concerns identified throughout the countries visited, drawing on the findings of these missions. While acknowledging that since the country visits a number of laws and other measures have been adopted with the aim of improving the situation of migrants in the various countries, the findings in this report are limited to the specific situation found in the countries at the time of the visit. The missions focused on key border and transit locations in Europe in 2016 and, recognizing that several other countries in Europe also received large numbers of migrants in the course of that year, this analysis does not claim to be an exhaustive assessment of the situation across the region. The aim of this report is to highlight how certain laws, policies and practices related to migration and asylum have compounded situations of vulnerability, prevented individuals from accessing

protection and created barriers to migrants' full enjoyment of their human rights.

The teams found that the vast majority of migrants were in a vulnerable situation due to experiences they had encountered in their countries of origin, during their journeys and upon reception, and/or due to a particular aspect of their identity or circumstance (e.g. being a child, a woman at risk, persons with disabilities, sexual orientation and gender identity, minority or other status). Yet States often seemed unable to adequately identify migrants in vulnerable situations and provide appropriate protection.

The main areas of human rights concerns that are highlighted in this report include, (1) criminalization, return and detention; (2) the lack of adherence to due process and fair trial guarantees; (3) difficulties faced by migrants in accessing services, including health, information, and legal assistance; (4) the lack of adequate child protection systems; and (5) the conditions in the facilities, camps and other locations where migrants were staying. The teams also observed increasing xenophobia, incitement to hatred, and violence against migrants without access to justice and remedies; and weak frameworks for independent human rights monitoring.

The teams acknowledge that these migratory movements took many parts of Europe by surprise, particularly in 2015 when increased numbers of migrants arrived via the Eastern Mediterranean and Balkan land route and the continuous high numbers of arrivals to Italy via the Central Mediterranean route. The teams appreciate that measures to respond to the protection needs of migrants were not always readily in place and had to be built progressively. However, the report concludes that in their responses, States too often relied on an emergency and security-focused approach to migration governance over one that was primarily migrant-centred and human rights-based. The systems in place at the time

of the visits frequently did not provide migration responses that were sufficiently sensitive to the human rights protection needs of the migrants who were seeking safety and dignity in Europe, leading to a number of protection gaps. In addition, the teams found that the lack of adherence of particular migration measures to minimum standards under international human rights law invariably had a knock-on effect, leading to negative impacts on a range of interrelated human rights.

The recommendations in this report are directed at the States visited as well as the European Union (EU) institutions as applicable and seek to provide norm-based and practical guidance on ensuring human rights-based migration and asylum governance measures under the premise that respecting, promoting and protecting the human rights of all migrants, regardless of their nationality, migration status or other circumstances, facilitates effective migration governance.² While the recommendations are made in relation to common concerns identified during the missions, the Office of the United Nations High Commissioner for Human Rights (OHCHR) stands ready to provide specific, tailored advice concerning each country situation through its continued dialogue with the relevant States and the EU. For this reason, where possible, the report identifies preliminary opportunities for technical assistance and increased advocacy with the EU and Member States, United Nations (UN) partners, civil society organizations and national human rights institutions and ombudspersons.

² The recommendations are drawn from the framework of international human rights laws and standards, with key guidance provided by OHCHR's *Recommended Principles and Guidelines on Human Rights at International Borders* (2014) and the Report of the United Nations High Commissioner for Human Rights to the Human Rights Council and accompanying Conference Room Paper on the *Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations* (A/HRC/34/31 and A/HRC/34/CRP.1).

INTRODUCTION AND METHODOLOGY

Between 2015 and 2016, over one million migrants arrived in Europe by dangerous land and sea routes. Almost 9,000 women, men and children lost their lives in the Mediterranean alone during 2015-2016.³ These stark figures reflect a human tragedy on a massive scale, with children and other vulnerable groups making up an increasing proportion of those arriving.

OHCHR, which is mandated to promote and protect the enjoyment and full realization by all people of all rights, has a crucial role in identifying key human rights issues with a particular focus on those individuals who are most vulnerable, excluded and marginalized. OHCHR can also offer practical guidance and assistance to States in designing and implementing human rights-based responses.

In response to the increasing concerns surrounding the protection of the human rights of migrants at borders and in transit in Europe, the High Commissioner decided in March 2016 to dispatch his staff on missions to a limited set of European border locations to monitor and identify the human rights challenges and protection gaps faced by migrants in these locations.

Visits were conducted to Greece (18 – 22 April 2016); Italy (27 June – 1 July 2016); Bulgaria (25 – 29 July 2016); the former Yugoslav Republic of Macedonia (4 – 7 September 2016), and France (16 – 19 November 2016).

The teams focused on assessing the situation of migrants within border governance measures. The countries visited represented

³ The statistics include deaths on the Eastern, Central and Western Mediterranean routes, see: <http://missingmigrants.iom.int/mediterranean-migrant-arrivals-reach-358403-official-deaths-sea-4913>.

key entry and transit locations in Europe in 2016, although several other countries in Europe also received large numbers of migrants in the course of that year – therefore, this analysis cannot claim to be an exhaustive assessment of the situation across the region.

The teams were guided by the framework of international human rights laws and standards and in this regard, key guidance was provided by OHCHR's *Recommended Principles and Guidelines on Human Rights at International Borders* (2014).⁴ Albeit not exclusively, the teams focused on migrants who may not qualify for refugee protection but who are nonetheless in vulnerable situations.⁵ The primary objective of the missions was to identify protection gaps, such as in the context of first assistance and identification. The missions also had a strong focus on issues related to child protection, as well as gender-related concerns and considerations.

The findings contained in this report are based on information gathered by the human rights monitoring missions conducted to the above-mentioned countries throughout 2016.⁶ The recommendations provide practical guidance to the States visited and EU institutions as applicable.

During the visits, the mission teams met with relevant national and local government authorities, EU officials, service providers and staff of the various facilities visited. Meetings were also held with UN partners, civil society organizations, ombudspersons and other

⁴ See: <http://ohchr.org/EN/Issues/Migration/Pages/InternationalBorder.aspx>.

⁵ See A/HRC/33/67.

⁶ Press statements, video-clips and/or human-interest pieces were variously issued subsequent to the missions to raise awareness of the human rights barriers faced by migrants and to advocate for the implementation of human rights-based migration responses. See Annex III.

national human rights institutions.⁷ The teams held interviews with migrants during their visits to immigration detention centres and reception facilities, including “hotspots”, as well as shelters for unaccompanied and separated children, and formal and informal camps.⁸

The findings and recommendations of each mission were discussed in some depth with the national authorities following the mission, with a view to offering practical guidance and technical assistance to improve States’ implementation of their obligations towards migrants under international human rights law.



⁷ See Annex I for list of stakeholders met.

⁸ See Annex II for list of facilities and camps visited.

CONTEXT

During 2016, the main routes used by migrants to reach Europe were by sea crossing from Turkey to Greece or by land from Turkey to Bulgaria (the Eastern Mediterranean and Balkan land route) and by

sea crossing from North Africa to Italy or Malta (Central Mediterranean route). Within Europe, migrants have established several transit pathways towards countries or locations of intended destination.

Eastern Mediterranean and Balkan land route

During 2015, increased numbers of migrants began arriving via Turkey across the Eastern Mediterranean route to Greece or Bulgaria and travelling north thereafter, along the so-called “Balkan land route” which transited through Austria, Croatia, Hungary, Serbia, Slovenia and the former Yugoslav Republic of Macedonia. A series of decisions in early 2016, such as the EU-Turkey statement, the Joint Statement of Heads of Police Services, the closure of land borders and the erection of fences, led to the near-closure of the Balkan land route and the Eastern Mediterranean route, leading to a 79 per cent decrease in persons arriving throughout 2016 and over 75,000 persons stranded in various countries along the route.⁹ Over 400 migrant women, men and children lost their lives on the Eastern Mediterranean route in 2016.¹⁰

The EU-Turkey statement was concluded on 18 March 2016 with the aim of reducing arrivals from Turkey to Greece, with the understanding that Turkey can be considered a “safe third country” or “first country of asylum”. It committed Turkey to accept the return of all migrants who transited that country and crossed by sea to the Greek Aegean islands. The EU committed to provide 6 billion euros in aid to Turkey, engage on visa liberalization for Turkish citizens, and

revive negotiations for Turkish accession to the EU. The statement also provided for the resettlement of one Syrian refugee from Turkey for each Syrian returned to Turkey under the statement. Over the course of 2016, the numbers of arrivals from Turkey to the Greek islands decreased significantly, but did not stop altogether (with a marked increase being reported after the attempted coup in Turkey in June 2016).¹¹

In addition, the Joint Statement of Heads of Police Services, an agreement between the heads of police services of Austria, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Slovenia was adopted in February 2016. The agreement foresaw increased cooperation, including in relation to security measures, refusals of entry at borders, as well as transfers and expulsions.

95 per cent of migrants travelling on this route in 2016 were from Syria, Afghanistan, Iraq, Pakistan, and Iran.¹² 37 per cent were children and 21 per cent women.

Central Mediterranean route

On the Central Mediterranean route, over 180,000 migrants crossing from Libya were rescued and disembarked in Italy throughout

⁹ See, <http://migration.iom.int/europe/>.

¹⁰ See, <http://missingmigrants.iom.int/mediterranean-migrant-arrivals-reach-358403-official-deaths-sea-4913> and <http://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>.

¹¹ See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161208-4th_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en_0.pdf.

¹² See, <http://data.unhcr.org/mediterranean/country.php?id=83>.

2016. Smaller numbers of migrants embarked on the sea crossing from Egypt, Tunisia and other locations. According to IOM statistics, this movement represents a 7 per cent increase from 2014 and a 19 per cent increase compared to 2015.¹³ Migrants travelling on this route in 2016 came from over 60 different countries, mainly from West Africa and the Horn of Africa. 16 per cent were children and 13 per cent women.¹⁴

Despite the efforts of European Union operations such as Sophia and Triton, the ships of individual European States such as the Italian Coast Guard, non-governmental organizations, and merchant ships to rescue migrants embarking on the risky sea journey, 2016 has proven the deadliest year so far on this route, with at least 4,410 migrants losing their lives at sea, a staggering 50 per cent increase from the 2,892 deaths recorded the preceding year.¹⁵

Settlements in the Calais area

The Calais “Jungle” camp was officially dismantled in October 2016 and, according to the Ministry of Interior of France, approximately 6,000 migrants out of the 10,000 inhabitants were transferred to 450 reception centres across France. In addition, various informal and semi-informal settlements in Northern France continue to provide shelter to migrants. Numerous migrants have died trying to board lorries or moving trains in order to cross the Channel tunnel.

¹³ See, <http://missingmigrants.iom.int/mediterranean-migrant-arrivals-reach-358403-official-deaths-sea-4913>.

¹⁴ See, <http://data.unhcr.org/mediterranean/country.php?id=105>.

¹⁵ See, <http://missingmigrants.iom.int/mediterranean-migrant-arrivals-reach-358403-official-deaths-sea-4913> and <http://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>.

See,

The “hotspot” approach and relocation

In Italy and Greece, so-called “hotspots” were established within the framework of the EU Agenda on Migration in order to ensure the swift identification, registration and fingerprinting of migrants arriving on their shores with the support of EU agencies, to immediately channel asylum seekers into an asylum procedure and to coordinate the return of irregular migrants.¹⁶ Other elements of the approach include the provision of emergency health assistance and information for the arriving migrants. The hotspot approach was also designed to contribute to the implementation of the temporary relocation schemes of 160,000 asylum seekers from Italy and Greece,¹⁷ which would apply to those nationalities with a 75 per cent or higher rate of recognition of refugee status, based on an EU average (as reflected quarterly by Eurostat).¹⁸

¹⁶ See EU Council conclusions of 25 and 26 June 2015, as well as https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf.

¹⁷ <http://www.consilium.europa.eu/en/meetings/jha/2015/09/22>. Decisions are legally binding for those to whom they are addressed. In May and September 2015, the European Council adopted decisions on a temporary and exceptional basis for a period of two years, on the relocation of 160,000 asylum seekers from Italy and Greece. These decisions were intended to “give meaning” to the EU principle of solidarity and fair sharing of responsibility in the area of border checks, asylum and migration, further to article 80 of the Treaty on the Functioning of the European Union. The procedure would apply to those persons who have applied for international refugee protection in either Italy or Greece, and the asylum application would then be processed in the Member State of relocation.

¹⁸ According to EASO, in July 2016, the following nationalities were eligible for relocation: Syria, Eritrea, Central African Republic, Seychelles, Dominica, Bahrain, Laos and Saudi Arabia or a stateless person previously residing in one of these countries. As of December 2016, the nationalities included: Syria, Eritrea, Burundi, Mozambique, Bahrain, Bhutan, Qatar and Yemen or a stateless person previously residing in one of these countries.

THE HUMAN RIGHTS SITUATION OF MIGRANTS

Focusing on the laws, policies and practices relating to the treatment of migrants in transit and at borders in the five countries visited, the teams documented a set of key common human rights concerns, which unveil a pattern of particular protection gaps and barriers faced by migrants who are in transit and/or at international borders. These concerns have been identified on the basis of applicable standards of international human rights law. More concretely, they relate to criminalization

of irregular entry or stay; procedures related to the prohibition of arbitrary or collective expulsion and non-refoulement; identification of vulnerabilities; access to services; the right to information; the rights to liberty, due process and fair trial; conditions in detention; conditions in settlements, camps or other locations; the protection of children; xenophobia, incitement to hatred, and violence against migrants; and human rights monitoring.

Criminalization of irregular entry and/or stay

International human rights standards¹⁹ provide that crossing or attempting to cross the border of a country in an unauthorized manner or without proper documentation, or overstaying a permit of stay should not constitute a crime; while irregular entry and stay may constitute administrative offences, they are not crimes per se against persons, property or national security.²⁰ Furthermore, States have committed in the New York Declaration for Refugees and Migrants²¹ to consider reviewing policies that criminalize cross-border movements.²² The High Commissioner has repeatedly maintained that, "desperate people who are left with no regular migration options will continue to risk their lives in search of safety and dignity."²³ Criminalization due to migrants' status or inability to arrive regularly will not serve as an effective deterrent and even less as an appropriate migration governance measure.

¹⁹ International human rights standards include international treaties, general comments or recommendations, concluding observations and the views of treaty bodies, as well as other soft law instruments including declarations, and resolutions.

²⁰ Report of the Special Rapporteur on the Human Rights of Migrants, 2 April 2012, A/HRC/20/24, para. 13; Report of the Working Group on Arbitrary Detention, 10 January 2008, A/HRC/7/4, para. 53; Report of the Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para. 58; the United Nations Committee on Migrant Workers, General Comment No. 2, para. 24, the Office notes that while international human rights standards are comprised of the entire body of relevant international treaties, general comments or recommendations, concluding observations and the views of treaty bodies, as well as other soft law instruments, the countries visited have not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

²¹ The New York Declaration for Refugees and Migrants was adopted at the UN General Assembly high-level summit to address large movements of refugees and migrants on 19 September 2016. In the New York Declaration, Member States unanimously reaffirmed their commitment to fully protect the human rights of all refugees and migrants as rights-holders, regardless of their status, and to devise comprehensive responses that will demonstrate full respect for international human rights law and other relevant standards. While the New York Declaration was adopted after the missions to Greece, Italy, Bulgaria and the former Yugoslav Republic of Macedonia, it reflects States' continued commitment to the core international human rights treaties in relation to their migration governance measures.

²² New York Declaration, para. 33.

²³ Open letter from the United Nations High Commissioner for Human Rights on protecting the human rights of migrants and refugees in large movements, 14 September 2016. Available at:

<http://www.ohchr.org/Documents/Issues/Migration/HCOpenLetterMigrantsAndRefugees.pdf>.

Findings

The impact of criminalization of irregular entry and stay on the rights of migrants was documented throughout the missions, where, in all countries visited, irregular entry and stay is punishable with penalties imposed on migrants amounting to imprisonment and/or a fine. The Office welcomes the partial decriminalization of irregular entry in Italy in 2014. While some countries have decriminalized the first registered irregular entry or stay, they have also put in place criminal offences with high penalties for repeated offences. As there is in general a lack of sufficient avenues for regularization in the countries of destination, migrants are bound to fall into the “repeated irregular migration” category if they have, for instance, been issued a deportation notice or expulsion order but could not be returned to the country of origin or sent to another state for various reasons.

The teams observed that such criminalization has led to increased detention, and were concerned about the prosecution and imprisonment of migrants in an irregular Criminalization may place individuals at a higher risk of suffering abuse and exploitation, benefits the business of smugglers, and deprives migrants from accessing services and justice for crimes and human rights violations committed against them, as they fear deportation or imprisonment. The mission heard from migrants in transit about the impact of having to live clandestine lives. Problems included being subjected to violence from certain police authorities because migrants were too afraid to report

situation and their treatment in detention. This included lack of access to legal aid, information, inconsistent access to medical care, and being held alongside foreign criminal offenders. In Bulgaria for example, migrants had been prosecuted for irregular border crossing and some were serving sentences of one year or more in Sofia Central Prison, in addition to the time spent in administrative detention. There were also concerns that a criminal record would in practice make it extremely unlikely for an individual to be recognized as a refugee, should they apply or reapply for asylum.

The teams also observed that criminalization leads to a security-focused approach, including over-securitization of borders and other measures that fail to provide adequate protection to migrants, as is highlighted in this report. Such physical and procedural barriers prevented individuals from being involved in decisions affecting them, and/or reuniting with their families, which had a particularly negative impact on unaccompanied children.

their conduct, and not being able to access adequate medical care (particularly for chronic illnesses) in informal settlements or along their journey.

Furthermore, criminalization feeds anti-migrant public perception and sentiments, which can result in increased intolerance, incitement to hatred and attacks against migrants. All these are reported to have increased in the locations visited (see below).

Recommendations

The criminalization of migrants in an irregular situation exceeds the legitimate interest of States to control and regulate irregular migration and also results in multiple negative human rights impacts. States should:

- **Decriminalize irregular migration** by amending legislation to ensure that leaving, entering and/or staying in a country irregularly is not considered a criminal offence. Any administrative sanctions applied should be proportionate, necessary and reasonable.
- In order to decrease the number of migrants in an irregular situation and to address the needs and rights of migrants effectively, develop policies and avenues to **regularize the status of migrants**, in particular for migrants in a situation of vulnerability and those individuals who are

protected from return under international human rights law. **Grant temporary residence status or other temporary protected status** to any migrants who cannot be returned, including those who are refused admission into the territory of their country of origin or habitual residence, or for whom there are practical obstacles to returning to their country of origin or residence.

- **Prevent indefinite or protracted detention** of any migrants who cannot be returned and protect them against re-detention.
- **Prohibit border governance measures that cause or risk human rights abuses** and avoid the securitization of migration policies and the externalization of border control.



Prohibition of arbitrary or collective expulsion and the principle of non-refoulement



The prohibition of arbitrary and collective expulsions as a principle of general international law requires States to conduct an individualized examination of all arguments militating against a migrant's expulsion before removing them and to afford migrants an effective remedy to contest a removal order.²⁴ The principle of non-refoulement, recognised as a peremptory rule of customary international law, prohibits the return of any individual to a place where she or he is at risk of persecution, torture or other serious human rights violations, without exception, derogation or limitation.²⁵ The effective protection of individuals against refoulement requires adherence to the due process and fair trial guarantees flowing from the prohibition of arbitrary and collective expulsions. In the New York Declaration, States have recognised these important guarantees, reaffirming that individuals must not be returned at borders and due process must be upheld.²⁶

²⁴ ICCPR, art. 13; ICRMW, art. 22(1); CERD, General Recommendation No. 30, CERD/C/64/Misc.11/rev.3 (2002), para. 26; Protocol 4 to the ECHR, art. 4 of; see also Intervener Brief filed by the United Nations High Commissioner for Human Rights pursuant to leave granted by the European Court of Human Rights on 9 October 2015 in *N.D. and N.T. v. Spain*, Application Nos. 8675/15 and 8697/15, in particular para. 19. Available at: www.ohchr.org/Documents/Issues/Migration/ThirdPartyIntervention.pdf.

²⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), art. 3; International Covenant on Civil and Political Rights (ICCPR), art. 7, see Human Rights Committee, General Comment 31, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 12; in the case of refugees, 1951 Convention relating to the Status of Refugees, art. 33.

²⁶ Paras. 24 and 58.

Findings

The teams found that in some cases the safeguards designed to prevent violations of the principle of non-refoulement and the prohibition of arbitrary and collective expulsions were either absent, weak or not adhered to in practice. For example, in some of the countries visited, individuals who did not express their wish to seek asylum were reportedly not afforded an individual assessment to determine whether reasons such as a risk of torture or other serious human rights violations would prohibit their return. Removal orders rarely contained the individualized assessment, reasoning or decision. In some countries, migrants were not provided with information or legal assistance in order to appeal the removal order, and time limits to appeal were in some cases very short (in one country, the 48-hour limit to appeal included weekends, rendering the right ineffective). Where a challenge may have taken place, there was no automatic suspensive effect of the deportation order. Migrants in several countries visited reported having signed documents they could not understand because translation into a language they understood was not provided.

In those countries operating hotspots, the missions observed how the EU's hotspots and emergency relocation scheme resulted in prioritizing the determination of migrants' nationality in order to channel particular nationalities towards the asylum system. Combined with the necessity to carry out all procedures swiftly, including the return of individuals not in need of protection, the teams found that the process of determining and separating individuals presented a real

risk that the refugee protection needs of individuals of a nationality with low asylum recognition rates, those not falling within the relocation scheme, or indeed those who had broader human rights protection needs may be overlooked. In Greece, the teams observed an implicit hierarchy of nationalities in the hotspots, which led in some instances to increasing tensions amongst migrants of different countries of origin, and concerns about discrimination and profiling based on nationality.

In countries along the Balkan land route, the progressive closure of possibilities for transit during 2016 led to a significant ramping up of arbitrary and collective expulsions by authorities outside any judicial or other formal process, including a lack of registration of those informally handed over or pushed back. Documented cases of such expulsions number in the thousands but could be much higher. Many expulsions involved violence and some resulted in death or serious injury. In the former Yugoslav Republic of Macedonia, reports indicated that only migrants in obvious vulnerable situations, such as women who were obviously pregnant or those who were sick or travelling with children, were not deported or expelled.

Such migration management measures amount to arbitrary expulsions, which are contrary to international and national law and undermine efforts to effectively protect migrants' human rights. They can further create distrust and disincentives for migrants to register their presence or cooperate with existing procedures.

Recommendations

All returns, deportations, removals and readmissions should be carried out with full respect for the human rights of migrants and in accordance with international law. In order to comply with the relevant standards,

- **Prohibit push-backs or dangerous interception measures** in areas where they exercise jurisdiction or effective control, including at border areas and on the high seas.
- **Conduct individual assessments**, which allow for enough time and to obtain an in-depth substantive understanding of each migrant's situation, rights and the risks that she or he might face upon removal, in particular the risk of torture or other serious human rights violations. Qualified personnel should be hired to conduct such assessments in a sensitive manner.

including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsion, the right to private and family life, the best interests of the child, the right to seek asylum and the right to non-discrimination, States should:

- Relevant EU policies should support Member States in this regard.
- **Ensure that adequate procedural safeguards** are made available to migrants regarding deportation decisions, including the provision of justification for a removal order in writing in a language and format the migrant can understand, the provision of information on the remedies available, legal assistance and time to challenge the decision, and automatic suspensive effect of a removal order until the case has been determined.

Identification of vulnerabilities and access to services

Under international human rights law, States are required to respect, protect and fulfil, without discrimination, the human rights of all individuals who may be within their territory and all persons subject to their jurisdiction.²⁷ When implementing migration measures, States are thereby required to take into account the differential needs, experiences and views of individuals and provide appropriate protection in order to prevent discrimination, or causing or exacerbating situations of vulnerability.²⁸ In the New York Declaration, States committed to addressing the special needs of all people in vulnerable situations and encouraged deeper interaction between Governments and civil society, recognizing 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 extremely vulnerable conditions.²⁹



²⁷ ICCPR, art. 2; ICESCR, art. 2; Human Rights Committee, General Comment 31, UN Doc. CCPR/C/21/Rev.1/Add. 13 (2004), para. 10.

²⁸ For example, persons with particular health requirements, such as victims of trauma, must be afforded adequate physical and mental health care and services, in accordance with the right to the highest attainable standard of health. Survivors of torture or sexual and gender-based violence, victims of trafficking, children, persons with disabilities and other individuals at risk must be identified promptly and afforded responses sensitive to their protection needs.

²⁹ Paras. 23 and 61.

Findings

Through interviews with doctors, psychologists, other service providers and stakeholders, and migrants, the teams found that the vast majority of migrants were in a vulnerable situation. This was due to the circumstances they had left in their country of origin, and/or the experiences and situations they faced during their journeys and upon arrival. These vulnerable situations were sometimes compounded by issues such as the experience of persistent discrimination, or due to their age or gender. The teams spoke with children; survivors of trauma; victims of forced labour, torture, arbitrary detention, gender-based violence, including rape and other forms of sexual violence; pregnant women; potential victims of trafficking; older persons and persons with disabilities. For many, this was the first time they had been asked to tell their story. The mission spoke to many migrants with clear mental healthcare needs resulting from their difficult journeys, including those who had lost relatives and loved ones in transit, and unaccompanied and separated children who had been traumatized by dangerous border crossings on land and sea. They had not spoken to a qualified mental healthcare professional or received psychosocial care and assistance since they had arrived.

Apart from migrants with critical medical conditions, very few migrants were afforded immediate assistance and special medical attention and referrals. The process of identification was largely based upon visibly identifiable vulnerabilities, i.e. visibly pregnant women and persons with visibly apparent disabilities were able to access necessary support, while women who were in the early stages of their pregnancy, persons with psychosocial disabilities, and survivors of trauma or sexual and gender-based violence who did not have easily visible scars and were hesitant to self-identify, were often not.

Many reported that the authorities' questions often had the sole objective of establishing a possible asylum claim and in some countries were undertaken with haste and with little meaningful information made available to migrants. In addition, the teams observed that identification procedures were not carried out consistently in all countries or facilities and there was a lack of established procedures and/or guidance on applicable standards. The teams thus found that mechanisms to identify migrants in vulnerable situations were predominantly inadequate.

An additional obstacle to carrying out adequate vulnerability screenings was a scarcity of trained staff dedicated to conduct vulnerability screenings and assessments and to respond appropriately to protection needs. The teams found that in many cases insufficient numbers of qualified staff resulted in a lack of adequate physical and mental health care, including psychosocial assistance and counselling and accessible sexual and reproductive health services (e.g. emergency contraception and abortion services, maternal health care). Furthermore, this led to health care staff working long shifts, placing a strain on their own health. The teams did note positively how certain facilities in Italy had cooperation agreements with medical volunteers in order to lessen the workload for state-funded doctors and provide increased services for migrants, although those doctors still noted their inability to ensure access for all who may be in need. The teams also observed that the perceived temporary nature of migrants' stays in the facilities meant that responsibility for carrying out in-depth consultations was relegated to a subsequent facility, even when migrants – including unaccompanied and separated children – remained in these places for weeks. The teams were further concerned that in some countries, migrants' medical records did not

follow them when they were transferred to other facilities.

Given the evident needs, including for physical and mental health care and services, the failure to prioritize the identification and

provision of an adequate response to these protection needs in migration reception systems undermines a human rights-based and migrant-centred response and may exacerbate or cause vulnerabilities.

Recommendations

To ensure migrants in vulnerable situations are identified and have access to services and protection measures that are sensitive to their needs, States should:

- **Put in place robust procedures** to permit the rapid and appropriate identification of persons in vulnerable situations and the full range of human rights protection needs. Staff must be trained to conduct identification and referral procedures in a sensitive manner, so as not to exacerbate vulnerabilities or put individuals at more risk.
- Make available **sufficient and appropriate shelter spaces** for migrants in vulnerable situations and not place them in detention facilities.
- Make arrangements to **effectively provide protection** in facilities to persons in vulnerable situations, including age/gender/culturally sensitive protection from further trauma and/or violence, including inter-ethnic violence and violence between different nationalities; abuse; sexual and gender-based violence, including domestic violence. Establish multi-purpose women-only spaces that provide private spaces for women to rest and receive information and other services.
- Ensure the **provision of sufficient and accessible physical and mental health care and services** for migrants in situations of vulnerability. If migrants are transferred elsewhere, States should ensure efficient procedures for the transfer of their medical records with them. Provide **comprehensive, adequate and accessible sexual and reproductive health services** (e.g. emergency contraception and abortion services, maternal health care), psychosocial assistance and information. These services should be accessible without discrimination, with full respect for privacy and confidentiality. They should also take into account barriers, such as harmful gender stereotypes and stigma, which may prevent victims of sexual and gender-based violence from seeking support, as well as the differential experiences and needs of women, men, girls and boys who have survived sexual and gender-based violence.

The right to information

Everyone has the right to seek and receive information.³⁰ The right to information is instrumental for the full and free enjoyment of other human rights and enables individuals to participate and make informed decisions in processes affecting them. Migrants should therefore receive information in a timely manner about their situation, the procedures that will be followed, their rights and obligations during the procedure, how to avail themselves of those rights, possible consequences of their non-compliance and remedies available to them.³¹ The information should be provided in accessible formats sensitive to migrants' age, gender, culture and vulnerabilities they may have, and in a language they are known to understand. States have committed to "take measures to inform migrants about the various processes relating to their arrival and stay in countries of transit, destination and return."³²



³⁰ ICCPR, art. 19 (2).

³¹ OHCHR Recommended Principles and Guidelines on Human Rights at International Borders, Guideline 7.9.

³² New York Declaration, para. 42.

Findings

The teams found that in all countries visited and throughout all procedures affecting migrants, there was in general inadequate and insufficient information provided to migrants regarding their rights and situation. In some cases migrants received information leaflets upon arrival or in places of detention; in some places the teams observed posters which contained some information on the rights and obligations of migrants in various languages; and in other instances staff from international or non-governmental organizations had the opportunity to speak to some migrants on arrival, prior to registration, but only briefly.

While some authorities noted that information measures had been put in place, many migrants reported that they had not received any meaningful information concerning their situation and relevant procedures. They were unaware of what would happen to them next; why they were being held, moved, or left stranded in a particular place; what services were available to them; or the options they had within the legal procedures for family reunification, asylum, relocation or return. Concerning the Calais camp eviction, migrants had not received any specific information regarding the location of the centres where they were to be sent or where relatives or friends would be located. In

Bulgaria, migrants interviewed were unaware that they had been criminally prosecuted for irregular border crossing or that a second such offence would result in a prison term of one year or more. In Greece, unaccompanied children held in separately enclosed sections within the facility complained that they had repeatedly asked for information about what was to happen to them; they were terrified that they would be deported to Turkey and wanted to know why they were being detained.

The teams observed that the provision of information was piecemeal and often insufficient to meaningfully inform migrants. The teams found this was due to a number of reasons which, in some cases, were acknowledged by the authorities, including insufficient resources for interpretation, lack of free legal aid or assistance, and restricted access by civil society organizations to migrants. Overall, the teams concluded that respect for the right to information was not deemed a priority.

The lack of information and absence of explanations about their situation, rights and future prospects exacerbated the levels of stress and anxiety migrants were experiencing, with negative consequences on the mental health of some migrants.

Recommendations

Migrants have a right to receive all relevant information that allows them to understand their situation and available options, the availability of specific services and how to access them, legal procedures, their rights and obligations during procedures, possible consequences of their non-compliance and remedies available to them. In ensuring the right to information, States should:

- Provide **meaningful and accessible information**, by ensuring information is provided in accessible formats, in a language migrants are known to understand, and in meaningful ways sensitive to migrants' age, gender, culture, minority status, disability status, sexual orientation and gender identity, or based on vulnerabilities they may have.

- **Ensure migrants are able to take informed decisions** in matters that affect them. To this end, any procedures, including interviews, which may affect migrants' legal rights, should not be carried out before migrants have received appropriate information about the procedures and their rights therein.
- Establish **information focal points** to provide accessible and meaningful information to migrants. States should seek the cooperation of human rights actors who could support the implementation of sensitive and meaningful information provision.

The right to liberty and to due process and fair trial

Everyone has the right to liberty under international human rights law and the arbitrary deprivation of an individual's liberty is prohibited.³³ Children should never be detained on the basis of their migration status or that of their parents, as it is never in the best interest of the child and always constitutes a violation of the rights of the child.³⁴ All forms of detention must be prescribed by law, laying out the legitimate purposes and time limit for the detention. Procedural safeguards in accordance with the rights to due process and fair trial must be in place to ensure that an individual assessment is carried out to determine the necessity and proportionality of the detention measure, including if the legitimate aim can be achieved by less invasive means, considering the human rights impact in each individual case. Should a migrant be detained, the decision should be subject to periodic re-evaluation, and the individual must be able to challenge the detention decision through judicial review, including with the support of legal aid and assistance.³⁵ The protections under international human rights law also apply to individuals held in de facto detention. In the New York Declaration, States commit to pursuing alternatives to detention for migrants upon their arrival to the territory.³⁶

³³ ICCPR, art. 9 (1).

³⁴ See the Child Rights Committee's report of the 2012 Day of General Discussion on the rights of all children in the context of international migration, para. 78.

³⁵ ICCPR, arts. 9(4) and 14; Human Rights Committee, General Comment No. 35 (2014), CCPR/C/GC/35, para. 18; Report of the Working Group on Arbitrary Detention, *Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court* (2015), A/HRC/30/37, para. 50. See Intervener Brief filed by the United Nations High Commissioner for Human Rights pursuant to leave granted by the European Court of Human Rights on 2 September 2016 in *Raoufi and others. v. Greece*, Available at: http://www.ohchr.org/Documents/Issues/Migration/Raoufi_v_Greece.pdf.

³⁶ Para. 33.

Findings

The teams found that migrants, including children, were subject to detention practices in most of the countries visited, including mandatory detention in some jurisdictions. Individual assessments to determine the necessity and proportionality of detention or to identify less restrictive alternative measures were not conducted. Furthermore, the absence of suitable vulnerability assessments as described above resulted in migrants in a vulnerable situation being detained and not provided with safe spaces appropriate to their protection needs.

In certain instances, the deprivation of liberty contravened national constitutions and international human rights law as there was no legal basis for the detention of migrants beyond an initial 48 or 72-hour time limit. For example, the legal basis for detaining individuals in the hotspots in Italy and Greece is either completely absent or inadequate. As a result, an individual assessment for the detention was not undertaken and migrants were held without a detention order, which is also an important procedural safeguard enabling a challenge to the lawfulness of their detention.

The teams also observed that most migrants were held for multiple days, and sometimes weeks or months, in immigration detention facilities, often without understanding the reasons for their detention or the possibility of challenging their detention. In the former Yugoslav Republic of Macedonia, the mission found that migrants at Gazi Baba detention centre for foreigners were held between three and seven weeks. In Bulgaria, all migrants arriving in an irregular manner are served with an expulsion order and a detention order in order to carry out that deportation/return/expulsion. Most, if not all migrants interviewed were detained for a number of months, although detention periods

had decreased at the time of the mission to Bulgaria.

With regard to due process and fair trial guarantees, migrants reported inadequate access to information, legal aid and assistance, with limited availability of lawyers who, in some instances, had difficulties accessing the detention facilities; as well as a lack of adequate translation services for migrants, including in criminal, expulsion or deportation proceedings. In Bulgaria, where migrants were subject to criminal prosecution for irregular entry, there were serious concerns over reports about the quality of some state-appointed legal representation providing false information with legal ramifications.

Furthermore, the teams found that some previously open reception centres or other facilities had been converted into highly securitized detention centres, where often both adults and children were held. While some centres allowed migrants to leave for a controlled period, others did not. This discrepancy within the same country, with some centres being completely closed and others open or semi-open did not appear to be based on any discernible criteria of necessity. The practice serves, however, to question the actual need for centres to be closed and managed as detention centres.

Authorities informed the teams that detention is intended to be “exceptional” and temporary in order to cope with and maintain some control over the increasing numbers of arrivals. However, the teams did not consider this approach to be reflected in what they found: the lack of an individualized assessment to ensure the exceptional use of detention, the length of detention, and weak due process guarantees indicated the opposite. This led the teams to conclude that

the presumption of liberty has been eroded in the immigration context, and reception systems appear in the main to have been replaced by detention.

These practices represent a dangerous trend that has other serious human rights implications. They affect the right to an adequate standard of health, the right to be free from torture or cruel, inhuman or degrading treatment and punishment, the right to a fair trial and due process guarantees and the rights of the child, and significantly heightened stigma on migrants and migration per se.

The teams raised the need to work with the authorities to develop alternatives to detention. Alternatives to detention can be an

important tool in migration management, yet Member States have made insufficient use of these to date, despite the requirement in the EU Return Directive to use less coercive measures where possible. Such measures are still largely absent at national level, though some initiatives were highlighted in two of the countries visited. There is a strong base of evidence to suggest that alternatives based on case management promote compliance and case resolution, including voluntary return, and protect the rights of migrants. National civil society actors, who have strong expertise in case management and are leading a number of such initiatives, are able to provide input and technical assistance on the practical implementation of effective alternatives.

Recommendations

To ensure the right to liberty and to due process and fair trial for all migrants, States should:

- **End all mandatory detention** policies and practices immediately.
- Establish a **presumption against immigration detention in law**, restating the right to liberty for all persons, regardless of migration status. States should immediately and expeditiously cease the detention of children on the basis of their migration status or that of their parents.
- Ensure that **any deprivation of liberty has a legal basis in national law**, which defines clearly the legitimate purposes for any detention, its limited scope and duration, and is sufficiently narrow to avoid mandatory detention of a broad category of person.
- Implement **robust due process and fair trial guarantees**, ensuring that immigration detention is only ordered by a

court of law on a case-by-case basis, as an exceptional and last resort measure and for the shortest period of time, after it has been deemed necessary and proportionate, and no suitable non-custodial alternative has been identified. Ensure migrants have access to information, translation, legal aid and assistance, and the possibility to challenge the lawfulness of any deprivation of liberty.

- Ensure **all procedural guarantees under the right to a fair trial to migrants imprisoned on criminal charges** due to the criminalization of irregularity in national law, inter alia the right to adequate information, free interpretation, legal aid and assistance, to be tried in their presence and with legal representation in court if they so wish, as well as the right to appeal.
- Ensure and facilitate **access and communication for civil society organizations** providing legal assistance to migrants held in immigration facilities.

- Develop national action plans to implement human rights-compliant, non-custodial, community-based **alternatives**

to detention based on an ethic of care, not enforcement.

Conditions in immigration detention

In accordance with the right to liberty, “detention may be arbitrary if the manner in which the detainees are treated does not relate to the purpose for which they are ostensibly being detained.”³⁷ Migrants who are detained are also protected by the right to freedom from torture or cruel, inhuman or degrading treatment or punishment and the right to be treated with humanity and with respect for the inherent dignity of the human person.³⁸ In the New York Declaration, States expressed their commitment to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times.³⁹



Findings

The teams encountered poor conditions in detention, some of which could amount to inhuman and degrading treatment. The poor conditions included overcrowding; children being held alongside unrelated adults; frequently dysfunctional toilets or other sanitary facilities; showers in spaces which posed a risk for the safety of women and girls; structures that are unfit for children; lack of adequate and sufficient water and food of nutritional value; and lack of access to quality physical and mental health care and services. Several of the facilities visited were extremely substandard, with strong general ambient faecal or sewage smells, limited opportunities for personal hygiene, washing, clean clothes or bedding, and other highly distressing conditions of confinement.

The teams found that the facilities visited did not provide a reception environment or reflect appropriately the administrative nature of immigration detention. Rather, the centres were generally heavily securitized; surrounded by razor and barbed wire fences; kept under surveillance by armed police, military or other security guards; and

sometimes contained enclosures where, based on age or nationality, migrants were detained separately and unable to move within the detention facility as other migrants. Migrants were not provided with any meaningful recreational options and their autonomy was seriously curtailed as personal property was often removed upon arrival and pens, paper, books and other items were not allowed for security reasons, without any assessment.

While the poor material conditions in immigration detention could be directly related to a lack and mismanagement of resources, the over-securitization and failure to ensure a reception environment points to a worrying prioritization of a security-based, punitive detention regime, in clear contravention of the requirement to ensure that the administrative purpose of immigration detention is reflected and measures taken to minimize the risks associated with the deprivation of liberty. These conditions negatively affected individuals' physical and mental health and safety and sometimes exacerbated migrants' vulnerable situations.

Recommendations

In the event that detention cannot be avoided, States should:

- Provide for **safe accommodation arrangements** for migrants, particularly migrants in vulnerable situations, by housing children separately from unrelated adults and protecting individuals against further risks.
- Ensure that migrants are provided with **sufficient water and food beyond the mere nutritionally required minimum**. Particular attention should be paid to the nutritional needs of pregnant and breastfeeding women, older persons, children and adolescents. Religious,

cultural or other special dietary requirements should be catered to.

- Repair dysfunctional and regularly maintain **shower and toilet facilities** in all facilities where migrants are held. States should ensure that toilet and shower facilities for women and girls do not pose a risk for their safety, making sure that, as a minimum, they are separated from men's sanitation facilities, are well-lit at night and in close proximity to women's quarters.
- Ensure that in all facilities where migrants are held **the conditions reflect the administrative purpose** for which

migrants are being detained. Specifically, States should take measures to ensure that facilities do not resemble prisons and that there is a reasonable balance between the numbers of security staff and those providing services for migrants.

- Ensure **sufficient numbers of trained and specialized staff** are hired in order to respond to the protection needs of migrants in detention. In particular, good-quality legal advice and assistance, child protection services, information services, medical services and psychosocial assistance and counselling should be

available and accessible to all migrants without discrimination. **Cooperate with civil society organizations**, which could support the provision of relevant services.

- Issue clear standards on restrictions imposed on **individual autonomy**, which should only be to the extent necessary to protect the rights of others and to maintain public order and based on individualized assessments. States should provide varied and appropriate activities to minimize the risks associated with immigration detention.

Conditions in settlements, camps or other locations of migrants

Everyone has the right to an adequate standard of living, comprising adequate and safe housing, food and nutrition; potable water and culturally acceptable sanitation; as well as clothing, including in temporary locations such as reception or transit facilities and informal settlements.⁴⁰ In fulfilling their human rights obligations, States should ensure that migrants can access health facilities, goods and services, information and legal assistance without discrimination and they should protect migrants' right to privacy and family life, as well as ensure effective access of all migrant children to adequate and appropriate education. In the New York Declaration, States recalled their obligations to fully respect the human rights and fundamental freedoms of migrants and refugees and stressed the need of such persons to live their lives in safety and dignity (paragraph 11).



⁴⁰ ICESCR, arts. 9 and 12.

Findings

The teams visited formal, semi-formal and informal settlements in a number of countries and found that the infrastructure, service and material provisions made in the various settlements were very minimal, in part as States were led by the assumption that these would be temporary, short-term shelter arrangements. However, the closure of borders and other measures restricting onward movement, the inability of migrants to obtain any legal status, the length of procedures, and the lack and inadequacy of reception facilities led to migrants being “stranded” in these settlements for prolonged periods of time in inadequate conditions and without any sustainable alternatives.

The teams noted concerns with regard to migrants’ access to health services, adequate food and shelter, access to education, as well as access to information and legal assistance in the various settlements visited. In some of the locations visited, younger children were eligible to attend local schools, but in others they were excluded and no alternative education was provided. Parents in Voinjok Centre in the former Yugoslav Republic of Macedonia were particularly concerned that their children could not attend school, with one mother worried that her daughter could not read or write. The teams also heard reports of discrimination in the distribution of food and aid in some of the camps, and observed physical marginalization of certain groups based on nationality.

The teams heard reports of violence in some camps committed by other migrants, smugglers and criminal actors. Non-governmental organizations provided safe spaces for self-identified victims of sexual and

gender-based violence, including domestic violence, in some settlements but there was a limited capacity for preventive measures and the teams also heard concerns about migrants’ safety at night. In other, smaller settlements, migrants reported feeling safe but feared leaving due to inadequate clothing and financial issues. Further concerns related to extreme segregation of some settlements from local communities, the barbed wire fences surrounding them and the de facto restrictions that were imposed on movement.

The temporary arrangement of these settlements further meant that dismantlement and relocation were constant threats, and coupled with a lack of information, this exacerbated the situation of uncertainty migrants were facing. Migrants in France, for example, reported that they would rather go into hiding than face eviction and dispersal through the country.

The teams found that for migration responses relating to the accommodation of migrants to be effective, as well as to be able to address the needs and secure the human rights of migrants sustainably, they should not be primarily or solely framed as emergency or temporary responses. Rather, migration measures should look to community-based solutions aimed at the inclusion of migrants in receiving societies. The settlements and related responses observed by the teams did not sufficiently integrate such an approach, denying migrants’ the ability to normalize their lives as individuals, families and communities, and thereby also affecting their enjoyment of a range of human rights.

Recommendations

The right to an adequate standard of living entails migrants having access to adequate safe food and nutrition; potable water and culturally acceptable sanitation; clothing; information and legal assistance; and safe and adequate housing corresponding to weather conditions and allowing for private and family life. To implement this right, including in temporary locations, States should:

- Take specific measures to **prevent discrimination** of any kind in the distribution and accessibility of goods and services.
- Make specific **safety arrangements**, including establishing and adhering to violence prevention and response standards, including for sexual and gender-based violence prevention, and provide safe accommodation and assistance to migrant victims of violence and exploitation. Water, sanitation and hygiene facilities should be well-lit, safe and private.
- Ensure that such settlements do not restrict the **freedom of movement** of migrants unnecessarily, and that they are not obliged to stay in closed shelter facilities. This includes the de-facto restriction of movement, in particular of women, children, or LGBT and Intersex migrants or persons with disabilities, due to fear of sexual, gender-based or other violence or other harms inside or outside the facility.
- Facilitate **living in the community**, by actively identifying and providing living arrangements for migrants in the community and taking necessary measures, such as provision of temporary residence status or other temporary protected status and relevant documents to ensure migrants are able to access services and integrate and participate in local communities until their situation has been resolved.

Protection of children



Children in the context of migration have the right to be treated as children first and foremost and States must ensure that the principle of the child's best interests takes precedence over migration management objectives or other administrative considerations.⁴¹ Children should never be detained for immigration purposes because it is never in the best interest of the child and always constitutes a violation of the rights of the child.⁴² Age assessment should only be used as a measure of last resort and States should provide unaccompanied and separated migrant children with special protection and assistance, including accommodation in child friendly reception facilities separate from adults and provision of guardians competent to represent their best interests.⁴³ In the New York Declaration, States commit that they will give primary consideration at all times to the best interests of the child and comply with their obligations under the Convention on the Rights of the Child.⁴⁴

⁴¹ Convention on the Rights of the Child (CRC), art. 3; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Principle A.6; Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/28/68, 5 March 2015, para. 80.

⁴² See the Child Rights Committee's report on the 2012 Day of General Discussion on the rights of all children in the context of international migration, para. 78.

⁴³ CRC, arts. 20 and 22(2); Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005.

⁴⁴ Para. 32.

Findings

An increasing number of children, including unaccompanied and separated children but also infants and toddlers who accompany their family members, have been migrating to Europe. With respect to the protection of children, the teams welcomed the extension of Bulgaria's nascent child guardianship system to migrant children, as well as strong legislation concerning the rights of the child in Italy, where unaccompanied and separated children are afforded residency and the same rights as Italian children, and their expulsion is prohibited. In Italy and Greece, several shelters run by local NGOs or foster-care arrangements were set up and provided temporary guardianship for a small number of migrant children, but such partnerships remained limited.

While certain progress could be observed, the teams found that, overwhelmingly, the responses to ensure protection of the rights of the migrant children encountered during the missions were manifestly inadequate and often detrimental to the effective protection of migrant children's rights, regardless of whether children were staying in informal, formal, open or closed facilities. There was a widespread lack of standardized systems to ensure their best interests were appropriately determined, including children who may not have been seeking asylum, along with an absence of mechanisms for migrant children to have their views taken into account in decisions affecting them in accordance with their age and maturity. The teams observed that there was in general a lack of human rights-compliant child protection services with few or no trained child protection officers.

Lack of prompt appointment of guardians or restrictive guardianship legislation combined with an absence of meaningful assessments of the best interests of the child resulted in children being separated from the family

members they were travelling with. One of the many examples was found in Greece, where the mission heard from one child in detention who was very distressed because upon arrival he had been separated from his 19-year old cousin with whom he was travelling, and had not been allowed to meet him for days. There were delays in ensuring family reunification, and barriers for children to access essential services such as healthcare. The teams also noted ineffective legal frameworks and procedures for the relocation of unaccompanied and separated children to other countries for the purposes of family reunification, and in some cases there were also arbitrary age determination procedures.

Children were also subjected to arbitrary and prolonged immigration detention and to abusive treatment and inhuman conditions in detention, without access to education, health services or meaningful recreational activities. Their lack of information and understanding about why they were being held or what was going to happen to them further exacerbated the risks to their mental health.

In some cases, the teams were concerned that ostensibly protective measures put in place by the authorities were having an unintentionally negative impact on children, such as in the Calais area where unaccompanied and separated children were leaving the official centres to which they had been transferred. The teams learned that, despite measures undertaken by the French authorities, insufficient information was provided to migrant children regarding their situation, and there was an absence of meaningful support provided at the centres. These factors contributed to children deciding to continue on with their migration project. In Greece, children were also leaving settlements in order to avoid "protective custody", which sometimes involved detention

in police cells. Yet with nowhere to go, these children were at severe risk of ill health, abuse and exploitation.

The inadequacies of the responses have a particularly harmful impact on the human rights of migrant children, impeding their physical, mental, spiritual, moral, social development and survival.⁴⁵ They exacerbate their situation of vulnerability and increase the risk of exploitation and abuse.

Recommendations

To ensure the effective protection of migrant girls' and boys' human rights, States should:

- End any form of detention of children on the basis of their or their parents' migration status, including in prisons or police stations.
- Further create **suitable shelter spaces** where families with children or unaccompanied and separated children can be accommodated. Establish mechanisms to facilitate the identification of available and suitable shelter spaces, including through central databases.
- Establish **standardized systems for the determination of the best interests of the child**, carried out by trained child protection staff, in a child-friendly manner, and guaranteeing children's rights to express their views freely in all matters affecting them and have their views taken into account in accordance with their age and maturity. **Qualified and trained child protection staff** should be available at all stages of the migration journey to ensure adequate assistance and protection for migrant children.
- Make every effort to **trace and reunite unaccompanied or separated children** with their parents or family, in accordance

with the principle of the best interests of the child, noting that reunification in the country of origin may not always be in the child's best interests. Take measures to simplify and expedite procedures, without compromising human rights standards, to make it easier for children to relocate and reunite with their families.

- Ensure that an **effective and individualized guardianship system** is available to unaccompanied and separated children and/or child-headed households without discrimination. In particular, the system should ensure that qualified and trained individuals and/or non-governmental organizations can be promptly appointed.
- Ensure **gender-sensitive and multidisciplinary age determination procedures** as a measure of last resort in case of serious doubt regarding the age of a migrant, drawing on assessments by independent and qualified psychologists and social workers in a safe, age-appropriate and dignified manner. Establish a presumption in favour of the child in situations of ambiguity.
- Ensure that migrant children can exercise their **right to education** as promptly as possible and have access to **meaningful recreational activities**.

⁴⁵ Contrary to the protections provided under the CRC, preamble, art. 6(2), 27.

Xenophobia, incitement to hatred, and violence against migrants

Everyone has the right, without discrimination, to security of the person, the right to life and not to be subjected to torture or cruel, inhuman or degrading treatment or punishment and States are required to prohibit such acts.⁴⁶ States must further prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.⁴⁷ Those who commit such offences must be held accountable and victims must be afforded access to justice and an effective remedy.⁴⁸ In the New York Declaration, States have committed to combating the abuses and exploitation suffered by migrants and refugees and have also strongly condemned acts and manifestations of racism, racial discrimination, xenophobia and related intolerance.⁴⁹



⁴⁶ ICCPR, art. 9, 6, 7; ICCPR, art. 26; Convention on the Elimination of Racial Discrimination (CERD), art. 5(b); CRC, art. 19(1); Convention on the Elimination of Discrimination against Women (CEDAW), art. 2.

⁴⁷ ICCPR, art. 20(2); CERD, art. 4; Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, appendix).

⁴⁸ ICCPR, art. 2(3).

⁴⁹ Paras. 10 and 14.

Findings

The teams heard reports of instances of disproportionate use of force during fingerprinting or forced returns, as well as verbal abuse by officials against migrants, including children. Of particular concern was the situation in Bulgaria, where numerous migrants suffered physical violence such as beating and kicking; theft by police and other State actors; and abuse by vigilantes. The teams also heard reports of assaults on human rights defenders who advocate for the human rights of migrants.

The teams further noted that at the time of the visits, violations and abuses had rarely led to conclusive investigations or prosecutions. This was in part due to a lack of safe reporting channels such as firewalls to ensure that criminal justice actors are not required to report irregular migrants to border authorities, as well as cases being dismissed for various reasons. For example, in the most prominent case in Bulgaria, in which an Afghan national was killed after police authorities opened fire with live ammunition on a group of migrants, the team was informed that no disciplinary measures were applied to any officer, *inter alia* as a result of forensic conclusions that the bullet concerned ricocheted off a bridge.

As a result, victims were left without access to justice or an effective remedy and an environment of impunity ensued.

There was also an increase in anti-migrant sentiment in all locations visited by the teams. A growing number of high-level officials, members of parliament, politicians, and in some cases members of the clergy also engaged in xenophobic discourse, sometimes amounting to incitement to hatred. The teams found that the largely unchallenged political and social discourse picturing migrants as threats, describing them as “illegal” or “criminals”, and stoking public fear, was a

clear driver of the physical and verbal abuse faced by migrants. Left unaddressed, this further contributed to signalling that violence against migrants was somehow justified.

In addition, the teams noted that some segments of the media were instrumental in contributing to an atmosphere of hostility towards migrants, as well as towards migrants’ human rights defenders and organizations, including by making false allegations against them. In some countries, this concerned primarily the tabloid media, while in others, anti-migrant views and incitement to hatred was seen across a broad spectrum of the media.

The teams concluded that such treatment of individuals who are seeking and in clear need of human rights protection undermines the values upon which the foundations of just and inclusive societies rest. It is essential that the justice system protect all individuals, including migrants, from harm and ensure victims can access effective remedies. Negative public perceptions, harmful stereotyping, and social exclusion must be effectively addressed and challenged in order to eliminate the conditions that give rise to such violence and discrimination against migrants.

Government officials and other prominent public figures such as faith leaders⁵⁰, along with the media, should redouble their commitment to promoting the values of diversity and inclusion, and to leading evidence-based conversations on the social, cultural and economic benefits of migration and the important role played by migrants in societies and communities. Some actors will invariably claim that such an approach

⁵⁰ See Beirut Declaration and its 18 commitments on “Faith for Rights”, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21451&LangID=E>.

ignores the challenges that migration can also bring; it is therefore crucial to underline that the above-mentioned recommendation does not preclude a serious and balanced

discussions on such challenges when they arise.

Recommendations

To counter discrimination and protect migrants from violence and exploitation, States should:

- **Prohibit and prosecute excessive use of force** and dangerous border control practices, such as the use of live ammunition or dogs against migrants.
- **Prevent, prohibit and prosecute hate crimes and incitement to hatred** against migrants in accordance with international human rights norms and standards.
- Condemn and take effective measures against all acts, manifestations and expressions of **racism, racial discrimination, xenophobia and related intolerance** against migrants and the stereotypes applied to them, including on the basis of religion or belief, and other intersecting forms of discrimination, including age, sexual orientation, gender or gender identity.
- Establish accessible, safe, gender and child-sensitive and confidential **violence prevention programmes**, along with **treatment and protection services**, including counselling, reporting and complaints mechanisms.
- Encourage migrants and others to **report crimes** committed against migrants and facilitate this, including through clear and binding **firewalls** to ensure migrants are able to report crimes against them, participate in criminal justice proceedings and access related assistance and support, and are not deterred from doing so due to fears of arrest, detention and expulsion on the basis of their migration status. Ensure that sentences imposed on those who carry out violence against, or exploit, migrants are proportionate.
- Ensure **access to an effective remedy** for migrant victims of crimes and human rights violations.

Human rights monitoring

International human rights law requires States to take positive measures to give effect to the human rights of all individuals.⁵¹ In order to measure progress States have made in achieving the implementation of their human rights obligations and to identify ways to improve their human rights record, monitoring of the human rights situation of all persons is a requirement under the relevant treaties.⁵² Furthermore, monitoring the human rights situation of migrants is one important element in ensuring accountability and transparency in migration governance.



⁵¹ ICCPR, art. 2; ICESCR, art. 2.

⁵² ICCPR, art. 40; ICESCR, art. 16.

Findings

The teams noted positively that national human rights and/or ombudsperson institutions in some countries were vested with powers to monitor detention facilities, including immigration detention centres, sometimes in cooperation with civil society. In Italy, the Senate Extraordinary Commission on Human Rights had also conducted monitoring of the hotspots, and made important recommendations. In France, the ombudsperson for human rights (*Défenseur des Droits*) had monitored parts of the eviction process in Calais at the end of 2016.

The teams were concerned at the absence in all countries of robust mechanisms for systematic independent monitoring of the human rights situation of migrants at borders, including, but not limited to, detention centres, reception conditions and arrangements, border screening and interview procedures, relocations and evictions, and procedures related to access to protection and assistance services. Where monitoring was carried out, there was no formal mechanism to ensure recommendations were implemented and followed up on. For instance, one national human rights body informed the team that its recommendations to the government were repeatedly ignored. The teams also observed that access for civil society organizations

carrying out human rights monitoring activities had been increasingly restricted and sometimes completely denied.

Furthermore, the teams noted that accessible mechanisms enabling migrants or others to lodge complaints about violations or abuses of human rights were either unknown or not available. Migrants were either not informed about the possibility of making a complaint or feared repercussions if they did. In some places official complaints channels were not established, or were too complex or cumbersome to access. On other occasions migrants were hesitant to access complaints channels as they were viewed as not sufficiently independent, often on the basis of prior negative experiences with public officials.

Human rights monitoring systems are essential to prevent human rights violations and abuses, to ensure minimum standards are upheld and justice administered where there are breaches. The various human rights concerns the teams observed during their visits indicated how human rights monitoring mechanisms were weak and fostered an environment of impunity.

Recommendations

Effective independent monitoring mechanisms should regularly monitor all migration-related facilities and procedures for their compliance with international human rights laws and standards. To this end, States should:

- Ensure and facilitate **unrestricted access of independent monitoring bodies**, including national human rights institutions, ombudspersons, national preventive mechanisms and other relevant

bodies to all locations under the jurisdiction or effective control of the State and to all information that is required to effectively monitor the human rights of migrants. Monitoring should extend, as applicable, to arrival, shelter and reception of migrants, border processing and interviewing, transfers, detention situations, pre-removal processes, and return processes.

- Enable civil society actors to participate in monitoring and evaluating the human rights impact of governance measures.
- Establish mechanisms by which the **implementation of the recommendations** from the independent monitoring bodies can be facilitated and ensured.
- Establish **accessible complaints mechanisms** for migrants to report to without fear of retribution.
- Ensure **effective accountability of private actors** carrying out migration governance functions, including by adopting or amending legislation to ensure that the actions of private actors do not undermine human rights and that any wrongdoing is sanctioned.

CONCLUSION

In conclusion, the teams found that the human rights of the migrant women, men, boys and girls in the countries visited were often insufficiently addressed by migration and asylum governance measures. As a result, the migration systems in place at the time of the visits were often unable to address the human rights protection needs of migrants, leading to a number of protection gaps.

The teams appreciate that measures to respond to the protection needs of migrants were not always readily in place and had to be built progressively, given that the migratory movements took a number of the countries by surprise. Nevertheless, States appeared to prioritize an emergency and security-focused approach in their migration responses, reflected in restrictive laws and policies, such as the criminalization of irregular entry and/or stay, the increased use of detention practices or swift return procedures, all of which had far-reaching impacts on migrants' safety, health and ultimately, their dignity. There were limited avenues available to identify migrants in vulnerable situations, along with a scarcity of referral mechanisms, qualified staff and access to services, all of which indicated a diminished priority afforded to these human rights concerns. Finally, the limited commitment to independent human rights monitoring and cooperation with civil society actors demonstrated the reluctance of States to improve the human rights situation of migrants.

Against this background, the Office urges the States visited and European Union institutions to take urgent action in implementing their human rights obligations towards migrants.

The recommendations provided in this report provide practical guidance to this end and the Office can provide further technical assistance. Furthermore, current discussions pursuant to the New York Declaration and its Annexes offer extensive opportunities to significantly advance global normative commitments to protect and promote the human rights of all migrants, regardless of their status, and to take tangible action to strengthen the human rights of migrants on the ground.

In accordance with the mandate of the United Nations High Commissioner for Human Rights (General Assembly Res. 48/141), OHCHR will continue its dialogue with the relevant States and the EU in following up on the implementation of the recommendations. In order to provide detailed technical assistance and practical guidance based on up-to-date information, OHCHR will consider systematizing its monitoring activities on the human rights situation of migrants in transit and at borders in Europe, including through the possibility of enhanced presence in relevant locations.

OHCHR will work closely with UN agencies and entities, the IOM, UN Country Teams and others to support the human rights of migrants, including strengthening moves away from securitized or exclusionary migration governance regimes, as well as by working closely with Governments, national human rights institutions and ombudspersons, relevant civil society partners and migrant associations to advance the human rights of migrants in practice.

ANNEX I – LIST OF FACILITIES AND CAMPS VISITED

Greece

- Informal settlement at Idomeni;
- Open official camp at Nea Kavala;
- Moria hotspot, Lesvos;
- Vial hotspot, Chios

Italy

- Centre for Identification and Expulsion Ponte-Galeria, Rome;
- Hotspots at Lampedusa, Trapani and Pozzallo;
- House of Cultures Shelter, Scicli;
- Ex Casa Marconi, Palermo;
- Rainbow centre for unaccompanied minors, Palermo

Bulgaria

- Sofia Central Prison;
- Lyubimets Detention Centre;
- Elhovo Transit Facility;
- Border at Kapitan Andreevo;
- Busmantsi Detention Centre

The former Yugoslav Republic of Macedonia

- Transit Centres, Tabanovce and Vinograd;
- Gazi Baba Centre for Foreigners, Skopje

France

- La Linière camp, Grande-Synthe;
- Centre d'accueil et d'orientation pour mineurs, Morbecque;
- Informal settlement, Norrent-Fontes

ANNEX II – LIST OF STAKEHOLDERS MET

Greece

- Migrants;
- Minister of Interior;
- Secretary General for Human Rights and Transparency, Ministry of Justice;
- Deputy Minister of Foreign Affairs;
- First Reception Service (FRS);
- European Commission (Structural Reform Support Service);
- EASO;
- UNHCR; IOM;
- ICRC;
- Representatives from civil society and non-governmental organizations

Italy

- Migrants;
- Ministry of Interior;
- Ministry of Foreign Affairs;
- Immigration focal points from the Prefectura (Agrigento; Palermo and Catania);
- Coast Guard;
- Guardia di Finanza;
- Mayor of Palermo;
- Mayor of Lampedusa;
- Senate Extraordinary Commission on Human Rights;
- European Commission representative, Rome;
- Frontex, Lampedusa, Pozzallo;
- EASO, Lampedusa, Pozzallo;
- UNHCR, Rome, Lampedusa, Pozzallo; IOM; UNICEF;
- Representatives from civil society and non-governmental organizations

Bulgaria

- Migrants;
- Ministry of Interior (Border Guards; Migration Directorate);
- State Agency for Refugees;
- Deputy Minister of Justice;
- Ministry of Foreign Affairs;
- Supreme Prosecutor's Office of Cassation;
- Directors and staff in/of Lyubimets Detention Centre;
- Elhovo Transit (Detention) Facility;
- Border Police at Kapitan Andreevo;
- Busmantsi Detention Centre (Ministry of Interior);
- Sofia Central Prison (Ministry of Justice);
- Ministry of Justice oversight staff for penitentiaries;
- Deputy Ombudsperson;
- UNHCR;
- UNICEF;
- Representatives from civil society and non-governmental organizations

The former Yugoslav Republic of Macedonia

- Migrants;
- The Ministry of Foreign Affairs;
- The Ministry of Interior;
- The Ministry of Labour and Social Policy and the Crisis Management Centre;
- UNCT Resident Coordinator; UN Country Team;
- The Ombudsman's Office;
- The National Chapter of the Red Cross;
- Representatives from civil society and non-governmental organizations

France

- Migrants;
- Ministry of Foreign Affairs;
- Ministry of Interior;
- Sous-préfet of Dunkirk;
- Representative of the Mayor of Dunkirk;
- Sous-préfet of Morbecque ;
- Commission Nationale Consultative des Droits de l'Homme;
- Défenseurs des droits;
- Contrôleur général des lieux de privation de liberté;
- UNICEF;
- Representatives from civil society and non-governmental organizations

ANNEX III – PUBLIC ADVOCACY IN RELATION TO THE MISSIONS

Greece

- <http://ohchr.org/EN/NewsEvents/Pages/MigrantchildreninGreece.aspx>

Italy

- <http://ohchr.org/EN/NewsEvents/Pages/SecurityatforefrontasItalian.aspx>
- <https://youtu.be/cvmjQ1B2fx0>
- <http://ohchr.org/EN/NewsEvents/Pages/DaoudaDream.aspx>
- <http://ohchr.org/EN/NewsEvents/Pages/LegalQuestionsOverHotspots.aspx>
- <http://ohchr.org/EN/NewsEvents/Pages/ChildMigrantsInItaly.aspx>
- <https://youtu.be/mrcJpk51h5k>

Bulgaria

- <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20365&LangID=E>
- <http://ohchr.org/EN/NewsEvents/Pages/HumanRightsOfficeBulgariaMission.aspx>

The former Yugoslav Republic of Macedonia

- <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20567&LangID=E>
- <https://www.youtube.com/watch?v=zjA3R465Byo>

France

- <http://ohchr.org/EN/NewsEvents/Pages/ProtectingMigrantsInTransit.aspx>
- <https://www.youtube.com/watch?v=HS9oibm-qJM>



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