

Migration

Protecting human rights in the context of migration

Background

Today, there are more than 232 million international migrants in the world. If they came together to form a country, it would be the fifth most-populous. And yet, this population remains largely invisible and silent. Vulnerable migrants, those in irregular situations, who are poor and low-skilled, live and work in the shadows. They are afraid to complain, denied the rights and freedoms that other people take for granted and are disproportionately vulnerable to discrimination, marginalization, violence and xenophobia.

As the international community came together at the General Assembly's 68th session in October 2013 to hold the second High-level Dialogue (HLD) on International Migration and Development, the High Commissioner for Human Rights called for a paradigm shift on migration. Even as reports reached the General Assembly's session of horrific losses of life at international borders, she stressed that it was not acceptable that migrants should be made to pay with their lives for seeking to escape from grinding poverty, conflict or discrimination.

Yet, amidst reports of despair there was a glimmer of hope. The Member States unanimously adopted a Declaration on International Migration and Development that renewed their commitment to the protection of the human rights of all migrants, regardless of their migration status, and strongly condemned all manifestations of xenophobia, racism and intolerance. Member States agreed to work towards an effective and inclusive agenda on migration that integrates development and respects human rights by improving the performance of existing institutions and frameworks and partnering more effectively with relevant stakeholders at the regional and global levels.

The Declaration also committed Member States and other stakeholders to recognize that human mobility is a key factor for sustainable development and should be considered in the elaboration of the post-2015 development agenda.





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Migrants from Central America holding a sign that reads “Respect the human rights of migrants.”

The near-silence of the Millennium Development Goals (MDGs) on issues related to discrimination has been problematic given that equality is one of the core values of the Millennium Declaration. The MDGs allowed overall progress to be recorded as the main indicator, despite slower progress experienced by certain segments of society and the growing exclusion and marginalization of vulnerable groups. Without an incentive to record their situation, some groups with limited or no political capital, such as migrants, were rendered invisible to the development agenda. As a new post-2015 development agenda is being debated, OHCHR has consistently stressed that another method of measuring progress is needed, one which will provide more information about how progress is distributed while also providing incentives to focus on those groups which are being left behind.

In its message to the HLD and to other relevant fora, OHCHR emphasized the need to develop an agenda that is responsive to the rights of migrants and not only focused on the economics of migration. OHCHR’s message on including migrants in the post-2015 development agenda was three-fold and suggested that the agenda could:

- ▶ Incorporate equality as a stand-alone goal in order to measure and progressively eliminate disparities in relation to the most marginalized groups, such as migrants at risk of discrimination and exclusion.

- ▶ Develop specific migrant-sensitive targets under relevant goals.
- ▶ Ensure the systematic disaggregation of indicators by migrant status under relevant goals and targets in order to monitor the progress of disadvantaged migrant groups.

Where a group of people is socially undervalued, discriminated against and politically excluded, the relevant data will not be systematically collected. OHCHR has argued that the post-2015 agenda provides an occasion to enhance the knowledge base on the human rights dimensions of migration and an important opportunity to seek out innovative ways of measuring and monitoring the situation of migrants.

OHCHR’s role

OHCHR promotes and contributes to the protection of the human rights of all migrants, regardless of their legal status. The Office advocates for a human rights-based approach to migration-related policies and discussions at the national, regional and international levels.

OHCHR supports Member States and other relevant stakeholders to respect the internationally guaranteed human rights of all migrants, protect

them against abuse and fulfill the rights that will enable migrants to enjoy a safe and dignified life.

In the 2012-2013 biennium, OHCHR has significantly stepped up its programme of work on the human rights of all migrants, including by contributing to the promotion and mainstreaming of human rights through discussions on migration at the international, regional and national levels. The Office is engaged in concrete follow-up to the commitments made at the High-level Dialogue on International Migration and Development.

OHCHR has developed capacity-strengthening tools such as learning packages and information materials on key issues; conducted research and consultation with a wide variety of stakeholders on migration; and highlighted key advocacy issues at the national, regional and international levels. Through its field presences, OHCHR has increasingly engaged in migration-related human rights work through the promotion of the core international human rights instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), as well as training activities, advocacy, technical advice, monitoring, protection and other initiatives. OHCHR also continued to support the human rights mechanisms relevant to migration, including the Committee on Migrant Workers (CMW), which oversees the implementation of the ICRMW, and the Special Rapporteur on the human rights of migrants.

The following are some key results to which OHCHR has contributed in relation to migration in the biennium 2012-2013.

National laws, policies and institutions (EA 1)

Increased compliance with international human rights standards of national laws, policies and administrative regulations relevant to migration

As part of OHCHR's ongoing efforts to increase compliance with international human rights standards, the Office has provided technical advice to governments and other regional, subregional and national stakeholders to promote the integration of a human rights perspective in the design and implementation of migration policies, plans and normative frameworks and to foster partnerships.

Building on a process initiated in 2012 to explore the human rights situation of migrants at international borders and a recognition of the need for enhanced human rights guidance on this issue,

OHCHR launched an initiative with Member States, UN system partners, NGOs, academics and other stakeholders to establish a set of Recommended Principles and Guidelines on Human Rights at International Borders. An initial draft was developed to provide a practical norm-based tool to assist States and other stakeholders to implement their human rights obligations in their border governance measures, including in relation to reception, screening, assistance, detention and return. Since then, the draft has undergone various consultation stages, including two expert meetings organized by OHCHR in March 2012 and November 2013. The experts from governments, international and regional organizations, civil society and academia in attendance welcomed the initiative and voiced their intention to apply the guidance. The Recommended Principles and Guidelines will be finalized in 2014.

At the regional level, OHCHR supported the Special Rapporteur on the human rights of migrants to develop a study on management of the external borders of the European Union (EU) and its impact on the human rights of migrants. This involved detailed research on the policy framework of the EU, two consultations in Brussels with representatives of key EU institutions responsible for promoting and protecting the rights of migrants and four visits to countries on both sides of the EU southern Mediterranean border; namely Greece, Italy, Tunisia and Turkey. The resulting report, which focuses in particular on the rights of migrants in an

Support for non-citizens in the Republic of Moldova

In October 2013, OHCHR received a complaint from Ms. N.S., a Moldovan citizen, whose partner, Mr. D.A. was a citizen of Ghana who had been forcefully deported from the Republic of Moldova to his country of origin, despite the fact that the couple had a six-month-old child together. Ms. N.S. requested assistance from OHCHR to facilitate the return of her partner with a view to marrying and founding a family in her country. OHCHR raised the issue with the Bureau for Migration and Asylum and, as a result, Mr. D.A. was issued a 30-day visa which allowed him to return to the Republic of Moldova to register with the civil registration. In addition, as a result of the September 2013 visit of the Special Rapporteur on extreme poverty and human rights, three women from the Migrants Detention Centre, who were at risk of being deported from the Republic of Moldova and becoming victims of human trafficking, were freed and offered legal assistance to secure residence permits in the country.

Since 2007, thousands of Malagasy have migrated to countries like Kuwait, Lebanon, Mauritius, Saudi Arabia and Seychelles, drawn by promises from employment agencies for better working conditions and the protection of their interests. Upon arrival in some of these countries, many migrant workers have become victims of exploitation and ill-treatment and have been abandoned. Despite the disheartening testimonies of returning migrant workers, another project was announced by the Minister of Public Function and Social Affairs in July to send 500 domestic workers per month to Kuwait and Saudi Arabia.

In collaboration with the Ministry of Justice, OHCHR, IOM and civil society organizations organized a meeting at the Prime Minister's Office to raise the awareness of authorities about this situation and advocate for the protection of the rights of Malagasy migrant workers. To this end, the Governing Council issued a decree suspending the authorization for sending non-qualified Malagasy workers to countries that could not provide sufficient protection for migrant workers. In addition, the law for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been adopted by the National Assembly and validated by the High Council of the Transition.

irregular situation and provides important practical guidance to EU institutions and EU Member States to implement a human rights-based approach to migration policies, was presented to the 23rd session of the Human Rights Council in May 2013 in the form of a thematic global mission report, with country specific attachments.

As part its ongoing efforts to promote and protect the human rights of migrant domestic workers in Lebanon, the Regional Office for the Middle East contributed to the development of a Code of Conduct for recruiting agencies that was launched in June 2013. The Regional Office worked closely with the Lebanese Government, ILO and various NGOs to alleviate the hardship of domestic workers in Lebanon and enhance compliance with international human rights standards. The Regional Office continues to explore advocacy initiatives in support of a draft law on migrant domestic workers, which is currently being considered by the Council of Ministers. This initiative has led to promising developments elsewhere in the region. For instance, the Government of Jordan has established a steering committee comprised of the Ministries of Interior and of Labour, representatives of the security forces and civil society, along with OHCHR and other

international organizations, to prepare a roadmap to enhance the protection of the human rights of migrant domestic workers in Jordan.

In South-East Asia, OHCHR continued to support, in close collaboration with UNHCR, a review of the Citizenship Law to address the exclusion from citizenship and consequential statelessness of the discriminated minority Rohingya in Myanmar's Rakhine state.

In West Africa, as an active member of the Regional Group on Protection in Mixed Migration (with IOM and UNHCR, as well as standing invitees ICRC, ILO, UNICEF, UNODC, UNOWA and UN Women), OHCHR contributed to increasing awareness and building capacity on migration and trafficking issues at the regional level. For instance, OHCHR and IOM co-organized a workshop on the situation of migrants and their access to fundamental needs in West Africa. In Senegal, OHCHR has facilitated training modules and developed an information brochure for a three-day workshop on international human rights instruments regarding people on the move. The regional governors and superior officers of the gendarmerie and border control who attended the trainings increased their knowledge about Senegal's international and regional commitments related to the rights of people on the move and strengthened their capacity to ensure protection and detect human rights violations. Moreover, they acquired the necessary competencies and awareness-raising tools to train their staff and colleagues on these issues.

In light of a growing demand for technical support related to migration at the country level, OHCHR assisted numerous governments, national human rights institutions and civil society to draft and revise relevant legislation in line with international human rights standards.

In Mexico, significant progress was achieved in the revision and adoption of legislation in line with international standards through the provision of technical assistance to the Government, including regarding asylum and procedural safeguards during deportation. More specifically, the Office, inter alia, reviewed the proposals; submitted legal briefs on international human rights standards; and provided technical advice to Federal and State Congresses. For instance, the revision of the Refugee and Complementary Protection Bill, approved by the Senate, took into consideration the joint recommendations from OHCHR and UNHCR. In Guatemala, the Office worked closely with the Congressional Commission on Migrants, Government

authorities and civil society on the reform of the Law on Migration. The Law incorporated recommendations issued by the Special Rapporteur on the human rights of migrants and the ICRMW. The revised Law is currently before Congress awaiting final adoption.

In the Russian Federation, OHCHR provided technical advice to Members of the Public Chamber and NGOs to promote the establishment of a migration policy in full compliance with international human rights standards. Relevant recommendations related to the integration and protection of migrants were included in the Concept of the State Migration Policy of the Russian Federation through to 2025, which was approved by presidential decree in 2012. Particular efforts have been made to challenge the perception of migration as solely an issue of security and border control and to provide a broader picture of migration that would prevent stereotyping, discrimination and criminalization as the basis for policymaking. To this end, a number of relevant special procedures thematic reports, Human Rights Council resolutions and CMW comments were shared by OHCHR with authorities. Furthermore, with the support of OHCHR, a comprehensive multidisciplinary Human Rights Master's Degree was established in the Russian Federation which includes courses on international aspects of the governance of migration and refugee protection.

Trafficking in persons

Governments are increasingly requesting OHCHR's assistance in capacity-building and to ensure the compliance of their laws, policies and administrative regulations with international human rights standards in the area of human trafficking. This is largely due to OHCHR's consistent promotion of the importance of applying a human rights-based approach in efforts designed to address trafficking in persons, as indicated in the 2010 Recommended Principles and Guidelines on Human Rights and Human Trafficking.

Positive steps have been taken in Belarus, the Middle East and North Africa region and Ukraine. In Belarus, OHCHR supported the organization of five training activities focused on a variety of topics, including child trafficking for pornography, cross-border cooperation, identification of victims of trafficking and the role of law enforcement officials. In Jordan, a capacity-development event was organized for judges and prosecutors from 20 countries in the Middle East and North Africa region. Feedback from participants underlined the usefulness of the tools in guiding the development of rights-based responses to combat trafficking in persons. In Ukraine, OHCHR organized a launch of the Commentary to the Principles and Guidelines and undertook training on this issue.



Migrants trying to reach the United States in a trailer truck detected by police X-ray equipment in Mexico.

Responsiveness of the international community (EA 10)

International community increasingly responsive to migrants' rights

The Office successfully contributed to the inclusion of a human rights perspective in the global debate on migration at the international level, including at the General Assembly's High-level Dialogue on International Migration and Development, held in New York in October 2013. The human rights of migrants were a prominent feature of a number of interventions made by Member States during the course of the deliberations and were featured prominently in the eight-point agenda for action outlined by the Secretary-General.

The High Commissioner delivered OHCHR's message on the human rights of migrants during Roundtable 2 of the HLD in an intervention, entitled *Measures to ensure respect for and protection of the human rights of all migrants, with particular reference to women and children, as well as to prevent and combat the smuggling of migrants and trafficking in persons and to ensure orderly, regular and safe migration*. The Assistant Secretary-General for Human Rights was also called on to deliver a statement to Roundtable 1, entitled *Effects of international migration on sustainable development and identifying relevant priorities in view of the preparation on the post-2015 development framework*. The High Commissioner and senior managers also participated in a series of high profile side events at the meeting (on issues related to the post-2015 development agenda, the detention of immigrant children, human rights at international borders, migrant domestic workers and children on the move), and in events leading up to the HLD. Through public advocacy and technical assistance, OHCHR supported the intergovernmental process of drafting a landmark Declaration on International and Development that was unanimously adopted by Member States at the HLD.

Leading up to the HLD, OHCHR carried out a series of events and activities to ensure that human rights were kept at the centre of all HLD deliberations. For instance, in June 2013, OHCHR organized an expert meeting on migration, human rights and governance. More than fifty participants engaged in this discussion, including representatives from Global Migration Group (GMG) agencies, human rights mechanisms, Member States, regional organizations, international and regional NGOs, trade unions and academia.



A Syrian migrant detained at a border police station in Bulgaria.

OHCHR also organized a high-level meeting in Geneva on 4 September 2013, entitled Migration and human rights: towards the 2013 High-level Dialogue on International Migration and Development. The meeting was opened by the High Commissioner and included the participation of the Special Rapporteur on the human rights of migrants, the Special Representative of the Secretary-General of the United Nations on International Migration and Development and more than 150 representatives from Member States, GMG agencies and international and national NGOs. The meeting developed targeted public messages and advocated for mainstreaming a rights-based approach within all roundtable discussions at the HLD. These objectives were largely met as human rights issues were consistently raised in all roundtables of the HLD.

OHCHR also launched a joint report with WHO and IOM, *International migration, health and human rights*, which explores the multifaceted health and human rights challenges that migrants face and describes recent developments in this area. The report was widely shared with a variety of stakeholders, including governments, civil society and UN agencies.

Moreover, OHCHR provided substantive technical assistance on human rights to a number of thematic

meetings of the Global Forum on Migration and Development (GFMD). In 2013, the Office sought to inject a human rights focus into background documentation and discussions held in the context of government team discussions of Roundtable session 1.2, entitled Framing migration for the MDGs and the post-2015 UN Development Agenda, and Roundtable 3.1, entitled Empowering migrants, their households and communities for improved social development outcomes. Upon request by the GFMD, OHCHR provided a background document, *Migrants, migration, human rights and the post-2015 UN Development Agenda*, for the May 2013 GFMD thematic meeting entitled Operationalizing Mainstreaming of Migration in Development Policy and Integrating Migration in the post-2015 UN Development Agenda. As Chair of the GMG Working Group on Migration, Human Rights and Empowerment, OHCHR led the drafting of a background paper for the third thematic meeting of the GFMD in 2013 named Empowerment and Assets.

On International Migrant's Day in 2013, OHCHR and ILO jointly launched a series of cartoons which seek to challenge myths and encourage a more positive public perception of migrants. The cartoon collection reached over 13,000 people on Facebook and the tweets generated an estimated 825,000 potential impressions on Twitter (number of times a tweet reached Twitter accounts).

OHCHR drafted the report of the Secretary-General to the Third Committee of the General Assembly (A/68/292), which included an analysis of how a human rights perspective can enhance the design and implementation of international migration and development policies. The report concluded that by applying a human rights-based approach to the design and implementation of migration policies, States are obliged to formulate and scrutinize such policies against human rights benchmarks and to strive to ensure that they are responsive to the human rights of all migrants, with a particular focus on those who are most vulnerable.

Finally, at the field level, OHCHR organized two seminars on cultural diversity in Mauritania which, inter alia, aimed to improve understanding of the rights of migrant workers and their families in the context of the promotion of tolerance and social justice. As part of OHCHR's efforts to increase the responsiveness of the international community to migration, OHCHR also organized, in cooperation with the Ministry of Interior of Mauritania, a capacity-building workshop for government authorities, members of the armed forces and security agencies and civil society on the rights of migrant workers and their families. The workshop aimed at enabling participants to cooperate more effectively with international partners in addressing the situation of migrants.



Do you know the difference between "illegal migration" and "migrants in an irregular situation"? Irregular entries, stay and work are not criminal offences but administrative misdemeanours. Not distinguishing between the two terms reinforces the false and negative stereotype that migrants in irregular situations are criminals.



Do you know that there are more migrants than ever because of the growing world population? The absolute number of people migrating has risen from 154 million in 1990 to 232 million in 2013, yet for many years migrants have made up about 3% of the world's population.

Human rights mainstreaming within the United Nations (EA 11)

Increased integration of human rights standards and principles related to migration into the work of international and regional processes on migration

OHCHR continued its efforts to actively promote and mainstream the human rights of migrants within the activities of the United Nations system.

The Office remained an active member of the GMG, which is comprised of 16 entities. As a result of a 2012-2013 internal review of the GMG and OHCHR's advocacy, a Working Group on Migration, Human Rights and Gender Equality was created with OHCHR, UNICEF and UN Women serving as rotating Co-Chairs. OHCHR assumed the role of Chair for the first 18 months and in November 2013, the Office led the preparation of a GMG Issues Brief to provide background documentation for the GFMD thematic meeting on Migration as an Enabler for Inclusive Social Development. In addition, a human rights work stream was created within the multiannual work plan of the GMG.

OHCHR also provided detailed input and mainstreamed human rights into a set of outcomes and recommendations on migration in preparation for the High-level Dialogue on Migration and Development. The Dialogue took place following the 2012 request by the High-level Committee on Programmes of the UN System Chief Executives Board for Cooperation.

In December 2012, the Secretary-General tasked OHCHR, in consultation with the GMG and UN system partners, to lead the preparation of a concise, analytical report on migration and human rights. The report *Migration and human rights: improving human rights-based governance of international migration* was launched in September 2013 and explores the importance of embedding the human rights framework and a human rights-based approach within the global institutional architecture on migration.

Building on 2012 achievements related to the Rio+20 negotiation process (which led to a strong reference to the human rights of migrants, regardless of their status, within the Rio+20 Outcome Document), OHCHR continued to advocate for the inclusion of the human rights of migrants in the post-2015 development agenda. In this context, OHCHR engaged in various global thematic consultations and technical discussions, including on population dynamics and on inequalities, submitted technical

briefs to the Open Working Group, and participated in the informal working group on the post-2015 agenda of the Special Representative of the Secretary-General of the United Nations on International Migration and Development. OHCHR also contributed to a joint GMG position on migration and the post-2015 development agenda, and participated in various side events organized by the GMG and other actors. OHCHR's input highlighted that migrants should be visibly integrated in the new agenda as full and equal subjects of development.

As a result of its advocacy efforts and leading voice on migration and human rights, OHCHR was invited to participate as Co-Chair in the migrants' rights work stream of the World Bank's Global Knowledge Partnership on Migration and Development. The Office also devised a work programme for this work stream.

Challenges and lessons learned

Despite the positive steps taken, OHCHR is cognizant of the significant challenges that remain. One of these challenges is the governance of migration at international, regional and national levels. In order to promote the rights of all migrants more effectively, more systematic discussion on migration issues is needed among States and other relevant stakeholders, under the auspices of the United Nations.

As evidenced during the 2013 High-level Dialogue on International Migration and Development, the UN offers a common platform for dialogue and cooperation on migration, based on the existing and agreed legal and normative framework. Since its early beginnings, the UN has sought to approach international migration from a human rights perspective. Through the human rights treaties and other supervisory mechanisms, the UN plays a vital role in elaborating the normative framework on migration and assisting States to incorporate this framework into their migration policies.

In its recent report on migration and governance, OHCHR identified a continuing need for regular cooperation and dialogue within the UN to enable systematic and norm-based interaction among all stakeholders, including States, civil society and migrants themselves. Such a space could identify and address policy and knowledge gaps on cross-cutting and emerging issues related to migration,



Global Migration Group side event during the High-level Dialogue on International Migration and Development, October 2013.

including countering discrimination and xenophobia against migrants, or the protection of migrants at international borders. As with other issues of a cross-cutting nature, there is no single organization in the international system that has the mandate to provide overall normative oversight and leadership in the protection of migrants' rights, which makes the creation of spaces for multistakeholder and cross-cutting dialogue all the more crucial.

In her statement to the High-level Dialogue, the High Commissioner highlighted the work that needs to be undertaken by the human rights movement to better explain the significance of human rights to the issue of migration and to what extent respecting, protecting and fulfilling human rights will be of real and material benefit to the lives of the 232 million migrants and their families. These efforts also need

to stress that a human rights-based approach to migration policymaking is premised on universal standards and principles that have been voluntarily assumed by States. Specific results, standards of service delivery and conduct and good practices are derived from universal human rights instruments. Further guidance on and elaboration of these standards and principles has been provided by the human rights mechanisms. They constitute a firm foundation on which to initiate the design and implementation of migration policies.

The years ahead will provide an opportunity to build on the successful leadership of OHCHR in the arena of migration and human rights. To this end, OHCHR will remain publicly committed to consolidating its leadership role within the international system to promote and protect the human rights of migrants.