

# Migration

A red suitcase with a black strap is positioned on a dirt ground. In the background, there is a green tent or tarp. The scene suggests a migrant or refugee camp.

## *Protecting human rights in the context of migration*

### Background

In 2011, OHCHR continued to advocate for the promotion and protection of the rights of migrants. The significant population movements that accompanied the momentous political changes in North Africa and the Middle East brought into focus the potential vulnerability of all migrants. During the conflict and insecurity, some migrant workers sought asylum when they were unable to return to their countries of origin. People became victims of trafficking. Migrants who left their homes in search of a better life found themselves wounded, helpless and stranded; sometimes at sea. And it was often forgotten that each of these individual migrants was a human being with human rights.

The events in North Africa and the Middle East highlighted the fact that while all migrants can be vulnerable to human rights violations, those who are in irregular situations can be even more vulnerable to discrimination, exclusion, exploitation and abuse at all stages of the migration process. They are more likely to be targeted by xenophobes and racists, victimized by unscrupulous employers, abducted or killed while in transit, subject to prolonged or even mandatory detention and are more vulnerable to traffickers. During 2011, public discussion on irregular migration focused on issues of risk and border control, law enforcement, security threats and expulsion. As the High Commissioner and the human rights mechanisms continued to emphasize, criminalizing irregular migration tends to have a disproportionate effect on realization of the rights of migrants. In addition, most criminalization policies are expensive to implement and do not deter irregular migration or discourage people from seeking asylum.

OHCHR's 2011 message was that a human rights-based approach provides an extensive baseline of protection for all migrants and constitutes a framework of action and set of guidelines and tools for migration policymakers. Such actions are not only the legal obligations of Governments, they also make sound public policy sense.



## OHCHR's role

OHCHR's strategy regarding migration focuses on promoting and contributing to the protection of the human rights of all migrants, regardless of their legal status. Underlying this strategy is recognition of the need to reframe the current global discussion of migration. OHCHR therefore seeks to encourage policymaking which is based on human rights norms. It aims to integrate human rights norms and standards into the international debate on migration and development. The Office believes that migrants whose rights are protected and are socially integrated are able to live in dignity and security and, in turn, are better able to make more meaningful economic and social contributions to society than those who are exploited, marginalized and excluded.

The Office is gradually building and strengthening its advocacy, analysis and technical assistance on issues of migration and human rights. Over the last few years, OHCHR developed capacity-building tools, such as learning packages and information materials on key issues. It has conducted research and consultation with a wide variety of stakeholders on migration and highlighted key advocacy issues at the national, international and regional levels. OHCHR supports the work of the human rights mechanisms on migration, including the Special Rapporteur on the human rights of migrants and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.

Distinct but complementary to its work on migration, OHCHR made progress in 2011 by advancing a human rights-based approach to combating human trafficking, including through technical support and capacity-strengthening and supporting the Special Rapporteur on trafficking in persons, especially women and children.

The following are results OHCHR helped to bring about in this area in 2011.

### National laws, policies and institutions

*EA 1 - Increased compliance with international human rights standards of national laws, policies and administrative regulations relevant to migration*

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OHCHR assisted Governments, NHRIs and CSOs to draft and revise relevant legislation in line with international standards on the human rights of

migrants. Through a variety of activities, the Office also sought to build the capacity of stakeholders at the national level to implement a human rights-based approach to migration, raise awareness of migrants' rights issues and foster partnerships.

In Lebanon, a law on migrant domestic workers was adopted by the Lebanese Ministry of Labour in January 2011. OHCHR, in collaboration with ILO, made significant inputs to the draft and is now assisting the Ministry of Labour to improve compliance of the Law with international human rights standards.

In May 2011, Mexico's new Immigration Act entered into force. The Act takes into account various recommendations by UN human rights mechanisms and establishes protection of the rights of all migrants, regardless of their immigration status. OHCHR accompanied the drafting process and facilitated UNHCR's access to it so it could provide technical input and guidance.

OHCHR organized a judicial colloquium on the implementation in Europe of article 3 (best interests of the child) of the Convention on the Rights of the Child. Judges from national and regional courts in Europe shared their experiences and good practices in determining the best interests of a child in procedures dealing with migrant children, including unaccompanied and separated children. A study prepared after the colloquium reviewed judicial decisions from regional and national courts and identified a number of relevant cases. It is expected that this study will be a valuable tool to guide jurisprudence and policy throughout Europe.

The Office raised awareness of the human rights-based approach to migration and trafficking through advocacy and subregional workshops. Initiatives are underway at the subregional and national levels to ensure that legislative and policy frameworks integrate the principles and guidelines concerning human rights and trafficking in persons in Cameroon, Congo, Equatorial Guinea and Gabon. Following a subregional dialogue on migration and human rights organized by the Office, the Ministry of Territorial Administration of Cameroon requested specialized training on human rights and migration for immigration officials.

During her visit to Australia in May 2011, the High Commissioner advocated for changes to Australia's migration policy and raised concerns about a planned agreement between Australia and Malaysia which would have resulted in a breach of Australia's international obligations. A subsequent decision by



The Mexican President signs the country's new Immigration Act, May 2011.

Australia's High Court confirmed this position and the Government abandoned the agreement. The Government also decided that more migrants and asylum-seekers would be released from mandatory immigration detention. An OHCHR opinion-editorial on the rights of migrants and asylum-seekers in Australia attracted significant national and regional media attention.

A few days after the conclusion of the visit of the Special Rapporteur on trafficking to Thailand, the Ministry of Labour and the Ministry of Social Development and Human Security announced that seven Fishery Labour Coordinating Centres would be established. Under this system, the National Fisheries Association would be responsible for assessing demands for labour in the fishing sector and liaising with the Ministry of Labour, which would formally recruit workers from neighbouring countries.

### Trafficking in persons

There has been an increase in the capacity of Government officials and civil society representatives from 44 countries in Central Africa, Central Asia, Europe and the Middle East to evaluate the impact of anti-trafficking policies and measures on human rights and adopt a human rights-based approach to address trafficking in persons as a result of trainings

and regional launches of the OHCHR Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking.

FRONTEX (tasked to coordinate the operational cooperation between EU member states in the field of border security) produced a "Trainer's Manual on Anti-Trafficking Training for Border Guards" in 2011, which will be used for training of border guards at the national level. OHCHR provided legal and technical advice, in cooperation with other UN and regional bodies, on the compliance of the FRONTEX manual with existing international and regional human rights standards.

Following OHCHR's advocacy in Central Africa in 2011, the United Nations Standing Advisory Committee on Security Questions in Central Africa included trafficking in persons on its agenda.

An agreement to integrate a human rights-based approach into the Arab Strategy for Combating Human Trafficking was reached at the Regional Consultation on the Human Rights-Based Approach to Combating Human Trafficking. The consultation was organized by OHCHR and the Qatar Foundation for Combating Human Trafficking in May 2011. The Arab Strategy for Combating Human Trafficking is a formal initiative of the League of Arab States to

strengthen regional implementation of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The earlier draft of the Strategy was amended to include explicit references to OHCHR's "Recommended Principles and Guidelines on Human Rights and Human Trafficking." The Strategy also includes explicit references to OHCHR as an important partner in combating trafficking.

### Civil society engagement with human rights mechanisms

#### *EA 7 - Increased engagement of rights-holders, national human rights institutions and civil society actors with UN and regional human rights mechanisms and bodies to promote migrants' rights*

OHCHR has developed a number of information tools to contribute to strengthening the capacity of civil society actors to promote migrants' rights, including by using the UN human rights mechanisms for this purpose. Around the world, NHRIs are becoming increasingly involved in the promotion and protection of the human rights of migrants. Civil society organizations continued to provide input into the consideration of States Parties' reports by the human rights treaty bodies. In September 2011, the Committee on the Protection of All Migrant Workers and Members of Their Families hosted a day of general discussion on the rights of migrant workers in an irregular situation and members of their families. The event was attended by more than 50 participants from Member States, intergovernmental organizations, civil society and academia. In November 2011, OHCHR and the Friedrich Ebert Foundation co-organized a side event, entitled "The Rights of Migrants in an Irregular Situation: Engaging with the UN Human Rights Mechanisms" during the civil society days of the Global Forum on Migration and Development in Geneva. The event served as a discussion forum and platform to promote the engagement of civil society with relevant UN human rights mechanisms.

Following a training workshop on the human rights of migrant workers in October 2011 in Bangkok, Thailand, many participants reported back on actions they had taken, individually or in collaboration with others, to protect migrants' rights using the knowledge and skills they had gained from the training. OHCHR, in collaboration with the Diplomacy Training Programme and Migrant Forum in Asia, organized the training workshop using materials on migration and human rights currently being developed by OHCHR. The workshop was

attended by 25 participants from NHRIs and NGOs in the Asia-Pacific region.

### Responsiveness of the international community

#### *EA 10 - International community increasingly responsive to migrants' rights*

The Office continued its efforts to raise awareness regarding the human rights approach to migration at the international level, including through advocacy by the High Commissioner at the Human Rights Council during official sessions and other relevant fora.

A two-day Global Roundtable on alternatives to the detention of migrants, refugees, asylum-seekers and stateless persons was organized by OHCHR in partnership with UNHCR in May 2011. The roundtable brought together representatives from States, international organizations, human rights mechanisms, regional human rights bodies, NHRIs and national and international NGOs. The informal summary conclusions of the roundtable have been used as an advocacy tool by OHCHR, UN human rights mechanisms and civil society actors.

The Office presented a study to the 18th session of the Human Rights Council on the human rights situation of migrants and asylum-seekers fleeing events in North Africa. The study was based on contributions from Governments, UN agencies and NGOs and presented a substantive set of recommendations to the international community and was welcomed by Governments and civil society in a side event at the Human Rights Council.

The Office highlighted migration and human rights themes during key meetings at the regional and international levels, notably at the annual conference of the EU's Fundamental Rights Agency on "Dignity and Rights of Irregular Migrants." The Deputy High Commissioner gave the keynote speech to the conference. At the 5th Global Forum on Migration and Development held in Geneva on 1 December 2011, OHCHR participated in the official roundtable discussions and organized a side event on addressing irregular migration through a human rights-based approach. A panel discussion organized by OHCHR in New York was held in May 2011 on the issue of migration, racism and discrimination as a prelude to the General Assembly's Informal Thematic Debate on International Migration and Development. Many Member States referred to the panel in their statements to the General Assembly.



Migrants wait at the Egyptian-Libyan border after fleeing violence in Libya.

## 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*

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OHCHR continued its efforts at the international level to encourage the integration of a human rights perspective in the global debate on migration. The Office was an active member of the inter-agency Global Migration Group (GMG) in 2011 and sought to promote and mainstream a human rights approach to migration within the United Nations system. As a member of the GMG Troika in the first half of 2011, OHCHR organized a roundtable on combating xenophobia and discrimination against migrants in the context of a GMG Practitioners' Symposium on "Migration and Youth: Harnessing Opportunities for Development."

Substantive input was also provided by OHCHR to two key GMG statements; the joint statement of the GMG to the General Assembly's Informal Thematic Debate on International Migration and Development held in May 2011; and a joint GMG Principals' statement on "The Impact of Climate Change on Migration" drafted by UNESCO, as the

Chair-in-Office in November 2011. The latter statement has been referred to in advocacy messages on climate change issued by several GMG agencies.

OHCHR also mainstreamed human rights issues within the GMG by providing trainings on migration and human rights at the International Labour Academy, organized by the ILO, and at the International Migration Law course, organized by the International Organization for Migration. Participants in these trainings included Government officials, such as migration policymakers, staff of UN and other intergovernmental agencies and civil society.

In the context of the UN Regional Thematic Working Group on International Migration, OHCHR contributed a chapter on migration and human rights for inclusion in the 2011 UN Situation Report on Migration in South and South-West Asia.

By encouraging application of the human rights-based approach, OHCHR continued to mainstream human rights issues into United Nations programming at the country and regional levels. For instance, regarding the Royal Thai Government's policy response to the severe flooding in Thailand, OHCHR advised on the advocacy messages of the UNCT with the Ministry of Foreign Affairs and other authorities, particularly regarding the protection of

migrants. This included highlighting relevant legal standards and recommendations of human rights mechanisms and providing other guidance and methodological tools to the United Nations Country Team (UNCT). The advocacy of the UNCT, combined with NGO advocacy and media coverage of the concerns relating to migrants, resulted in the establishment of an additional shelter for migrants and improved legal protection.

Together with ILO, OHCHR drafted an employer's Code of Conduct for national and international UN staff employing migrant domestic workers. The Lebanon UNCT endorsed the text in July and staff members were asked by Heads of agencies to sign it, preferably with their employees. Several agencies consider it to be a mandatory procedure. The Code of Conduct complies with international norms, but does not provide for a minimum wage.

In reaction to allegations of serious human rights violations committed against irregular migrants from the Democratic Republic of the Congo, following OHCHR's advocacy and a visit by the Special Representative of the Secretary-General on Sexual Violence in Conflict, the UNCT in Angola identified the protection of the rights of migrants as a priority area. This is expected to result in the appointment of a Protection Adviser to the UNCT by UN Action in 2012.

### Trafficking in persons

A joint UN statement was submitted to the European Union providing clear examples on the application of a human rights-based approach, as well as gender- and age-sensitive recommendations of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims. OHCHR actively participated in the elaboration and adoption of the EU Directive, in cooperation with the UNCT (OHCHR, ILO, UNHCR, UNICEF, UNODC and UN Women). A commentary designed to assist EU countries in interpreting the Directive using a human rights-based approach was developed and submitted to the EU.

### Challenges and lessons learned

As recognition has grown about the myriad and complex human rights issues raised by migration, OHCHR has stepped up its efforts to ensure that migration is viewed as involving human beings who have human rights and not merely an issue of economic development, remittance transfers or border control and security. A remaining challenge is to turn rhetoric into reality and concretely assist



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States and other stakeholders to promote and protect the human rights of migrants by filling normative and implementation gaps at the national, regional and international levels.

Challenges also remain in relation to ratification and effective implementation of core international human rights instruments relevant to migrants, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and enhancing the capacity of all human rights mechanisms to include the situation of migrants in their analyses and recommendations.

OHCHR's work on migration has primarily concentrated on the international level where important advances have been made in terms of partnership and advocacy. A limited number of OHCHR field presences has begun to develop work on migration in their particular country or regional context. Yet more needs to be done to develop and strengthen their capacity to engage at the operational and field levels in order to monitor violations, advise on and address concrete migration issues through a human rights lens, including by supporting implementation of recommendations issued by human rights mechanisms.

Migration is a multifaceted field and OHCHR will need to invest sufficient resources to ensure adequate attention is paid to the human rights dimensions of this complex phenomenon. It is estimated that if the migrant population continues to increase at its current pace, there will be approximately 405 million international migrants in the world by 2050. It is incumbent on OHCHR to take the lead in the coming years to ensure that the human rights of all migrants are protected, respected and fulfilled.



Judicial colloquium on the implementation of article 3 of the Convention on the Rights of the Child organized by OHCHR's Regional Office for Europe, July 2011.

OHCHR's Regional Office for Europe (ROE) engaged with local authorities and civil society stakeholders on a pilot project in Ostrava, Czech Republic for the inclusion of Roma. As a result of an initiative launched by ROE, the City of Ostrava embarked upon a complex and ambitious inclusion project involving housing, as well as other policy areas (health, employment, education, community-building), which will be primarily financed by EU Structural Funds. ROE also conducted a two-day training session on the application of a human rights-based approach on the ground for local authorities and civil society actors (including the Roma themselves). If carried out as envisaged, this could be the most comprehensive human rights-based project of its kind focused on the social exclusion of Roma in a major city in Central and Eastern Europe. The project would certainly not have been possible without the initiative and support of OHCHR. The actual implementation of the project, however, will need to be closely monitored to ensure that its objectives are fully realized and that the Roma remain empowered throughout the process.