

# Migration

---

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

### Background

Migration is a policy issue that has steadily taken on greater prominence on the global political agenda. In 2013, the UN's General Assembly will hold the second High-level Dialogue on International Migration and Development, during which Member States will discuss measures to enhance the benefits and reduce the costs of international migration.

OHCHR's message in 2012 was that migration is more than a simple economic or political phenomenon. It is rather an increasingly complex, and at times precarious, movement of more than 214 million people. At its heart, migration is about human beings. And while many migrants are able to live and work safely and in dignity in their host countries, millions are less fortunate.

As the global financial crisis continued, measures were taken that impacted on the rights of the most vulnerable migrants, including austerity measures that discriminated against migrant workers; xenophobic rhetoric that encouraged violence against irregular migrants; and immigration enforcement laws that allowed the police to profile migrants with impunity. An increasingly powerful message of xenophobia permeated both fringe and mainstream political movements in many countries and resulted in a climate of exclusion of, heightened anxiety about, and rising violence against migrants, frequently fuelled by government policies and practices.

The current debate on migration is perhaps more relevant and urgent than at any time in the recent past. As human mobility becomes more complex, and the journeys taken by many migrants more perilous, it is imperative that national, regional and international policy responses to migration are premised on human rights principles. In the lead-up to the 2013 High-level Dialogue on International Migration and Development, OHCHR called on Member States and other stakeholders to hold principled, practical and creative discussions to ensure the protection of the rights of all migrants, wherever they are and whatever their status.





A little girl looks on at a Roma camp, east of Paris, France.

## OHCHR's role

OHCHR promotes the integration of human rights norms and standards in all aspects of migration policy at the national, regional and international levels. While several UN and other international agencies have a mandate to work on migration-related issues, many lack an explicit human rights focus to their activities. The Office advocates for a human rights-based approach to migration and the need to ground migration policymaking in the international legal framework, calling on Member States to respect the internationally guaranteed human rights of all migrants, protect them against abuse and fulfil the rights that are necessary for migrants to enjoy a safe and dignified life.

To address this issue, OHCHR 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 the central advocacy issues at the national, regional and international levels. Through its field presences, OHCHR also 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 and protection and other initiatives. In addition, OHCHR continued to support the Committee on Migrant Workers, which oversees the implementation of the ICRMW, and the Special Rapporteur on the human rights of migrants.

Distinct but complementary to its work on migration, OHCHR made progress in 2012 in advancing a human rights-based approach to trafficking, including through technical support and capacity-strengthening and by supporting the Special Rapporteur on trafficking in persons, especially women and children.

The following are some key results OHCHR achieved in relation to its work on migration in 2012.

### National laws, policies and institutions (EA 1)

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

At the international level, OHCHR actively promoted the integration of human rights standards in migration policies. In March 2012, OHCHR held an expert meeting on the subject of *Human Rights at International Borders: Exploring Gaps in Policy and Practice*, which was attended by experts from governments, international and regional organizations, civil society and academia.



© EFPAL/Ino Arrigo Azzoparci

Irregular migrants adrift south of Malta are rescued by Armed Forces of Malta personnel.

In a background paper prepared for the meeting, OHCHR identified borders as a site of significant human rights violations against migrants, including arbitrary detention, which are perpetrated by State and non-State actors. Informal summary conclusions of the meeting called on the Office to develop Principles and Guidelines on the issue of human rights at borders. OHCHR began drawing up this Guidance in 2013.

In May 2012, the High Commissioner publicly welcomed the February 2012 decision of the European Court of Human Rights in the case of *Hirsi Jamaa and others v. Italy*. The decision reaffirmed the human rights of all migrants, particularly in the context of collective expulsions, thereby picking up on an argument put forward by OHCHR in a legal brief it submitted to the Court in May 2011 as an intervening party.

At the regional level, OHCHR provided technical assistance to the European Agency for the Management of Operational Cooperation at the External Borders of Member States of the European Union (FRONTEX) in developing human rights training materials for border guards, which contributed to an increased awareness of guards on the human rights-based approach to migration. The Office also supported the Special Rapporteur on the human rights of migrants in his engagement with the European Union (EU) while carrying out a year-long study on the management of the external borders of the EU and its impact on the human rights of migrants. In this context, the Special Rapporteur undertook a mission to the EU institutions in Brussels and country visits to Greece, Italy, Tunisia and Turkey. The Special Rapporteur will present a thematic report on this issue to the Human Rights Council's 23rd session in 2013, which is intended to provide practical guidance to EU institutions and Member States on integrating the human rights of migrants in their migration policies and practices.

Also in Europe, OHCHR launched a study in 2012 following a Judicial Colloquium organized by the Regional Office for Europe in 2011 on the implementation of article 3 of the Convention on the Rights of the Child, focusing on the case of migrant children, including unaccompanied and separated children. The launch of the study took the form of a discussion during a plenary session of the Committee on Civil Liberties of the European Parliament (LIBE); the parliamentary committee tasked with discussing human rights issues within the EU. The study will serve as a key advocacy tool and its dissemination in LIBE has already contributed to an increased awareness and understanding of the notion of the

best interests of the child and its interpretation by national courts.

At the country level, OHCHR assisted governments, national human rights institutions (NHRIs) and civil society to draft and revise relevant legislation in line with international standards on the human rights of migrants. For instance, while the development of a specific law on migrant domestic workers was hindered by changes in the leadership of the Lebanese Ministry of Labour, the Regional Office for the Middle East contributed to the development of a Code of Conduct for recruiting agencies working with migrant domestic workers in Lebanon. The support provided to the drafting of the Code of Conduct represents another major step in the Regional Office's efforts to enhance the level of compliance of policies and procedures with international human rights standards. In addition, through a number of awareness-raising activities, the knowledge of recruiting agencies regarding international human rights standards and the provisions of the endorsed Code of Conduct was enhanced.

In Guatemala, the Office continued to provide technical assistance and advice to Congress through various commissions to ensure the compliance of initiatives and legal reforms with international standards. The Office worked closely with the Commission on Migrants, relevant authorities and civil society on reforms to the Law on Migration. The views expressed by the Office were incorporated in the draft, which correspond to the recommendations issued by the Special Rapporteur on the human rights of migrants and the Committee on the Protection of Migrant Workers and Members of Their Families. The legislation now includes fundamental human rights principles and moves away from an approach based purely on national security and border control.

Through a variety of activities, the Office built the capacity of stakeholders at the national level to implement a human rights-based approach to migration, raise awareness about migrants' rights issues and foster partnerships. In Mexico, for instance, OHCHR designed and implemented a project on the *Impact Evaluation of the Human Rights Training of Government Officials from the National Institute for Migration Institute*. The Institute responded positively towards recommendations made by OHCHR regarding its human rights education policies and indicators for measuring the impact of human rights training activities. Consequently, the National Institute of Migration and OHCHR co-published a *Guide for Civil Servants on the Human Rights of Migrants*.

## Trafficking in persons

The FRONTEX *Trainers' Manual on Anti-Trafficking Training for Border Guards* was finalized in 2012. OHCHR, through its Regional Office for Europe, contributed to its compilation by ensuring a human rights-based approach was reflected in the manual. Through OHCHR's trainings and awareness-raising activities, knowledge was increased among border guards on applying a human rights-based approach to combat and prevent trafficking in persons.

In Senegal, the Office contributed to the revitalization of the National Cell on the fight against trafficking in persons, especially women and children. The Cell began to hold regular meetings, developed a communication plan and organized a number of workshops to raise awareness and train stakeholders, including from the private sector, on the problem of trafficking and the concomitant human rights violations.

To increase compliance with international human rights standards at the national level, OHCHR continued to promote the application of the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* through the organization of regional and subregional launches of the *OHCHR*

*Commentary on the Recommended Principles and Guidelines* which were developed in 2010. For instance, 55 participants from nine countries, including law enforcement officials from various ministries, increased their knowledge on the application of the Recommended Principles and Guidelines during a launch of the OHCHR's Commentary in Yaoundé for Central and West African countries. At the end of the event, participants evaluated the Commentary as a useful tool for application in their daily work.

## Responsiveness of the international community (EA 10)

### *International community increasingly responsive to migrants' rights*

The Office continued its efforts to raise awareness about a human rights-based approach to migration at the international level, including through advocacy undertaken by the High Commissioner at the Human Rights Council, during official missions and in other relevant fora.

Advocacy efforts undertaken by OHCHR within the context of the Rio+20 negotiations process led to the inclusion of a strong reference to the human rights of migrants, regardless of their status, within the Rio+20



Female sex workers participate in the 15th National Encounter of the Mexican Net of Sex Work, June 2012. Participants analysed issues such as human rights and the laws to prevent, punish and eliminate human trafficking, as well as help that is available for victims of this crime.

outcome document. In addition, advocacy undertaken by OHCHR for the inclusion of the human rights of migrants within various thematic consultations related to the post-2015 development agenda, including the Inequalities and the Population Dynamics consultations, led to more holistic and norm-based references to migration and human rights.

OHCHR provided substantive technical assistance to various roundtables held at the sixth Global Forum on Migration and Development (GFMD) in Mauritius in November 2012. In particular, OHCHR ensured the inclusion of a human rights focus in background documentation and discussions held in the context of roundtable session 3.1 (Improving Public Perceptions of Migrants and Migration) and session 3.2 (Migrant Protection as Integral to Migration Management). OHCHR also held a side event on *Public Perceptions, Migration and Human Rights* and produced a short brochure on the theme which was distributed to participants and contributed to their increased understanding of the links between public perceptions of migration, xenophobia and human rights.

## 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 at the international level to ensure a human rights perspective in the global debate on migration. The Office remained an active member of the Inter-Agency Global Migration Group (GMG) in 2012 and promoted and mainstreamed a human rights approach to migration within the United Nations system.

On 18 December 2012, the Secretary-General's Policy Committee held a discussion on *International Migration* which was jointly led by OHCHR and the Department of Economic and Social Affairs. Following this discussion, the Policy Committee endorsed a set of key human rights-based messages on migration and decided that OHCHR would lead the preparation in 2013 (in consultation with the GMG and other entities within the UN system) of a concise analytical report on *Migration and human rights*. The report will consider how attention to the rights of migrants can be strengthened within the governance framework of migration at the international level and will aim to focus attention on this issue within the upcoming High-level Dialogue on Migration and Development in 2013 and in the context of the post-2015 development agenda.



OHCHR remained an active member of the GMG and played a central role in the GMG internal review process in 2012. Through its input, OHCHR attempted to enhance and strengthen Inter-agency coordination of migration and bolster the GMG's mandate to promote the wider application of all relevant instruments and norms relating to migration. As a result, the Inter-agency body paid more attention to the human rights framework. For instance, one of the decisions made in the GMG Principals meeting in 2012 was that the GMG should consider the establishment of a Working Group on Migration, Gender and Human Rights, with OHCHR serving as the co-Chair. OHCHR also provided detailed input to and mainstreamed human rights within a set of draft outcomes and recommendations on migration which are being prepared by the UN system in preparation for the 2013 High-level Dialogue on Migration and Development.



Somali refugees board a bus that will take them to a transit centre in Dollo Ado, close to the Ethiopia-Somalia border.



© REUTERS/Bogdan Cristel

A Roma girl arriving at Bucharest airport, August 2012.

## Trafficking in persons

As a member of the Inter-Agency Coordination Group against Trafficking in Persons (ICAT), OHCHR was successful in mainstreaming a human rights-based approach into the joint policy papers developed by the ICAT. The first paper focused on the intersection between international and national legal regimes to combat trafficking and the rights-based approach was presented as an essential component of the legal framework to combat trafficking in persons.

## Challenges and lessons learned

In 2012, migration remained a contested issue in a crowded Inter-agency and intergovernmental field. While some important advances were made in ensuring norm-based discussions on migration at key international events, more work needs to be done to ensure that the human rights framework is broadly recognized as the fundamental framework for a coherent, comprehensive and sustainable global discussion of migration.

At the intergovernmental level, there are few processes (including the bilateral, regional and

international levels) in which the human rights framework on migration is given more than cursory attention. To date, there is no comprehensive global system or framework for debating and managing migration and human rights at the international level and there is little global consensus on how to address the complex dynamics of international migration. As the complexity of human mobility increases and traditional distinctions between voluntary and forced migration become less clear, it is essential to address the rights of all migrants, regardless of their legal status, in a holistic way.

The ICRMW remains the least ratified instrument of all the core international human rights instruments and States continue to be reluctant to recognize that the protection of universal human rights norms apply equally to all migrants. The Global Forum on Migration and Development, as a voluntary, non-binding and State-led process, has been traditionally hesitant to undertake a normative discussion of migration and is not inclined to commit States to concrete action with regard to human rights issues. At the Inter-agency level, challenges primarily derive from a lack of robust coordination and coherence on migration and human rights issues, coupled with some degree of competition between agencies for access to and space within the limited international and regional institutional structures on migration.

## Hear our voices - children in immigration detention

Amin Senatorzade, a former child migrant from Afghanistan, left his homeland for Turkey and found himself detained in Turkey, Greece, and Norway. At 16, Afghan-born Gholam Hassanpour migrated alone to Greece from Iran and was placed in detention. Mariane Quintao, a former child migrant from Brazil, spent three weeks in detention in the United States.

According to the International Detention Coalition (IDC), more governments are using detention as a measure against irregular migration. This results in thousands of migrant children being imprisoned or held in detention centres, some for long periods of time. In addition to the violation of their rights due to undue detention, many of them are held without their parents present, leaving them particularly vulnerable to physical, sexual and psychological abuse.

The IDC was able to provide six children with a unique platform to share their personal experiences in detention during a side event, "Hear Our Voices - Children in Immigration Detention." The event was held during the Committee on the Rights of the Child's annual Day of General Discussion (DGD) on the Rights of All Children in the Context of International Migration held at the Palais des Nations in Geneva in the Fall.

Six formerly detained children shared their stories by performing a play called *Always Behind My Back*.

The presentation was produced during a one-week workshop during which the group collaborated on art projects, shared their stories, and participated in creating the key messages for the theatre presentation.

"The art was used to tell the often very traumatic stories because it allows for a measure of emotional distance and limits re-traumatization," said Glynis Clacherty, the IDC's child participation facilitator and researcher. Clacherty explained that the stories were recorded and used for creating the script in order to fully capture their experiences in detention.

"I was on the boat with 70 people," said 15-year-old Bashir Youseidei, who was detained for seven months in Australia, having migrated from Afghanistan. "We didn't have any food and any water for seven days. I was excited to arrive when I got there (to Australia) to get an education. But, I got really sad when I saw the fence... It is always behind me, here - the memory."

Many of these children shared similar stories. Marianne performed an original song during the event about her detention in the United States. "They wouldn't talk to me. They wouldn't answer me, they would never say anything," she says. Gholam arrived in Greece seven years ago from Iran without his parents. He was a victim of abuse by the police who detained him. "The police took me and another boy and four men and they

beat us very hard," says Gholam. At 16, Rim Tekei Salomon spent six months in an Israeli detention camp. "My parents left Eritrea during the war in Sudan. I was born in a refugee camp."

During the DGD, UN Human Rights Special Rapporteur on the human rights of migrants, Francois Crepeau said, "States often see migration as a problem and portray migrants as potential law breakers or criminals, overlooking the fact that migration of children in particular has multi-dimensional root causes, such as the persecution of the child or the child's parents, post-conflict situations, and trafficking, including the sale of the child by its own parents."

The Committee also emphasized that article 37 of the Convention on the Rights of the Child, which also applies in migration situations and is legally binding for its 193 States Parties, explicitly states that "no child shall be deprived of his or her liberty unlawfully or arbitrarily" and the "arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

The presentation was produced with the support of the Global Campaign to End Immigration Detention of Children - a campaign that was launched in March at the 19th session of the United Nations Human Rights Council in Geneva.