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

Promotion and protection of the human rights of migrants in the context of large movements*

Report of the United Nations High Commissioner for Human Rights

Summary

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

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

* The present report, was submitted late to the conference services owing to the fact that Human Rights Council resolution 32/14, the basis for the mandate for the report, was adopted after the deadline for the submission of reports to be considered by the Council at its thirty-third session.



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I. Introduction

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

2. Accordingly, on 22 July 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) addressed a note verbale to Member States and intergovernmental and non-governmental organizations seeking their views and information on the issue. Written submissions were received from States, intergovernmental organizations, non-governmental organizations and individual experts.¹

II. Background

3. In the New York Declaration for Refugees and Migrants,² Member States asserted that “large movements” might be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement that is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another.

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

5. In the present report, the High Commissioner analyses the human rights situation of migrants in the context of large movements, making a connection between the development of the present analysis and the guidance being developed by the Global Migration Group, through its Working Group on Human Rights and Gender Equality, on the human rights protection of migrants in a vulnerable situation within large and/or mixed movements.³ The

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

² The outcome document of the high-level plenary meeting on addressing large movements of refugees and migrants convened by the General Assembly, adopted by the Assembly in its resolution 71/1 of 19 September 2016.

³ In its resolution 32/14, the Human Rights Council requested the High Commissioner to continue to develop, as co-Chair of the Global Migration Group Working Group on Migration, Human Rights and Gender, principles and practical guidance on the protection of the human rights of migrants in

most relevant elements of the New York Declaration are highlighted in each section of the report, to demonstrate the commitments made and the continuing importance that the international community has attached to such human rights challenges.

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

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

6. Every individual in large movements, whether he or she is defined as a migrant,⁴ as a refugee⁵ or as any other category of person, is entitled to enjoy his or her human rights. In general terms, in accordance with article 2 of the Universal Declaration of Human Rights, everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind. In paragraph 5 of the New York Declaration, Member States reaffirmed, and stated that they would fully protect, the human rights of all refugees and migrants, regardless of status, emphasizing that all are rights holders. In the International Bill of Human Rights, exceptions between nationals and non-nationals are made in respect of only two rights, and then only in limited circumstances.

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

vulnerable situations within large and/or mixed movements, on the basis of existing legal norms, and to report thereon to the Council at its thirty-fourth session. In paragraph 51 of the New York Declaration, the signatories took note of the Global Migration Group initiative.

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

⁵ Refugees are entitled to specific protection under international refugee law, including protection from return to persecution (Convention relating to the Status of Refugees, art. 33) and non-penalization for irregular entry (*ibid.*, art. 31).

⁶ In paragraph 6 of the New York Declaration, the signatories acknowledged that though their treatment was governed by separate legal frameworks, refugees and migrants had the same universal human rights and fundamental freedoms, and that they also faced many common challenges and had similar vulnerabilities, including in the context of large movements. OHCHR is of the view that the treatment of refugees and other migrants under international law is governed by distinct but overlapping legal frameworks; all people on the move are entitled equally to the protection of human rights law, which includes protection from refoulement, for instance under the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

discrimination or the right to health apply equally to all human beings, and international human rights law provides the bedrock of protection for all people on the move, regardless of their subsequent categorization into more specific groups with more precisely defined entitlements.

8. Indeed, human rights are universal, inalienable, indivisible and interdependent. The international human rights framework makes clear that in order to give effect to those rights the unique and individual circumstances of each person must be taken into account and the person must be recognized as an active participant rather than only a passive recipient of services. Human rights attach to the person, not to the place. This in turn implies the obligation of the duty bearer to respect, protect and fulfil the rights of all people at every stage of their movement.

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

9. In paragraph 23 of the New York Declaration, Member States stated that they recognized and would address, in accordance with their obligations under international law, the special needs of all people in vulnerable situations who were travelling within large movements of refugees and migrants. The conviction that the rights of migrant workers and members of their families had not been sufficiently recognized everywhere and therefore required appropriate international protection was expressed in the International Convention on the Rights of All Migrant Workers and Members of Their Families.

10. In the present report, the High Commissioner seeks to shed light on the human rights situation of those migrants who may not qualify as refugees under the Convention relating to the Status of Refugees, yet who are in vulnerable situations and thus in need of protection. Consequently, in the remainder of the report, the term “migrant” will be used to refer to such individuals. With respect to this broad group of people, however, it is important to be aware of the differentiated rights and needs of particular individuals and groups, such as trafficked persons, migrant workers, smuggled migrants, older persons, children, women at risk and persons with disabilities, as well as asylum seekers who have been unsuccessful in their claim.⁷ The specific rights of many of those groups have been recognized in international legal instruments.⁸

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

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

⁸ Such as, for instance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁹ See in this regard the view of the Special Rapporteur on the human rights of migrants, who has stated that when speaking generally of migrants, he has come to use the word “precarious”, which refers more to the situation they are in, constructed as it often is, rather than the word “vulnerable”, which connotes more their intrinsic characteristics (see A/71/285, para. 60).

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

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

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

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

C. Confronting xenophobia against migrants

13. In paragraph 14 of the New York Declaration, Member States strongly condemned acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against refugees and migrants, and the stereotypes often applied to them, including on the basis of religion or belief. Under paragraph 2 of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.

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

¹⁰ A thorough understanding of vulnerability usually requires an individual and situation-specific analysis. For a related discussion, see United Nations Office on Drugs and Crime, "Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons, Issue Paper (Vienna, 2013), p. 14.

¹¹ International Labour Office, International Organization for Migration and OHCHR, in consultation with Office of the United Nations High Commissioner for Refugees, *International Migration, Racism, Discrimination and Xenophobia* (2001), p. 2.

contemporary forms of racism, racial discrimination, xenophobia and related intolerance recently asserted that in the current era of increased mobility, manifestations of xenophobia were both myriad and alarmingly on the rise (see A/HRC/32/50, para. 30). Such manifestations can include overt physical violence, hate speech and hate crimes, as well as intentional, implicit or structural discrimination against migrants. Widespread misperceptions about the scale and nature of migration can contribute to xenophobia. In addition to overt efforts to exclude migrants from territorial borders, xenophobia may also be manifest in efforts to exclude migrants from particular areas of a city or from accessing public or private services, institutions or resources.

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

D. Guaranteeing access to justice for migrants

16. In paragraph 39 of the New York Declaration, Member States stated that they would take measures to improve the integration and inclusion of migrants and refugees, as appropriate, and with particular reference to, among other things, access to justice. In accordance with article 14 of the International Covenant on Civil and Political Rights, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

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

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

¹² For a more detailed discussion, see A/71/285, para. 80.

¹³ United Nations Office on Drugs and Crime and International Federation of Red Cross and Red Crescent Societies, *Combating Violence against Migrants: Criminal Justice Measures to Prevent, Investigate, Prosecute and Punish Violence against Migrants, Migrant Workers and Their Families and to Protect Victims* (2015), p. 4.

E. Protecting the lives and safety of migrants in distress

19. In paragraph 10 of the New York Declaration, Member States emphasized that they were determined to save lives. In article 6 of the International Covenant on Civil and Political Rights, it is stated that every human being has the inherent right to life.

20. Increasingly tough controls at external borders, coupled with a critical lack of regular migration channels, have escalated the risks and raised the stakes of irregular movement, compelling migrants to resort to dangerous modes of travel. The International Organization for Migration reported that 4,234 people had lost their lives along migratory routes in the first eight months of 2016; the figure is almost certainly a significant undercounting.¹⁴

21. In deserts and on other land borders, thousands of migrants have perished due to exposure to the elements, dehydration or asphyxiation in overcrowded trucks. Thousands more have died at sea because their boats capsized and sank, because they were compelled to travel below deck in overheated engine rooms without water or ventilation or because they were forced overboard by smugglers or coast guards in dangerous interception operations. The bodies often remain lost or unidentified, and families often do not know if missing relatives are dead or alive. Also largely uncounted are the many migrants who suffer serious injuries in the course of their journey.

F. Ensuring that all border governance measures protect human rights

22. In paragraph 24 of the New York Declaration, Member States, recognizing that States have rights and responsibilities to manage and control their borders, committed to implementing border control procedures in conformity with applicable obligations under international law, including international human rights law and international refugee law. In its article 12, the International Covenant on Civil and Political Rights states that everyone lawfully within the territory of a State should, within that territory, have the right to liberty of movement and freedom to choose his or her residence, and that everyone should be free to leave any country, including his or her own.

23. Preoccupation with border control and surveillance has escalated dramatically in recent years, spurred by concerns about “uncontrolled” migration overwhelming destination States and fears — largely unfounded — about links between migration and transnational crime or terrorism.

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

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

¹⁴ See the International Organization for Migration, Missing Migrants Project web page on methodology (<http://missingmigrants.iom.int/methodology>).

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

26. Also in the context of borders, concerns have been raised about a lack of oversight and justice mechanisms, which can encourage a culture of impunity to flourish among border guards and immigration officials. Border management functions are now often carried out by private actors who can operate without adequate government oversight and without taking human rights imperatives into account.

G. Ensuring that all returns are lawful and sustainable

27. In paragraph 58 of the New York Declaration, Member States stipulated that any type of return, whether voluntary or otherwise, must be consistent with their obligations under international human rights law and in compliance with the principle of non-refoulement, and that particular attention should be paid to the needs of migrants in vulnerable situations who return, such as children, older persons, persons with disabilities and victims of trafficking. In article 3 (1) of the Convention against Torture, it is stated that no State party should expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

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

29. Migration policies that are premised on deterrence can lead to violations of the fundamental principle of non-refoulement, which is a peremptory norm of international human rights law applicable to any form of removal or transfer of persons, regardless of their status, to a country where there are grounds for believing the person would be at risk of torture or other irreparable harm.¹⁵ Migrants can also be subject to arbitrary and collective expulsion. In some cases, migrants are unable to exercise free and informed consent in regard to returns that are characterized as “voluntary”.

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

H. Protecting migrants from all forms of violence and exploitation

31. In paragraph 10 of the New York Declaration, Member States pledged to combat with all the means at their disposal the abuses and exploitation suffered by countless refugees and migrants in vulnerable situations. Under article 5 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties undertake to guarantee the right to security of person and protection by the State against

¹⁵ See Convention against Torture, art. 3; Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

¹⁶ In cases concerning returnees in Balkan States, the Committee on Economic, Social and Cultural Rights has defined sustainable return to include equal enjoyment of rights covered in the International Covenant on Economic, Social and Cultural Rights, especially in the field of social protection, health care, education and employment (see E/C.12/BIH/CO/2, para. 11).

violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

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

33. They can be subjected to disproportionate and unlawful force by security forces, police officials and border authorities. Non-State actors can also exploit and abuse migrants in the context of large movements, where such migrants are particularly at risk of being trafficked (see A/HRC/29/38, paras. 11-13) and of being exploited by unscrupulous employers. Migrants are also at risk of being kidnapped and tortured by criminals seeking to extort money.

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

I. Upholding the right to liberty of migrants

35. In paragraph 33 of the New York Declaration, Member States pledged to consider reviewing policies that criminalize cross-border movements and to pursue alternatives to detention while the assessments were under way, and, in paragraph 56, affirmed that children should not be criminalized or subject to punitive measures because of their migration status or that of their parents. The International Covenant on Civil and Political Rights, in article 5 (1), makes explicit that everyone has the right to liberty and security of person.

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

37. Even short-term stays in detention can have a detrimental impact on the mental health of children. Children in immigration detention are often traumatized and have difficulty understanding why they are being “punished” despite having committed no crime (see A/HRC/15/29, para. 51). Children in immigration detention are five times as likely to be subjected to a substantiated incident of sexual violence, are much more likely to witness or experience other forms of violence, including physical harm by facility staff members, and are also more likely to commit suicide or engage in other forms of self-harm when housed in adult facilities (see A/HRC/28/68, para. 43).

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

38. In paragraph 57 of the New York Declaration, Member States stated that they would consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, family reunification, among other things. Article 23 (1) of the International

Covenant on Civil and Political Rights states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

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

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

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

41. In paragraph 32 of the New York Declaration, Member States stated that they would protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. Article 3 (1) of the Convention on the Rights of the Child provides that in all actions concerning children the best interests of the child should be a primary consideration.

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

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

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

45. Despite the fact that the assessment of age can be the key to being protected as a child, many migrant children can be subjected to inappropriate age determination techniques, which can interfere with their right to privacy and violations of their human dignity. A false belief in the reliability and precision of such techniques can lead to serious errors and can place children at risk of refoulement, detention and denial of essential services.

L. Protecting the human rights of migrant women

46. In paragraph 31 of the New York Declaration, Member States stated that they would ensure that their responses to large movements of refugees and migrants mainstream a gender perspective, promote gender equality and the empowerment of all women and girls and fully respect and protect the human rights of women and girls. In accordance with article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, States parties are to condemn discrimination against women in all its forms.

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

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

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

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

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

51. In paragraph 30 of the New York Declaration, States are encouraged to address the vulnerabilities to HIV and the specific health-care needs experienced by migrant and mobile populations. In accordance with article 12 of the International Covenant on Economic, Social and Cultural Rights, States parties agree to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

52. Migrants in the context of large movements can be prevented from enjoying their right to health at all stages of the journey. The conditions in which migrants are compelled to travel, their living and working conditions in transit and the circumstances of their reception often deprive them of essential underlying determinants of their right to health and can lead to poor health outcomes.

53. Health issues associated with long, traumatic and exhausting journeys include accidental injuries, hypothermia, burns and dehydration, as well as untreated infections, injury and violent trauma due to violence suffered en route. Vulnerable individuals, especially children, are prone to respiratory infections and gastrointestinal illnesses because

of poor living conditions, suboptimal hygiene and nutritional deprivation during their movement. The effect of precarious movements on the mental health of migrants is often dramatic, with up to half of all migrants in large movements suffering from post-traumatic stress disorder.

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

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

55. In paragraph 11 of the New York Declaration, Member 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. In accordance with article 11 of the International Covenant on Economic, Social and Cultural Rights, States parties agree to recognize the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

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

57. Migrants who are in an irregular situation en route and when they arrive at the destination are often compelled, by law or circumstance, to live in segregated, run-down and poorly maintained residential areas with poor services and facilities.¹⁷ The criminalization of irregular migration can mean that migrants are unable to rent private property of good quality; as a result, they may be forced to live in shacks, derelict buildings or even in the open air. They are often prohibited by law or administrative regulation from making improvements to the structures in which they live.

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

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

59. In paragraph 57 of the New York Declaration, Member States pledged to pay particular attention to the application of minimum labour standards for migrant workers regardless of their status. Under articles 6 (1) and 7 of the International Covenant on Economic, Social and Cultural Rights, States parties commit to recognize the right to work, which includes the right of everyone to the opportunity to gain his or her living by work

¹⁷ *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation* (United Nations publication, Sales No. E.14.XIV.4), pp. 64-65.

which he or she freely chooses or accepts, and the right of everyone to the enjoyment of just and favourable conditions of work.

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

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

P. Protecting the right of migrants to education

62. In paragraph 39 of the New York Declaration, Member States pledged to take measures to improve the integration and inclusion of migrants and refugees, as appropriate, and with particular reference to access to, among other things, education. Under article 13 (1) of the International Covenant on Economic, Social and Cultural Rights, States parties commit to recognize the right of everyone to education.

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

64. Other barriers to accessing education include requirements to produce specific documentation, including evidence of identity and residency and birth and medical records. In some cases, migrant families are required to pay high fees for school. Some migrant children may also have to work to support themselves or pay for their journey, and thus may not attend school.

65. Migrants, including adults, are often unable to obtain recognition of their diplomas and qualifications or to transfer educational achievements.

Q. Upholding migrants' right to information

66. In paragraph 42 of the New York declaration, Member States pledge to take measures to inform migrants about the various processes relating to their arrival and stay in countries of transit, destination and return. In accordance with article 19 (2) of the International Covenant on Civil and Political Rights, everyone is to have the right to freedom of expression; that right is to include freedom to seek, receive and impart information and ideas of all kinds.

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

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

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

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

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

71. In paragraph 61 of the New York Declaration, Member States recognized 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. Article 22 (1) of the International Covenant on Civil and Political Rights states that everyone is to have the right to freedom of association with others.

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

73. At the same time, such individuals and organizations are often harassed, attacked and criminalized for their work. They can be subjected to arbitrary detention and arrest; threats; confiscation of rescue equipment, such as boats; and verbal, physical and sexual harassment and violence by individuals or by public authorities, such as police. They may face charges of migrant smuggling or facilitating irregular entry and other criminal or administrative charges.

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

74. In paragraph 25 of the New York Declaration, Member States pledged to make efforts to collect accurate information regarding large movements of refugees and migrants. In accordance with article 65 (1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, States parties are to maintain appropriate services to deal with questions concerning international migration of workers and members of their families.

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

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

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

77. In paragraph 7 of the New York Declaration, it is recognized that large movements of refugees and migrants have political, economic, social, developmental, humanitarian and human rights ramifications, which cross all borders, and that such movements are global phenomena that call for global approaches and global solutions. In accordance with article 64 (1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, States parties are to, as appropriate, consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

78. The governance of migration is often considered as an issue solely defined by national sovereignty, which is in turn generally equated with national security. The common framework provided by universal human rights principles is often disregarded in discussions of migration governance. However, there is now an emerging understanding that enhanced international cooperation is a central element of any successful response to large-scale, irregular and precarious movement of migrants and refugees, and that the United Nations, in accordance with its Charter, has a key role to play as a forum for international cooperation in this regard.

79. Nevertheless, as the present report has made clear, there continue to be serious gaps in the human rights protection of the significant numbers of migrants who are in a vulnerable situation within large movements, but who may not qualify as refugees. Much

more needs to be done collectively to address the drivers of forced migration, such as extreme poverty and climate change and environmental degradation, and to respond to the human rights protection needs of migrants who are moving in precarious ways, during transit and at the destination.

IV. Conclusions and recommendations

80. In the New York Declaration, Member States expressed their commitment to protect the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times (para. 41) and pledged their support to those affected today as well as to those who will be part of future large movements (para. 11).

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

82. The United Nations High Commissioner for Human Rights recommends that States and other stakeholders, as relevant, should:

(a) Recognize that all persons in the context of large movements are rights holders, and commit to full protection of their human rights and fundamental freedoms, regardless of status or other circumstance;

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

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

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

(e) Devote specific attention to migrants in vulnerable situations, and in this regard continue to support the development by the Global Migration Group Working Group on Migration, Human Rights and Gender of the principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, and commit to build the State-led process to develop guidelines for vulnerable migrants on the strong normative foundation provided by the above-mentioned principles and practical guidance;

(f) Premise the global compact on safe, regular and orderly migration on protection of the human rights of all migrants, and ensure that it is firmly based in international human rights law and other relevant normative standards; include in

the compact specific actions to ensure human rights-based governance of migration, such as addressing the drivers of precarious migration, enhancing safe and regular pathways and taking measures to regularize the status of irregular migrants; and ensure that all relevant stakeholders, including OHCHR, the United Nations human rights mechanisms and civil society, including migrants' groups, are fully involved in the development of the compact.
