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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

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

## Intersessional panel discussion on the human rights of migrants: prevention and accountability for human rights violations in transit

### Report of the Office of the United Nations High Commissioner for Human Rights

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 53/24, in which the Council requested the Office of the United Nations High Commissioner for Human Rights to convene a half-day intersessional panel discussion on avenues to prevent and address human rights violations and abuses against migrants in transit and to ensure access to justice for victims and their family members, including through monitoring at international borders, highlighting best practices and challenges in this regard, to ensure the meaningful participation of migrants and their family members and to prepare a summary report on the panel discussion. The panel discussion was held on 15 May 2024.



## I. Background

1. In its resolution 53/24, the Human Rights Council reaffirmed the need to protect the safety and dignity of all migrants, and to respect, protect and fulfil their human rights and fundamental freedoms, in all situations, including in situations of transit. It expressed concern at the loss of life, disappearances, various forms of violence, exploitation, torture and other human rights violations and abuses suffered by migrants undertaking perilous journeys. It also expressed serious concern about the vulnerable situations and risks faced by migrants, noting that they can arise from the reasons for leaving their country of origin, circumstances encountered by migrants en route, at borders and at destination. The Council expressed concern about the increasing trend in xenophobia, racism, multiple and intersecting forms of discrimination and hostility towards migrants in societies, which might have a negative impact on the fulfilment of human rights globally. It stressed the importance of eliminating all forms of discrimination against migrants, in helping to prevent human rights violations and abuses against migrants, including migrants in transit.

2. In the same resolution, the Council recognizing the shared and respective responsibilities of countries of origin, transit and destination in promoting, protecting and respecting the human rights of all migrants, encouraged States to strengthen cooperation, information exchange and coordination at all levels, including between all countries and with international organizations, civil society and migrants and their families, in order to prevent and investigate human rights violations and abuses against migrants in transit and to ensure accountability for victims. The Council recommitted to strengthening efforts to enhance the availability and flexibility of pathways for safe, orderly and regular migration as a means of preventing human rights violations against migrants. It called upon States to ensure that their migration legislation, policies and practices were consistent with international human rights law and to promote the enjoyment of human rights by all migrants without discrimination. It encouraged States to adopt gender-, disability- and age-responsive approaches for the prevention of or effective responses to human rights violations and abuses against migrants, including migrants in transit.

3. Also in resolution 53/24, the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to convene a half-day intersessional panel discussion on avenues to prevent and address human rights violations and abuses against migrants in transit and to ensure access to justice for victims and their family members, including through monitoring at international borders, highlighting best practices and challenges in this regard, and to ensure the meaningful participation of migrants and their family members. The intersessional panel discussion was held on 15 May 2024.<sup>1</sup> The Council requested OHCHR to prepare a summary report on the panel discussion, to be submitted to the Human Rights Council at its fifty-seventh session and to the General Assembly at its seventy-ninth session. The present report is submitted to the Council pursuant to that request.

## II. Opening remarks

4. The Ambassador and Permanent Representative of Mexico to the United Nations Office and other international organizations in Geneva, Francisca E. Méndez Escobar, welcomed all participants to the intersessional panel discussion, stressing the importance of the discussion as a space of dialogue for the Human Rights Council, States, civil society organizations, migrants and their families.

5. The United Nations High Commissioner for Human Rights, Volker Türk, opened the intersessional panel discussion by highlighting some of the human rights violations and abuses faced by migrants in transit and the challenges that they encountered in gaining access to justice. He stressed that the physical and legal barriers in place to deter migration pushed people to travel irregularly using dangerous routes and resulted in severe violations and abuses of their human rights. He noted that, during their journeys, migrants often faced

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<sup>1</sup> See <https://www.ohchr.org/en/events/events/2024/intersessional-panel-discussion-human-rights-migrants-transit-15-may-2024>.

pushbacks, the denial of life-saving assistance, arbitrary detention, violence and gender-based violence, slavery, forced labour, kidnapping and extortion. The High Commissioner affirmed that the suffering and deaths of migrants during their journey was a consequence of systems of migration governance that prioritized deterrence and political gain over human rights, amplified by dehumanizing narratives and the criminalization of solidarity. The High Commissioner noted that those factors shrank the human rights protection space, leading to increased risks for migrants in transit and a lack of access to justice. In that regard, he added that many lived in the shadows, afraid to complain or seek support, with justice remaining inaccessible for many.

6. The High Commissioner reiterated the urgent need for comprehensive approaches to migration governance that included pathways that allowed for people to travel regularly and safely and to gain access to essential services, including health care, justice and education. He stressed that saving lives must be the foremost priority and underlined the importance of human rights monitoring at borders to enable the reporting and prevention of human rights violations and to contribute to accountability. The High Commissioner encouraged communication that emphasized the humanity of migrants and their human rights, noting that portraying migrants as criminal or undeserving paved the way for the acceptance of human harm along migration routes and generated discrimination and exacerbated the risks that migrants faced.

7. The High Commissioner concluded by recalling the vital role played by the Council and its mechanisms, including the Special Rapporteur on the human rights of migrants, in preventing human rights violations and ensuring accountability for protection gaps that migrants faced in transit and on arrival, as well as the importance of hearing directly from migrants and their families. He further encouraged States to keep the human rights of people on the move central to the Council's agenda and to continue to hold States to account in their implementation of the Global Compact for Safe, Orderly and Regular Migration, including in the context of the universal periodic review.<sup>2</sup>

8. The Undersecretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs of Mexico, Joel Hernandez, recalled that migrants, in particular those moving irregularly, could face significant human rights risks during their journeys. He highlighted the importance of protecting migrants in vulnerable situations, especially women and children. He noted that the lack of regular migration pathways exposed thousands of migrants to the risk of being victims of organized crime, including kidnapping, smuggling, trafficking, slavery, gender-based violence and forced labour.

9. Mr. Hernandez recalled the commitment made to cooperate internationally to facilitate safe, orderly and regular migration under the Global Compact and the 2030 Agenda for Sustainable Development.<sup>3</sup> He also referred to Human Rights Council resolution 53/24, in which the Council urged States to adopt measures to prevent disappearances, arbitrary detention, torture, gender-based violence and the excessive use of force against migrants. He expressed concern over the more than 63,000 migrant deaths registered over the past decade,<sup>4</sup> highlighting the urgent need to prevent further loss of life.

10. Mr. Hernandez reiterated the urgent need to ensure independent and transparent investigations into human rights violations committed against migrants, to end impunity, and encouraged States to adopt and implement, in coordination with all stakeholders, effective legislation, policies and programmes to prevent human rights violations and abuses against migrants and to protect the human rights and dignity of all migrants, regardless of their status.

<sup>2</sup> See <https://www.ohchr.org/en/statements/2024/05/human-rights-council-intersessional-panel-high-commissioner-urges-rights>.

<sup>3</sup> Target 10.7 of the Sustainable Development Goals is to facilitate orderly, safe and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies).

<sup>4</sup> International Organization for Migration, Missing Migrants Project, available at <https://missingmigrants.iom.int/data>.

### **III. Preventing human rights violations and abuses against migrants in transit**

#### **A. Statements by the panellists**

11. The moderator of the first segment of the panel discussion, the Ambassador and Permanent Representative of the Philippines to the United Nations Office and other international organizations in Geneva, Carlos D. Sorreta, reiterated that all migrants experienced human rights protection gaps, at land, sea and air borders around the world, including unlawful profiling, torture, ill-treatment, gender-based violence, dangerous interception practices and arbitrary detention.

12. A migrant shared his experience of transit after he had been forced to leave his country of origin to seek safety. During his perilous journey to Europe, he reported having faced multiple pushbacks at borders, often experiencing and witnessing violence. He also described incidents where the police had stolen medicine and forced migrants to undress for inspections. He added with concern that the police had conducted age assessments using X-rays on his brother, wrongly determining that he was over 18, despite his being a child, and leading to his detention and deportation. He explained that, due to a lack of resources and documentation, his brother was now unable to reunite with him.

13. A member of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Pablo Ceriani Cernadas, stressed that narratives based on structural xenophobia and racial discrimination disproportionately affected certain populations based on their nationality, migration status, race, ethnicity, disability status, gender, age or sexual orientation. Mr. Ceriani Cernadas highlighted that those narratives informed security-based policies on migration that placed migrants at further risk of human rights violations and abuses by State actors and organized crime in various migration corridors. In that context, he referred to militarization, detention, including of children and families, pullbacks, pushbacks, refoulement, expulsions without due process, trafficking and gender-based violence. He stressed the risks triggered by the lack of pathways for regular migration, in particular for those in vulnerable situations. He also referred to policies, legal frameworks and good practices that facilitated effectively safe and regular migration, including humanitarian visas, regularization programmes and family reunification procedures, as well as mechanisms established at borders to allow individuals to seek asylum and protection, including for children, families in vulnerable circumstances and victims of trafficking and smuggling. Among key recommendations, he underlined the importance of advancing regularization programmes, changing the narrative on irregularity as an indicator of vulnerability, rather than a crime, guaranteeing access to asylum and protection mechanisms, ensuring search and rescue, rather than criminalizing assistance and militarizing corridors and borders, and addressing structural racism and xenophobia. He recognized the efforts of States to work towards addressing the multidimensionality of migration through a whole-of-government approach, in line with the commitments made in the Global Compact. He referred to the joint general comment under development by the Committee on Migrant Workers and the Committee on the Elimination of Racial Discrimination on the obligations of States parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention on the Elimination of All Forms of Racial Discrimination concerning public policies for addressing and eradicating xenophobia and its impact on the rights of migrants, their families and other non-citizens affected by racial discrimination.<sup>5</sup> He added that the general comment would provide authoritative guidance for States parties of both conventions to adopt comprehensive policies to eradicate and address xenophobia and its impact on harmful policies that were affecting the rights of migrants and societies at large.

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<sup>5</sup> See <https://www.ohchr.org/en/calls-for-input/2024/call-submissions-concept-paper-cerd-cmw-joint-general-commentrecommendation>.

14. The Legal and Humanitarian Affairs Adviser of Médecins sans frontières, Almudena Puig, reported that, in 2023, more than half a million people had crossed the Darien jungle, with an estimated 36 per cent of them being women and girls. She stressed that migrants faced situations of extreme vulnerability and a hostile environment, marked by violence, sexual violence, robberies, kidnappings and homicides, with perpetrators often acting with impunity. She reported that, in 2023, more than 600 survivors of sexual violence had received comprehensive medical and psychological care from Médecins sans frontières in the province of Darien. Among factors identified by them as contributing to gender-based violence against migrants, she referred to a lack of information about the dangers of that migratory route and about the services available. She underlined that there was a lack of information on the need to seek medical care within 72 hours for cases of sexual violence, as treatment was essential to prevent severe consequences like unwanted pregnancies and sexually transmitted infections. In that regard, Ms. Puig also stressed that increased efforts and resources to ensure security, access to justice and health-care services were essential to preventing violence and addressing impunity. Ms. Puig noted that, in February 2024, Médecins sans frontières had been forced to suspend its activities in the Darien region, and she expressed concern about the negative consequences on migrant victims of gender-based violence, who were reportedly not receiving comprehensive treatment or were afraid to seek medical care. She also expressed concern over the registrations of the number of victims of gender-based violence and noted that, without statistics or information on specific cases, the challenge of gender-based violence against migrants might become invisible.

15. An Advocacy Manager in Humanitarian Affairs and Migration at EMERGENCY, Francesca Bocchini, reflected on the human rights protection gaps faced by migrants in the Central Mediterranean region, pointing to over 29,000 victims, and the frequent criminalization of humanitarian organizations. She recalled States' international law obligations, including to assist any person in distress at sea, regardless of nationality or status, and on the termination of rescue operations in a place where the safety of the rescued people was no longer threatened and basic needs could be met. She noted however that a gradual disengagement of European assets and a practice of non-assistance, notably by some coastal States, coupled with the externalization and securitization of migration governance, had exposed migrants to human rights violations. She underscored the situations of individuals intercepted, pushed and pulled back to Libya and Tunisia, where systemic human rights violations and abuses had been reported. Ms. Bocchini expressed concern over the further restrictions of the humanitarian space for search and rescue operations by recent regulations and the assignment of distant ports for disembarkation. She stressed that that had led to the administrative detention of 21 humanitarian vessels, increased travel time, reduced rescue capacity and worsened conditions for rescued individuals and had diverted financial resources to unnecessary navigation costs. Ms. Bocchini highlighted the presence of the assets of non-governmental organizations at sea as a good practice to fill the rescue gap left by the competent authorities, protect life at sea, record and share the testimonies of survivors and prevent, document and report human rights violations and abuses. She also highlighted the importance of operational advocacy and strategic litigation to shed light on human rights violations committed by States and on the shrinking of civic space. She concluded with a set of recommendations to States, namely, to prioritize the protection of lives at sea, in particular on the Mediterranean route, to launch a European Union-led search and rescue mission to prevent death and provide assistance and relief to migrants in distress, to recognize the lifesaving role of non-governmental organizations, to increase information-sharing, coordination and cooperation at sea to preserve the humanitarian space and prevent human rights violations, to create a safe and enabling environment where search and rescue non-governmental organizations could operate, by revoking laws and practices that criminalized such non-governmental organizations and ensuring the assignment of the nearest available port of disembarkation, to prevent collective expulsions and protect migrants from becoming victims of smuggling and trafficking in persons by ceasing measures or agreement that supported interceptions or pushbacks or perpetuated externalization, to

invest in long-term aid programmes in origin and transit countries and to ensure pathways and effective mechanisms for reception and inclusion.<sup>6</sup>

## B. Plenary discussion

16. During the first segment of the panel discussion, interventions were made by delegates of the following States and organizations: Algeria, Bangladesh, Belarus, Colombia, Croatia, Egypt, Greece, Indonesia, Morocco (in its national capacity and on behalf of the Global Compact champion countries),<sup>7</sup> Panama, Türkiye, Venezuela (Bolivarian Republic of), Center for Justice and International Law, Danish Refugee Council, Human Rights Watch, International Detention Coalition, Scalabrini International Migration Network and Queen Mary University of London. A written statement was received from the Southern Border Communities Coalition.

17. During the discussion, participants reiterated that all migrants were entitled to all human rights, regardless of status. Participants highlighted States' obligations under international law to uphold their human rights and to ensure the effective respect, protection and fulfilment of their human rights at all stages of migration. Participants noted that upholding human rights of all migrants, including those in transit and at borders, enhanced the efficiency of migration governance and called upon States to refrain from developing and implementing laws, policies and programmes that undermined migrants' human rights, exacerbated situations of vulnerability and endangered the lives of migrants.

18. Participants called for human rights-based, whole-of-government and whole-of-society approaches to migration governance and for enhanced international cooperation between countries of origin, transit and destination, and across all stages of the migration cycle, to prevent and address human rights violations and abuses against migrants, in line with obligations under international human rights law and commitments made under the Global Compact. Participants called upon States to galvanize their support and exchange relevant information and best practices on the protection of the human rights of migrants. Some participants underlined the need to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Their Families and ensure its effective implementation.

19. Many participants noted with concern human rights violations and abuses that migrants often faced in transit and at borders, notably when they were undocumented. Reference was made to instances of, inter alia, violence, including gender-based violence, arbitrary detention, torture, ill-treatment, exploitation, enforced disappearances, racial and religious profiling and denial of economic, social and cultural rights, as well as discrimination, xenophobia, racism, racial discrimination and related intolerance, perpetrated against migrants. Some participants focused on specific instances of discrimination based on race and religion. It was noted that migrants of all genders experienced human rights violations and abuses, but that migrant women and girls faced specific forms of discrimination and could be at particular risk of being victims of gender-based violence, trafficking and exploitation.

20. The widespread impact of harmful and dehumanizing narratives against migrants and their families was mentioned as a factor exacerbating situations of vulnerability and perpetuating discrimination and stereotypes against migrants. It was stressed that divisive narratives also led to exclusion, and even violence, against migrants and could result in policies that undermined their human rights. Participants added that harmful narratives had negative effects not only on migrants and their families, but also on society as a whole. Participants encouraged the countering of those narratives and the promotion of more inclusive, humanizing and evidence-based discourse on migration and migrants.

<sup>6</sup> See EMERGENCY, "Saving lives in the abandoned sea: one year of Life Support" (2024), available at [https://en.emergency.it/wp-content/uploads/2024/04/EMR\\_SAR\\_REPORT\\_ENG\\_web\\_final.pdf](https://en.emergency.it/wp-content/uploads/2024/04/EMR_SAR_REPORT_ENG_web_final.pdf).

<sup>7</sup> United Nations Network on Migration champion countries initiative, see <https://migrationnetwork.un.org/champion-countries>.

21. Participants stressed the importance of providing migrants with information on their rights and services and on the risks and challenges faced in transit, as well as on access to remedy, where needed. Participants recommended the enhancement of the capacity of duty bearers and other relevant stakeholders on the human rights of migrants in order to provide migrants with greater protection. They also advised collecting primary evidence from migrants themselves to inform policies and advocacy, as well as to raise awareness of and to prevent human rights violations and abuses at borders and in transit. Some participants also advocated for increasing investment in early warning systems and shared analysis to prevent severe human rights violations and ensure accountability. Other participants urged the improvement of the reception process of migrants by adopting community-led initiatives that prioritized human rights and dignity for all migrants.

22. Participants called for increased efforts and enhanced international cooperation to protect the lives, safety and dignity of migrants and to prevent their deaths and disappearances. In that context, participants recommended reviewing restrictive and securitized migration laws and policies to ensure that they did not exacerbate the risk of migrants dying or going missing and expanding pathways for safe and regular migration as a means of preventing situations of vulnerability and loss of life along migratory routes both at land and sea. Where migrants do go missing, States were called upon to enhance efforts and international cooperation and to establish search and rescue mechanisms that enabled information exchange and coordination along migratory routes, ensuring the effective involvement of the affected families.<sup>8</sup> In addition, some participants welcomed the development of guidance on missing migrants, including within the United Nations Network on Migration, and urged States to renew their commitments to save the lives of migrants and uphold their human rights.<sup>9</sup>

23. Some participants condemned laws, policies and practices adopted by countries around the world in a context of generalized hostility, securitization and criminalization of irregular migration, noting that forms associated with that approach, such as immigration detention, pushbacks, the externalization of borders and the criminalization of humanitarian assistance, contributed to the continued deaths and disappearances of migrants and exposed them to greater human rights risks. Therefore, they called for those laws, policies and practices to be consistent with international human rights law and standards. Some participants expressed concern over the externalization of borders to prevent border crossing and the outsourcing of international obligations by some States by sending individuals to third countries to process their asylum or other protection claims, even when not considered safe. Other participants noted that such practices left people with no choice but to embark on dangerous journeys and gave rise to increased violations and abuses against migrants in transit. In that context, many urged for the expansion of pathways for safe and regular migration, including humanitarian visas and regularization options. Some participants underlined that opening and expanding pathways for regular migration was an effective tool for preventing and addressing vulnerabilities by limiting the exposure of migrants to dangerous, perilous and irregular journeys and preventing abuse from smuggling and trafficking networks. Many participants also recommended guaranteeing access to life-saving assistance while refraining from criminalizing humanitarian organizations and human rights defenders.

24. The role of the Human Rights Council and the international human rights mechanisms and the importance of addressing migration issues within those forums were underlined. Participants also called for the human rights-compliant implementation of commitments made by States under the Global Compact to make safe, orderly and regular migration a tangible reality for all migrants, regardless of their status.

<sup>8</sup> See Committee on Enforced Disappearances, general comment No. 1 (2023) on enforced disappearance in the context of migration.

<sup>9</sup> United Nations Migration Network, “Actionable recommendations on missing migrants and providing humanitarian assistance to migrants in distress”, available at: <https://migrationnetwork.un.org/actionable-recommendations-missing-migrants-and-providing-humanitarian-assistance-migrants-distress>; and Committee on Enforced Disappearances, general comment No. 1 (2023) on enforced disappearance in the context of migration.

25. Despite the challenges, numerous efforts and promising practices were mentioned during the panel discussion. The representative of Bangladesh informed participants about legislative and policy measures, including those to combat trafficking in persons. The representative of Belarus noted its openness to receive migrants, as well as to allow visits from United Nations independent experts. The representative of Colombia referred to the provision of temporary protected status, the regularization and integration of over 2.5 million migrants, underlining that it was possible to welcome migrants and offer them regular options for a dignified life, and highlighted that Colombia was making efforts towards their socioeconomic integration. The representative of Croatia informed participants about legislative and institutional efforts and training undertaken to enhance the protection and respect of the human rights of migrants at borders, as well as its cooperation with civil society organizations and independent monitoring mechanism in the context of border management, which allowed for unannounced visits to police stations, border crossings and reception centres at borders. The representative of Greece informed participants about the adoption of legislative and administrative tools to protect the human rights of migrants, including the appointment of a fundamental rights officer and the establishment of a fundamental rights violations complaint mechanism, as well as on efforts to ensure access to legal assistance and free legal aid for applicants of international protection and to identify and protect individuals in vulnerable situations, including unaccompanied children and victims of trafficking, torture or mental or sexual violence. The representative also referred to efforts to promote regular migration pathways, including through regularization initiatives and bilateral labour agreements, as a means of responding to the business model of organized criminal networks, as well as efforts in search and rescue to save lives at sea.

26. Among other promising practices, the representative of Indonesia referred to efforts to provide protection to irregular migrants and to foster positive narratives by leveraging social media platforms and working collaboratively with various stakeholders, including universities, youth associations and social media influencers. The representative of Morocco referred to efforts as a Chair of the Global Compact champion country initiative to spearhead a programme of action focused on strengthening regular migration pathways and addressing negative narratives on migration, as well as cooperation with OHCHR to translate human rights standards into practical border governance strategies. The representative of Panama informed participants about investments to provide humanitarian assistance to migrants, including shelter, food, health care, medicine and sanitation, while in temporary reception stations, as well as efforts to investigate allegations related to violations and abuses. The representative of the Bolivarian Republic of Venezuela informed participants about the creation of a special commission to register, document and investigate human rights violations against Venezuelans abroad. The representative of Egypt reported on efforts to ensure that migration governance was enhancing the protection and respect for the human rights of migrants and their families. The representative of Türkiye informed participants that, as a Global Compact champion country, they were seeking to foster collaboration between States and all relevant stakeholders to develop whole-of-government and whole-of-society approaches to protecting the human rights of migrants.

27. Other promising practices shared included ensuring access to justice, ending immigration detention, establishing non-custodial alternatives to detention,<sup>10</sup> expanding pathways for entry and stay, including regularization, establishing national screening and referral mechanisms, ensuring access to services, ensuring the meaningful participation of migrants and their families when designing and implementing policies from whole-of-government and whole-of-society approaches and engaging in the Global Compact champion country initiative.

28. In his closing remarks for the first segment, Mr. Ceriani Cernadas invited States and stakeholders to engage with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Elimination of Racial Discrimination on their joint general comment, as well as in the subsequent implementation

<sup>10</sup> International Detention Coalition, “Alternatives to immigration detention in contexts with transit migration”, briefing paper, Mexico, 2023, available at: [https://idcoalition.org/wp-content/uploads/2024/01/Alternatives-to-immigration-Detention\\_WEB.pdf](https://idcoalition.org/wp-content/uploads/2024/01/Alternatives-to-immigration-Detention_WEB.pdf).



of the authoritative guidance at the local, national and regional levels. He urged States, including those that had endorsed and championed the Global Compact, to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to enhance the protection of the human rights of all migrants. Ms. Puig highlighted the importance of building the capacity of all relevant stakeholders and engaging with communities hosting migrants in transit. She also pointed to the impact of border externalization and other policies that placed migrants in transit at greater risk and called for increased efforts to promote and ensure migrants' access to humanitarian aid and health-care services to prevent and address the consequences of gender-based violence. Ms. Bocchini urged for the improvement of cooperation between countries of destination, transit and origin and advocated for redirecting resources towards addressing the root causes of irregular migration, opening pathways for regular migration and ensuring protection in transit, including through search and rescue operations and aid programmes, instead of securitized border management. She recommended employing advocacy strategies and engaging with legal institutions, policymakers, human rights organizations and other stakeholders to investigate, report and ensure a policy shift. Mr. Sorreta concluded the segment by recalling the importance of cooperation among all countries and relevant stakeholders, including civil society organizations, to support States in addressing the challenges identified during the discussion.

#### **IV. Addressing human rights violations and abuses against migrants in transit and access to justice for victims and their family members**

##### **A. Statements by the panellists**

29. The moderator of the second segment of the panel discussion, the Ambassador and Permanent Representative of Canada to the United Nations Office and other international organizations in Geneva, Leslie N. Norton, recalled that, in its resolution 53/24, the Human Rights Council had underscored that all migrants must be treated with dignity and with respect for their human rights, regardless of migration status. From the Canadian experience, she noted that a sovereign State could ensure the safety and security of its citizens and residents, while also upholding the human rights of migrants. She stressed the importance of whole-of-government and whole-of-society strategies and the meaningful participation of migrants and their family members in their development and implementation.

30. A family member of a missing migrant, part of the Salvadoran Committee of Relatives of Killed or Disappeared Migrants, stressed that it was a challenge to make visible the severe human rights violations and abuses that migrants faced in transit, including exploitation, rape, death and disappearance. He highlighted that family organizations had been crucial in creating search mechanisms for missing migrants, urging that those efforts must always involve families. He reiterated that the meaningful participation of migrant families was fundamental not only in the search for missing migrants, but also for repatriation processes. He outlined that, despite some progress made, access to justice remained a significant barrier for migrant families, including due to the lack of visas, preventing them from searching their family members across borders. He recommended that States enhance their efforts to protect the human rights of migrants, hold perpetrators of violations accountable and ensure that migrants and their families could gain access to justice effectively, as well as implement the commitments made in the Global Compact, in particular under objective 8, to save lives and establish coordinated international efforts on missing migrants.

31. The Director of Platform for International Cooperation on Undocumented Migrants, Michele Levoy, noted that many countries were focusing on increasing the rate of returns, often based on the false assumption that return was the only option for rejected asylum applicants, as reflected in the Pact on Migration and Asylum of the European Union, which was focused only on asylum or return procedures. She recalled that international and European Union law provided for several human rights grounds protecting individuals from return, even when they did not qualify for asylum, including the principle of non-refoulement,

prohibiting return to places where individuals were at risk of serious human rights violations, such as torture, ill-treatment, lack of access to medical care, gender-based violence, prolonged arbitrary confinement and systematic denial of economic, social and cultural rights, such as the rights to food, water, education, livelihood, housing or social security. Among other grounds, she also referred to the right to family and private life and the principle of the best interests of the child, as well as the need to examine the individual's physical and mental health.<sup>11</sup> In that context, she recalled the requirement to have a thorough individual assessment before each potential decision to deport an individual. She outlined numerous examples from European countries that provided pathways to stay and obtain protection status, in addition to asylum, such as residence permits for victims of trafficking, labour exploitation or domestic violence, as well national statuses based on the principle of non-refoulement, medical grounds or humanitarian reasons. She also referred to regularization mechanisms for children, young people, families and stateless people. She added that, despite those developments, many migrants remained unprotected, due to strict or arbitrary criteria or administrative or legal barriers. She recommended that States take specific action to broaden the range of permits, taking into account the international legal framework and the reasons for which people move, in line with the commitments made to enhance the availability and flexibility of pathways for regular migration under the Global Compact. For effective implementation, Ms. Levoy stressed that permits for those with barriers to return should grant them access to the labour market and social services and allow for the conversion of such permits to longer-term permits counting towards naturalization. She underlined the need to establish transparent and predictable procedures, with clear criteria, documentation and impartial decision-making, as well as procedural safeguards with written explanation for refusals, the right to appeal and access to free legal aid. She also underlined the need to comprehensively assess fundamental rights considerations and the possibility to apply for a national residence permit before a return decision was issued.

32. The Regional Coordinator of Transnational Research of Fundación para la Justicia, Claudia Interiano, highlighted several challenges that migrants and their families faced in gaining access to justice and protection for their human rights from the States in countries of origin, transit and destination, including the inadequate provision of protection, assistance and consular cooperation in line with international law, limited cooperation between States to prevent human rights violations and ensure effective coordination to search for missing migrants and the failure to investigate and prosecute human rights violations and abuses, impose penalties and ensure non-repetition. To address those challenges and ensure migrants' access to justice, she recommended that States align national laws, policies and procedures with international human rights standards and integrate a gender perspective into, and to take a differentiation approach to, laws, policies and institutions. She underscored the need to better understand challenges to acquiring access to justice, such as socioeconomic and language barriers. She called upon them to establish mechanisms and enhance international cooperation to identify the remains of missing migrants. She underlined the imperative of facilitating the effective participation of families in searching for missing migrants from the countries where they live, to access to justice processes and reparation and to a guarantee of non-repetition. Ms. Interiano outlined some promising practices, including strategic litigation actions resulting in public policies for locating and identifying missing migrants and ensuring access to justice for their families. She also referred to forensic banks established in El Salvador and Honduras and the creation of inter-institutional and multidisciplinary mechanisms composed of representatives of public authorities, civil society organizations and committees of family members to advance efforts on those issues. Among other examples, she referred to the Forensic Commission in Mexico mandated to identify remains of migrant victims and the Foreign Search and Investigation Support Mechanism in Mexico, created to support the families of disappeared migrants in reporting cases from abroad and to facilitate access to justice and reparations.

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<sup>11</sup> Platform for International Cooperation on Undocumented Migrants, "Why is the Commission's push to link asylum and return procedures problematic and harmful?", briefing paper, October 2021.

33. The Special Rapporteur on the human rights of migrants, Gehad Madi, recalled the severe human rights violations and abuses that migrants faced along their journeys, in particular at international borders, further exacerbating situations of vulnerability. He referred to patterns of human rights violations and abuses documented and reported by civil society organizations and national, regional and international human rights mechanisms, including the incitement to hatred and violence prevalent on digital platforms. He also pointed to instances of racist violence, pushbacks, police brutality and denial of access to territory to seek asylum and other protections at borders. He expressed concern about the criminalization of irregular migration, the precarious conditions in immigration detention and a lack of access to justice and impunity for crimes committed against migrants. He noted that reports of human rights violations and abuses were frequently dismissed, including due to the absence of effective and independent investigative mechanisms. He highlighted challenges faced by migrants to access justice effectively, due to factors like the criminalization of irregular migration, a lack of regular migration status, language barriers, a lack of legal assistance and firewalls and ineffective oversight mechanisms. Mr. Madi recalled States' obligations to protect the human rights of all migrants, regardless of status, and to ensure access to justice for them. Among key recommendations, he called upon States to address racism and racial discrimination by adopting and implementing anti-discrimination laws, decriminalizing irregular entry, prohibiting detention, in particular of children, combating trafficking and smuggling, ensuring that protection was at the centre of migration and border governance, and strengthening the capacity of tribunals, national human rights institutions and other mechanisms for human rights protection and dispute resolution to enhance accountability. Operationally, he recommended that States address law enforcement bias and train personnel on human rights-compliant border management. He called for the investigation of human rights violations and abuses against migrants, for holding perpetrators accountable and providing victims with effective remedies and redress, while preventing further violations. He reiterated the call made by a former holder of his mandate for the establishment of independent monitoring mechanisms at the national and international levels in view of the increased instances and patterns of grave human rights violations perpetrated against migrants at international borders. He joined civil society's call to the Council and States to establish an independent monitoring mechanism to investigate human rights abuses and violations against migrants at international borders. He urged for the involvement of expert organizations, national human rights institutions and civil society in the development and delivery of such mechanisms and for the improvement of access to justice and accountability for human rights violations against migrants.

## **B. Plenary discussion**

34. During the second segment of the panel discussion, delegates of the following States and organizations took the floor: India, Lithuania, Luxembourg, Mexico, the European Union, the International Organization for Migration, the Border Violence Monitoring Network, the Center for Peace Advocacy and Sustainable Development, the Global Detention Project, the Quaker United Nations Office and a migrant. A written statement was received from the Research Centre on Asylum and Migration.

35. During the discussion, it was recalled that States had obligations under international law to address the risks and human rights violations experienced by migrants in transit and to ensure access to justice for victims and their family members. Participants reiterated factors that exacerbated situations of vulnerability and human rights risks, including a lack or limited pathways for regular migration, harmful and dehumanizing narratives against migrants and security-oriented migration policies and practices. On the latter, participants called for an increased focus on the protection of migrants' human rights, instead of on security-driven and deterrence-based migration and border management, enforcement and control. In that context, some participants highlighted with concern the increasing trend in some States of the securitization of their migration policy, including militarization, i.e. granting security forces and military personnel tasks related to migration control and verification. It was recommended that States avoid the deployment of public security forces and military personnel in migration control tasks and, in case that was necessary, it should

be exceptional, proportional to the circumstances and with due diligence to safeguard the human rights of migrants.

36. Participants stressed that restrictive border governance measures did not prevent irregular migration but instead compelled migrants to take more dangerous and precarious journeys. The need to enhance and expand pathways for regular migration that facilitated the safe admission and stay of migrants, including regularization, was repeatedly underscored throughout the discussion. Participants referred to regular pathways as a way to boost innovation, support family reunification, stimulate the economy, respond to labour market needs, prevent and address situations of vulnerability and ensure the protection of migrants' human rights. Some participants highlighted that, by enhancing pathways for regular migration, States provided alternatives to those migrants who might resort to irregular migration and to trafficking and smuggling networks, supporting also efforts to combat that phenomenon. In that context, participants called for increased efforts to combat national and transnational organized crime, including the smuggling of migrants and trafficking in persons, in order to ensure the effective protection of migrants and their families.

37. The systematic practice of collective expulsions, including pushbacks by some States, was highlighted with concern by some participants. Participants highlighted that collective expulsions, including pushbacks at borders, were prohibited under international human rights law and placed individuals at further risk, including of refoulement. Participants also referred to instances of excessive use of force by State authorities against migrants during pushbacks. In the context of borders, participants reported instances of violence and xenophobia against migrants, including children, as well as the damage and confiscation of their mobile telephones, clothing and money. Other participants reported with concern examples of migrants being stranded at borders zones for long periods of time in dire conditions, without proper shelter or medical attention. Participants urged States to investigate effectively allegations of human rights violations occurring during pushbacks and to ensure accountability for human rights violations resulting from collective expulsions and refoulement at borders.

38. The detrimental and long-lasting impact of immigration detention on migrants' physical and mental health was underscored. Some participants noted with concern that children continued to be detained due to their or their parents' migration status, despite the prohibition of child immigration detention under international law and the recognition that that measure was never in the best interests of the child. They called for the immediate end of immigration detention, notably of children, and urged for the establishment of non-custodial alternatives to immigration detention, such as case management, as underlined by some participants. A strong call was made for guaranteeing access by civil society organizations and independent monitoring bodies to detention centres and proactively addressing concerns raised by those monitors. Furthermore, greater oversight was recommended to ensure that funds were not used for harmful immigration detention practices and to guarantee respect for human rights standards in the treatment of all individuals in custody.

39. The importance of opening participative platforms and mechanisms, including within the Human Rights Council, where migrants could share their experiences, expertise and recommendations, was underscored. Participants emphasized the need for migrants to have a meaningful role and participate in the design, implementation and monitoring of policies, processes and decisions that affected them.

40. Participants referred to barriers hindering access to justice and accountability for migrants and their families. They included a lack of access to comprehensive or accessible information about their rights, economic and language barriers, the unavailability of free legal advice, a mistrust in the justice system and fear of presenting their cases to authorities due to their migratory status. Additional obstacles identified included limited cooperation and information-exchange between countries of origin, transit and destination and relevant stakeholders, including victims, delays in investigations and limited mechanisms for transnational investigations, especially for deceased or disappeared migrants. Participants called for immediate action to review and amend laws, policies and practices contributing to those barriers and gaps. They also urged for strengthening the capacity of courts, tribunals, national human rights institutions and other mechanisms in human rights protection and

dispute resolution to ensure accountability for rights violations. They stressed the importance of adopting holistic strategies and enhancing international cooperation to ensure that migrants and their families could gain access justice, remedies and redress effectively and to hold perpetrators accountable to end cycles of impunity. In addition, some participants recommended taking specific actions to respect the right to truth and ensure effective remedies, reparation and guarantees of non-repetition for human rights violations committed against migrants and members of their families.

41. Participants recommended that States strengthen human rights monitoring bodies at the national and international levels. Some participants noted with concern that, despite multiple reports submitted to the Human Rights Council detailing serious and widespread violations against migrants at international borders, grave human rights violations and abuses persisted with impunity, exacerbated by a lack of accountability and access to justice. In that regard, several participants reiterated the call to the Human Rights Council and States to establish an independent mechanism to monitor human rights violations and abuses against migrants at borders, a call supported by over 200 civil society organizations in 2023.<sup>12</sup> The importance of such mechanism to ensure accountability for human rights violations and abuses against migrants was stressed. Participants recommended increasing the number of cases of human rights violations and abuses against migrants referred to the international human rights mechanisms for their appropriate action.

42. Some participants shared promising practices on measures taken to address human rights violation faced by migrants in transit. The representative of the European Union referred to the establishment of independent monitoring mechanisms to be created in all European Union member States under the new screening and border procedure regulation under its pact on migration and asylum, in order to uniformly protect the human rights of migrants and ensure access to justice. The representative also referred to the efforts envisaged to identify the vulnerabilities of migrants, notably children, including those who were unaccompanied, early in the process in order to address them in an efficient manner. The representative of India referred to the establishment of a mechanism for the empowerment and social protection of nationals abroad and for informing policies to minimize adverse drivers of migration and create pathways for regular migration through bilateral migration and mobility partnership agreements. The representative of Mexico referred to the creation of a mechanism allowing for Mexican embassies and consulates to support the investigation into cases of missing migrants and receive such claims from family members. The representative added that the mechanism had been created with the active and meaningful engagement of the families of missing persons, victims' groups, civil society and international organizations, to allow for relatives to report disappearances, provide and request information and claim their human rights effectively as victims. In addition, the representative shared information about efforts to disseminate relevant legal instruments, as well as to develop protocols and guidelines to address the needs of migrants, including children and women who were victims of violence and trafficking, ensuring that officers adhered to legal standards.

43. In her closing remarks for the second segment, Ms. Levoy called for migrants and civil society organizations to be at the forefront of discussions. She highlighted the success of some innovative regularization mechanisms developed in Europe, which had benefited from the involvement of civil society in a multi-stakeholder effort, and underscored the urgent need to meaningfully involve civil society and migrants in shaping pathways tailored to their needs. Ms. Interiano recalled the importance of involving, and listening to requests and needs of, migrants' family members and ensuring access to justice. Mr. Madi urged civil society organizations to provide his mandate with any information that they had concerning human abuses and violations against migrants for his consideration and possible action with the States concerned. He reiterated the call for the establishment of an international monitoring mechanism for those human rights violations and urged States to build consensus in that regard, while also addressing the financial challenges that the United Nations was facing, which were affecting human rights efforts in the United Nations system. Ms. Norton

<sup>12</sup> See <https://www.hrw.org/news/2023/06/27/joint-letter-un-human-rights-council-should-urgently-respond-rights-violations>.

concluded the segment by thanking all panellists and participants for their valuable contributions to the discussion.

## V. Concluding remarks

44. In concluding the intersessional panel discussion, the Ambassador and Permanent Representative of Sierra Leone to the United Nations Office and other international organizations in Geneva, Lansana Alison Gberie, recalled the severe challenges faced by migrants in transit, including violence, exploitation and discrimination. He stressed the need for effective and coordinated solutions to prevent and address risks and violations through comprehensive and humane approaches, the adoption and implementation of laws, policies and programmes that safeguarded migrants' rights and enhancing shared responsibility. He emphasized key points of the discussion, such as the critical need for safe and regular migration, combating organized crime, ensuring individual assessments of migrants' vulnerabilities and protection needs and upholding the prohibition of collective expulsions and the principle of non-refoulement. He underlined that access to justice remained a significant challenge for migrants and their families, due to legal, economic and systemic barriers. He urged for countering widespread harmful narratives and discrimination against migrants with inclusive and humanizing discourse on migration.

45. Mr. Gberie highlighted some of the promising practices identified during the discussion, including the adoption of policies and measures that prioritized the protection of migrants' human rights and ensured their humane treatment, the expansion of safe and regular migration pathways as a means of protecting migrants from abuse and exploitation and the strengthening of legal frameworks to ensure that migrants and their families had access to information and justice. He reiterated the importance of monitoring, as well as of enhanced cooperation and shared responsibility among States and stakeholders, for protecting migrants' human rights and ensuring justice and accountability. He recommended increasing efforts to empower migrants and their families by meaningfully involving them in policymaking and decision-making processes in matters affecting them, recalling that their voices and experiences were vital in shaping effective and human rights-based migration policies tailored to their needs. He concluded by inviting States to join the Global Compact champion countries initiative and to renew their commitment to uphold the rights and dignity of all migrants and to collaborate in that regard.

46. The Ambassador and Permanent Representative of Morocco to the United Nations Office and other international organizations in Geneva and President of the Human Rights Council, Omar Zniber, concluded the intersessional panel discussion by recalling that migrants in transit often endured severe human rights violations as they embarked on long and often dangerous journeys in pursuit of safety and better opportunities. He emphasized that every migrant, regardless of status, was entitled to the full protection of human rights. He highlighted key recommendations from the two segments of the panel discussion and urged States and stakeholders to prevent negative narratives and to hold perpetrators of human rights violations accountable effectively, in order to break the cycle of impunity. He recalled that States had the authority to regulate migration but must do so while respecting human rights and ensuring protection for all migrants, regardless of nationality, status or appearance. He added that that included ensuring individual assessments of protection needs upon arrival, prohibiting collective expulsions and refoulement, preventing arbitrary detention or discriminatory treatment and providing special consideration for migrants in vulnerable circumstances. He underlined the Recommended Principles and Guidelines on Human Rights at International Borders of OHCHR<sup>13</sup> as a tool for translating the international human rights framework into practical and human-rights based border governance measures.

47. Mr. Zniber noted that, despite the efforts made by States to promote and protect migrants' human rights, many challenges remained. He underlined the crucial role of the Human Rights Council in addressing those gaps and driving meaningful change. He added

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<sup>13</sup> See

[https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf).

that international cooperation, multilateralism and solidarity were indispensable in upholding the human rights of migrants throughout the migration cycle, in alignment with international human rights law and the Global Compact. He extended his congratulations to the Global Compact champion countries for their leadership and support of the effective implementation of the Global Compact. Mr. Zniber urged all stakeholders at different levels to continue their efforts to promote, protect and uphold the human rights of all migrants, including those in transit, and their families.

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