

**ELEVENTH COORDINATION MEETING ON
INTERNATIONAL MIGRATION**

Population Division
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**OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS CONTRIBUTIONS
TO THE HIGH-LEVEL DIALOGUE ON INTERNATIONAL MIGRATION AND
DEVELOPMENT AND BEYOND ¹**

Office of the High Commissioner for Human Rights (OHCHR)

¹ The views expressed in the paper do not imply the expression of any opinion on the part of the United Nations Secretariat.

Introduction

The Office of the High Commissioner for Human Rights (OHCHR) promotes the integration of human rights norms and standards in all aspects of migration policy, at the national, regional and international level. The Office advocates for a human rights-based approach to migration and the need to ground migration policymaking in the international legal framework, calling on States to respect the internationally guaranteed human rights of all migrants, to protect them against abuse, and to fulfill the rights necessary for migrants to enjoy a safe and dignified life.

Migration is not merely an economic or political phenomenon. It is centred on the increasingly complex, and at times precarious, movement of more than 214 million people. At its heart, migration is about human beings. And while many migrants are able to live and work safely and in dignity in their host countries, millions are less fortunate.

As the global financial crisis has continued, measures are being taken that impact on the rights of the most vulnerable migrants; austerity measures that discriminate against migrant workers, xenophobic rhetoric that encourages violence against irregular migrants, and immigration enforcement laws that allow the police to profile migrants with impunity. An increasing message of xenophobia has permeated both fringe and mainstream political movements in many countries and resulted in a climate of exclusion of, heightened anxiety about, and rising violence against migrants, fuelled in some instances by government policies and practices.

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

OHCHR's preparations for the 2013 High-Level Dialogue on International Migration and Development

OHCHR raises awareness about human rights issues relating to migration, including through public advocacy by the High Commissioner, and the production of thematic reports and studies for the Human Rights Council and General Assembly.

On 18 December 2012, the Secretary General's Policy Committee held a discussion on "International Migration" led jointly by OHCHR and UN DESA. Following this discussion, the Policy Committee endorsed a set of human rights-based key messages on migration, and decided that OHCHR would lead the preparation in 2013 (in consultation with the Global Migration Group and UN System) of a concise analytical report on *Migration and human*

rights which would specifically consider how attention to the rights of migrants can be strengthened within the governance framework of migration at the international level. The report endorsed by the Policy Committee aims to bring more focused attention to the human rights of migrants within the upcoming High-Level Dialogue on Migration and Development, 2013, and also beyond to the post-2015 development agenda. OHCHR in collaboration with the Global Migration Policy Associates had held an expert meeting in September 2012 entitled *An informal conversation on global governance, migration and human rights* in order to seek the views of experts from governments, international organisations, academia and civil society.

The proposed report on *Migration and human rights*, to be prepared by OHCHR in consultation with the GMG and UN System partners as well as other relevant stakeholders including civil society, will assess how the human rights of all migrants, including labour rights and all other relevant normative standards, can be promoted and strengthened within the global migration regime. The report would include an analysis of the role of the UN System, IOM and other relevant stakeholders within the current global migration regime and the role they can play in providing assistance to Member States to implement existing norms relevant to the protection of the rights of all migrants, as well as measures to foster deeper multilateral and multi-stakeholder cooperation in this regard. The analysis will also consider the role of the GMG in improving coordination and providing assistance to Member States to develop migration policies that promote and protect the rights of migrants. Furthermore, it will study the potential for creating a consolidated item on the agenda of the General Assembly on international migration. The report will explore the important reasons to embed the human rights framework and a human rights-based approach (focused on non-discrimination, participation, equality and accountability) within the global institutional architecture on migration.

In order to prepare the report, OHCHR will consult with GMG agencies as well as other relevant UN System partners, and undertake targeted consultations with civil society and academic experts, including relevant human rights mechanisms.

At its 67th session the General Assembly resolution on the Protection of Migrants (A/C.3/67/L.40/Rev.1) requested *inter alia* the United Nations High Commissioner for Human Rights to ensure that the High-level Dialogue on International Migration and Development analyses the linkage between migration and development in a balanced and comprehensive manner that includes a human rights perspective. The resolution also requests the Secretary-General to submit to the General Assembly at its sixty-eighth session a report on the implementation of the present resolution and to include in that report an analysis of how a human rights perspective can enhance the design and implementation of international migration and development policies. Contributions to this report are invited from all interested Global Migration Group agencies and entities and other interested stakeholders.

OHCHR is also looking to the High Level Dialogue to provide key input to the post-2015 development agenda. Given that human rights, along with equality and sustainability, has been identified as a fundamental principle for the post-2015 agenda, OHCHR has sought to ensure that the post-2015 development agenda explicitly and effectively integrates, and is consistent with, existing international human rights standards and principles. OHCHR therefore believes that it is imperative that all migrants, regardless of legal status or categorisation, are included in the new development framework and in the design and implementation of development interventions, and that the post-2015 agenda must be designed to advance the three closely-related concepts of equity (fairness in distribution of benefits and opportunities), equality (substantive equality, of both opportunity and results, with full protection under law), and non-discrimination (prohibition of distinctions that are based on impermissible grounds and that have the effect or purpose of impairing the enjoyment of rights).

Selected recent activities of OHCHR and human rights mechanisms in relation to the themes of the High-Level Dialogue, including on measures to ensure respect for and protection of the human rights of all migrants

OHCHR develops tools on migration and human rights for governments, judges and lawyers, national human rights institutions and civil society organizations. It provides technical assistance to governments and lawmakers to develop/reform legal and administrative frameworks related to migration which are compliant with international human rights standards. Around the world, national human rights institutions are becoming increasingly involved in the protection and promotion of the human rights of migrants.

In March 2012, OHCHR held an expert meeting on the subject of *Human Rights at International Borders: Exploring Gaps in Policy and Practice*. A background paper prepared by OHCHR for the meeting identified the border as the site of significant human rights violations against migrants, including arbitrary detention, perpetrated by State as well as non-State actors. Informal summary conclusions of the meeting, which was attended by experts from governments, international and regional organisations, civil society and academia, called on the Office to develop Principles and Guidelines on the issue of human rights at borders. OHCHR has begun drawing up such guidance in 2013. OHCHR also provided technical assistance to the European Agency for the Management of Operational Cooperation at the External Borders of Member States of the European Union (FRONTEX) in developing human rights training materials for border guards.

In May 2012, the High Commissioner publicly welcomed the February 2012 decision of the European Court of Human Rights in the case of *Hirsi Jamaa and others v. Italy*, which reaffirmed the human rights of all migrants particularly in the context of collective expulsions. OHCHR had submitted a legal brief before the Court as an intervening party.

OHCHR continued its efforts at the international level to ensure a human rights perspective in the global debate on migration. It remained an active member of the GMG, including in the

context of the GMG internal review process. Through its input, OHCHR attempted to enhance and strengthen inter-agency coordination of migration, and to bolster the GMG's mandate to promote the wider application of all relevant instruments and norms relating to migration. OHCHR provided substantive technical assistance to various round tables held at the sixth Global Forum on Migration and Development (GFMD) in Mauritius in November 2012. In particular, OHCHR ensured a human rights focus to background documentation and discussions held in the context of round table session 3.1 (Improving Public Perceptions of Migrants and Migration) and session 3.2 (Migrant Protection as Integral to Migration Management). OHCHR held a side event in Mauritius, on the theme of "Public Perceptions, Migration and Human Rights", and produced a short brochure on this topic for dissemination to participants of the GFMD.

Through its field presences, OHCHR also increasingly engages in migration-related human rights work through the promotion of the ICRMW and other relevant human rights instruments, training activities, advocacy, technical advice, monitoring and protection, and other initiatives. For example, OHCHR's Regional Office for Europe launched the study following the Judicial Colloquium it had organised in 2011 on the implementation of article 3 of the Convention on the Rights of the Child, focusing on the case of migrant children, including unaccompanied and separated children. The Regional Office for the Middle East contributed to the development of a Code of Conduct for recruiting agencies working with migrant domestic workers in Lebanon. In Guatemala, OHCHR continued to provide technical assistance and advice to Congress, through various commissions, to ensure the compliance of migration initiatives and legal reforms with international standards. And in the West Africa region OHCHR carried out training and awareness raising activities on the rights of migrants in Senegal and Burkina Faso.

On 28 September 2012, the Committee on the Rights of the Child held a Day of General Discussion on the theme of "the rights of all children in the context of international migration". Participants stressed that all children in the context of migration regardless of their immigration status should be treated as children first and foremost, and highlighted specific challenges faced by children in the context of international migration. The Committee hopes that this Day of General Discussion will be just the first step in a growing international dialogue regarding the significant human rights challenges around children in the context of international migration, and to raise awareness of the urgent need for change.

The Committee on Migrant Workers drafted its General Comments No. 2 on the rights of migrant workers in an irregular situation and members of their families. The draft was published through the CMW's website to invite relevant stakeholders to submit their comments and observations by January 2013. On 22 April 2013, the Committee on Migrant Workers will hold a Day of General Discussion on the role of migration statistics for treaty reporting and migration policies.

Conclusions, challenges, ways forward

As the 2013 High-Level Dialogue approaches, migration remains a contested issue in a crowded field. At the intergovernmental level, there are few processes (at the bilateral, regional or international level) in which the human rights framework on migration is given more than cursory attention. To date, there is no comprehensive global system or framework for debating and managing migration and human rights at the international level and there continues to be little global consensus on how to address the complex dynamics of international migration. As human mobility becomes more complex, and traditional distinctions between voluntary and forced migration become less clear-cut, there is an increasingly compelling argument to address the rights of all migrants, regardless of their legal status, in a holistic way.

The ICRMW remains the least ratified instrument of all the core international human rights instruments, and States can be reluctant to recognize that the protection of universal human rights instruments apply equally to all migrants. The GFMD, as a voluntary, non-binding and States-led process, has been traditionally hesitant towards a normative discussion of migration, and not inclined to commit States to concrete action in regard to human rights issues. At the inter-agency level, challenges derive mainly from a lack of robust coordination and coherence on migration and human rights issues, and some degree of competition between agencies for access to and space within the limited international and regional institutional structures on migration.

OHCHR's key message is that migration will only be able to fulfil its potential as an inclusive, equitable and sustainable process when human beings become the central concern of migration policy-making and when the human rights framework is broadly recognised as *the* fundamental basis for a coherent, comprehensive, and sustainable global discussion of migration.