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MIGRATION AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS

International migration has traditionally been discussed primarily in terms of its socio- economic costs and benefits. Increasingly, however, the human cost is coming into focus, including through daily media reports of human tragedies involving people being smuggled or trafficked across international borders. The scale of international migration has substantially increased in recent years and become a truly global phenomenon with more than 200 million people estimated to live outside their country of origin.

In many cases migrants are well integrated into the economy and society of the country of destination. However, those working in the informal sector and those in an irregular situation, are often among the most vulnerable. A human rights approach to global migration governance is needed to ensure the protection of human rights of all migrants and their families.

Issues related to the enjoyment of economic, social and cultural rights are particularly crucial for many migrants. Very often, they are confronted with severe discrimination in housing, education, health, work or social security. Laws discriminating against non-nationals, along with programmes and policies that fail to address their specific needs and vulnerabilities, often result in migrants and their families being unable to access basic services or only being able to do so at levels that do not meet international human rights standards. For migrants in an irregular situation, their vulnerability is compounded because access to remedies is often unavailable because of their status.



Tearful reunions at the airport by repatriated Filipinos, many of whom are migrant workers

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The global financial crisis

Because of the global financial crisis, a rise in xenophobia, racist sentiment and discriminatory practice is likely to affect the civil, cultural, economic, political and social rights of migrants. Migrant workers – those documented as well as those in an irregular situation – will be, and already have been, the first to lose their jobs, not only because their status is called into question but also because they are employed in sectors that are particularly affected by the crisis. Growing unemployment and shrinking state resources make cutbacks in public spending on health, education and social protection more likely. These cutbacks may occur at the expense of, or have a disproportionate impact upon, migrant workers and their families.

While States may deny a person entry to their territory or expel or remove migrants in an irregular situation, everyone living within a State's territory, irrespective of his or her immigration status, is entitled to general human rights guarantees. A State must ensure that all migrants on its territory are able to exercise their economic, social and cultural rights.

Migrants arriving irregularly in a new country are often detained in administrative centres or in prisons. Although the deprivation of liberty should be a last resort under international human rights law, migrants are often detained as a routine procedure and without proper judicial safeguards. Conditions of detention raise concerns relating to economic, social and cultural rights. Overcrowded immigration detention centres often have poor access to healthcare, inadequate food, sanitation or safe drinking water, and a lack of separate sanitation facilities for men and women. Equally, there is an increasing tendency to criminalize migration offences (as opposed to treating them as administrative offences) which has, in some cases, resulted in violations of migrants' rights.

The principles of equality and non-discrimination are fundamental to international human rights law. International treaties explicitly recognize that factors such as race, colour and national origin often contribute to discrimination, exclusion and disadvantage. Because of this, specific human rights instruments have been drafted to enhance protection of these groups. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, for example, provides guidance for human rights safeguards which address the specific situation of migrant workers and their families.

The Durban Declaration recognized that xenophobia against non-nationals, including migrants, constitutes one of the main sources of contemporary racism and that there are frequent and widespread human rights violations against members of such groups.

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