

Statement by the UN human rights mechanisms on the occasion of the UN High Level Summit on large movements of refugees and migrants.

GENEVA (16 Sept 2016) – Ahead of the UN High Level Summit on large movements of refugees and migrants, human rights experts call on Member States to develop a human rights-based framework for migration when developing the global compacts on refugees and migration.

The human rights experts noted the importance and timely event that is to take place on 19 September and warmly welcomed the Secretary-General's report entitled "In Safety and Dignity: Addressing Large Movements of Refugees and Migrants". The experts appreciated the work of the United Nations Special Adviser on the Summit on Addressing Large Movements of Refugees and Migrants, Ms. AbuZayd for overseeing the process and for her inclusive, open and transparent approach.

We also welcome the reassertion by Member States in the draft New York Declaration of their obligations under international human rights and humanitarian law and their call for States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

These obligations which incorporate the fundamental principles of equality and non-discrimination, the State's duty to respect, protect and fulfil human rights, including access to justice and remedies, must underpin the global compacts on refugees and migrants¹. States must acknowledge that human rights are for all and that migrants should be treated as equal rights holders, regardless of their migratory status in relation to the sovereign territory they find themselves in. When migrants are viewed as equal rights holders, a duty to protect them at all stages of the migration process naturally follows. If violations of their rights occur at any point, migrants need access to remedies to redress such violations.

The draft Declaration is a step in the right direction; the Global Compacts must take the Declaration even further so that it becomes a solid and dynamic contribution in the common quest to realize all human rights for all.

Yet the draft Declaration contains some areas of grave concern in reference to migrant children in detention which seriously lowers established human rights standards. The detention of children, even for short periods, can have severe physical and psychological consequences and adverse effects on their development. The Committee on the Rights of the Child – and other human rights mechanisms – have unequivocally declared that immigration detention can *never* be in the best

¹ (*) Check the advance unedited version of the Special Rapporteurs report on Developing the Global Compact on Migration <http://www.ohchr.org/Documents/Issues/SRMigrants/DevelopingGlobalCompactOnMigration.pdf>

interest of a child and that immigration detention of children, whether unaccompanied or together with their families, constitutes a violation of the rights of the child. Consequently, both unaccompanied children and families with children should always benefit from the many rights-based alternatives to detention which exist.

We therefore call on Member States to ensure that prohibition of detention of migrant children, unaccompanied or with their families, is integrated and given full recognition with practical measures in the Global Compacts.

We welcome the attention paid to the need to detect vulnerabilities beyond those triggering international refugee protection, including the identification of risks of human trafficking. In this regard measures taken where the vulnerabilities emerge, including during conflict situations, are of paramount importance. International standards in this regard are not lacking and point to the necessity of individual screening and referral process at borders without discrimination ensuring that each individual's situation and reasons for entry are determined and those who may be at particular risk be identified and appropriately referred. This is not say to that further principles and guidelines are not needed. We stand ready to provide technical advice and expertise during this process as envisaged in the draft Declaration.

In relation to children who are part of large movement of persons, we recommend a child-rights based approach with regard to their specific vulnerabilities and their protection at all stages of the movement, in countries of origin, transit and destination.

Identifying and addressing vulnerabilities entails taking into account that many migrants, particularly women and girls, have suffered sexual and gender-based violence en route. Sometimes women and girls arrive at their destination pregnant as a result of rape. Regrettably, specialized medical attention, including sexual and reproductive health services and information (for example on emergency contraception or abortion services, and maternal health care) is not provided upon arrival or in transit. In addition these women and girls are not provided with safe spaces to recount their stories which would facilitate the referral to specialized services.

We also urge Member States to recognize that while smuggling and trafficking are often intertwined, they are different crimes and require adapted and coordinated responses that comply with human rights norms and standards. In addition, trafficking is in itself a grave violation of human rights and needs to be addressed as such. States' response to trafficking in persons must be human-rights-based and centered on the needs of trafficked persons. In contrast, combatting smuggling is essentially useless as long as barriers to mobility erected by States create an underground market that criminal gangs will exploit. In the absence of alternative channels for regular migration at all skills levels that would enable migrants to safely reach destinations and provide the opportunity to build a future for themselves and

their children, people will continue to pay smugglers and risk their lives through dangerous journeys. Such journeys are marred by suffering, exploitation and human rights abuse at the hands of recruiters, smugglers and unscrupulous employers or landlords that take place in countries of origin, transit and destination. These vulnerability factors affecting smuggled migrants can easily lead to trafficking.

Disrupting the smugglers' and traffickers' business models will only happen when States take over the mobility market, by offering safe, regular, accessible and affordable mobility solutions to migrants and asylum seekers.

We consider that the UN Summit will be incomplete without addressing the plight of internally displaced persons (IDPs). Internal displacement is frequently the first stage in a process leading to refugee and migrant movements. Those forced to flee their homes yet remaining in their countries – more than 40 million people displaced due to conflict alone – constitute a highly vulnerable population often living in the most difficult conditions. Without addressing root causes, prevention, and effective internal protection, today's IDPs will be tomorrow's refugees and migrants. Those who remain in conditions of insecurity, socio-economic deprivation, inadequate housing and food, poor access to education, health-care or livelihood opportunities and with little prospect of sustainable solutions may inevitably look beyond national borders for solutions. States and the national and international humanitarian and development community must adopt new, human-rights-based approaches that provide stability, protection, assistance and development in order for IDPs to take steps towards self-reliance and resilience.

We welcome Member States' commitment to combat racial discrimination and xenophobia against refugees and migrants. We note with appreciation the pledge to take measures to improve their integration and inclusion, as well as to ensure access to education, healthcare and justice. This requires that efforts be made to foster social and economic environments where migrants and refugees are not just tolerated but treated as equals and fully integrated with the local population. It also demands that a clear separation exist between immigration enforcement functions and the provision of public services. We stress the importance of States implementing such "firewalls" between immigration enforcement and public services, thereby allowing public service providers to fulfill their mission without interference and ensuring that refugees and migrants, regardless of status, are able to access justice, housing, healthcare, education, social and labour services, without fear of detection, detention and deportation, as recently recommended by the Council of Europe.²

We reiterate our concern about the toxic, discriminatory, racist and xenophobic narrative that is taking hold in many parts of the world based on fear and

² ECRI General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants From Discrimination, adopted 16/03/2016

manipulation of that fear by politicians and the media.³ We urge States to take concrete measures to counter racist hate speech by sending a clear message that discrimination and xenophobia against migrants and refugees are unacceptable, and ensuring that those who incite violence or hatred are held accountable. We invite Governments, including at the local level, to take the necessary measures to foster intercultural dialogue in order to dissipate mistrust and to build a culture of mutual respect. Moreover, we call upon States to fully commit to the upcoming Global Campaign against xenophobia, to take ownership of it by developing grassroots campaigns to counter misinformation discrimination and promote a positive and truthful narrative on migration.

We also welcome the commitment of States to “strengthening global governance of migration” and we propose that Member States ensure that the International Organization for Migration (IOM) a strong mandate to protect the human rights of migrants. In developing “a closer legal and working relationship with the United Nations as a related organization”, IOM should mainstream a human rights perspective based on the international human rights normative framework in all its policies and programmes, in order to ensure that the human rights of migrants, regardless of status, are actually respected, protected and promoted by all.

All policies and practices aimed at effectively responding to the phenomenon of increasingly mixed migration movements, as well as at addressing the situation of migrants in transit and destination countries, must be fully in line with the norms and principles established by the international community.

We hope that, despite the absence of any reference in the draft Declaration to UN international human rights treaties and UN experts, we will become part and parcel of the development of the Global Compacts. In this regard we are committed to continue reflecting and advising States and other stakeholders on ways and means for these Compacts to integrate and operationalize the international human rights normative framework.

Approved by Committee on the Rights of the Child, Chair of the Committee on the protection of the Rights of All Migrant Workers and Members of their Families, CERD, SR on Trafficking, Racism , Migrants and IDPs

(*) The experts: Special Rapporteur on trafficking in persons, especially women and children, Ms. Maria Grazia Giammarinaro; Special Rapporteur on the human rights of migrants, Mr. François Crépeau; Special Rapporteur on internally displaced peoples, Mr. Chaloka Beyani; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere; Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Mr. Jose Brillantes; Chair of the Committee on the Rights of the Child, Mr. Benyam Dawit Mezmur; Chairperson of the Committee on the Elimination of Racial Discrimination, Ms. Anastasia Crickley

³ Statement by the Committee on the Elimination of Racial Discrimination Statement on the occasion of the United Nations Summit on Refugees and Migrants, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_STA_8091_E.pdf.