United Nations A/68/283

General Assembly

Distr.: General
7 August 2013

Original: English

Sixty-eighth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, François Crépeau, in accordance with Assembly resolution 67/172.

* A/68/150.

13-42115 (E) 030913

Please recycle

Report of the Special Rapporteur on the human rights of migrants

Summary

The present report is submitted by the Special Rapporteur on the human rights of migrants in accordance with General Assembly resolution 67/172. The report first introduces the Special Rapporteur's activities throughout the reporting period. The thematic section is dedicated to global migration governance. The Special Rapporteur provides an overview of global migration governance, including recent developments and the current institutional and normative framework. He then explores the need for a strengthened institutional framework based on human rights and demonstrates how this would be beneficial for States. He also explores different proposals for possible new institutional frameworks for migration within the United Nations system.

The report contains specific recommendations in relation to the High-level Dialogue on International Migration and Development, which will be held by the General Assembly on 3 and 4 October 2013. The Special Rapporteur hopes that the present report will be of use to Member States and other stakeholders during the High-level Dialogue.

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of migrants, François Crépeau, pursuant to resolution 67/172.

II. Activities

2. During the period under review, the Special Rapporteur participated in a number of conferences and events related to his mandate, including the sixth meeting of the Global Forum on Migration and Development, held in Mauritius in November 2012.

3. In February 2013, he participated at the Eleventh Coordination Meeting on International Migration in New York, and he was the keynote speaker at the third round table of the 2013 High-Level Dialogue series on the theme "Towards the 2013 High-level Dialogue on International Migration and Development: measures to ensure respect for and protection of the human rights of all migrants, with particular reference to women and children, as well as to prevent and combat the smuggling of migrants and trafficking in persons and to ensure regular, orderly and safe migration".

4. In April 2013, he participated in a seminar organized in Brussels by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the implementation by European Union member States of recommendations of human rights mechanisms with regard to migration.

5. In May 2013, the Special Rapporteur presented his second annual report to the Human Rights Council (A/HRC/23/46), focusing on the management of the external borders of the European Union and its impact on the human rights of migrants, with accompanying country visit reports on his missions to Greece, Italy, Tunisia and Turkey. The reports were the result of a year-long study during which the Special Rapporteur liaised closely with the European Union. He travelled to Brussels in May 2013 to present the final report to the European Union.

6. In June 2013, the Special Rapporteur was the general rapporteur at a seminar organized in Strasbourg, France, by the European Union Agency for Fundamental Rights and the European Court of Human Rights on the occasion of the launch of a handbook on European law relating to asylum, borders and immigration.

7. Also in June 2013, he participated in an expert meeting on migration, human rights and governance organized by OHCHR.

III. Thematic section: a human rights framework for global migration governance

A. Background

8. Migration is a complex phenomenon which affects most, if not all, States in the world and is closely linked to other global issues, such as development, health, environment and trade. States have created international frameworks for such other

global issues, recognizing the advantages of regulation at the international level, but despite the existence of legal frameworks on migration issues, a comprehensive framework for migration governance is still lacking. Certain aspects of migration are more frequently discussed at the bilateral and multilateral levels, such as the connections between migration and development. However, given that migration is in essence a fundamentally human phenomenon, the Special Rapporteur notes the need for an international migration governance regime strongly focused on human rights.

9. Thus, in the light of the upcoming High-Level Dialogue on International Migration and Development and the post-2015 development agenda, the Special Rapporteur decided to focus his report on examining global governance processes on migration, in particular with a view to analysing whether human rights are effectively included and mainstreamed therein.

1. The concept of global migration governance

10. Global governance has been defined as the norms, rules, principles and decision-making procedures that regulate the behaviour of states (and other transnational actors).[1] In the sphere of migration, governance assumes a variety of forms, including the migration policies and programmes of individual countries, inter-State discussions and agreements, multilateral forums and consultative processes, and the activities of international organizations, as well as relevant laws and norms.[2]

11. Owing to the lack of a comprehensive framework, global migration governance is fragmented, with different institutional approaches and normative frameworks relating to specific aspects of migration, such as the human rights of migrants, smuggling of migrants, trafficking, refugees and asylum seekers, and labour migration.

2. Brief overview of developments relating to global migration governance

12. In 1990, the General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Following its entry into force in 2003, a Committee to monitor its implementation by States was established.

13. In 1994, the International Conference on Population and Development, held in Cairo, included a chapter on international migration in its Programme of Action.

14. In 1999, the Commission on Human Rights created the mandate of the Special Rapporteur on the human rights of migrants.

15. In 2002, the Secretary-General, in his report entitled “Strengthening of the United Nations: an agenda for further change” (A/57/387), noted the need to take a more comprehensive look at the various dimensions of the migration issue. Subsequently, he set up a working group on migration, convened by his Special Adviser, Michael Doyle, as part of his proposals for strengthening the United Nations.

---

[1] Alexander Betts, ed., *Global Migration Governance* (Oxford, Oxford University Press, 2011).

[2] Global Commission on International Migration, “Migration in an interconnected world: new directions for action” (2005).

16. The report of the working group (the "Doyle report") highlighted various aspects of migration, such as the protection of migrants, asylum and labour migration, as well as the state of international cooperation. It formulated three recommendations: (a) to close the legal and normative gaps in the regimes for migrants; (b) to fill the institutional gaps through enhanced coordination; and (c) to create a global commission.

17. In response to the Doyle report, the Global Commission on International Migration was created in 2003 by a group of States as an independent commission to make recommendations on how to strengthen the national, regional and global governance of migration.

18. In 2004, the International Labour Conference, in the adoption of a plan of action for migrant workers, achieved consensus among its tripartite constituents (labour ministries and employers' and workers' organizations) on a rights-based approach to labour migration.

19. The report of the Global Commission on International Migration, finalized in 2005, recommended the establishment of an inter-agency global migration facility within the United Nations system.

20. In 2006, the Secretary-General established the Global Migration Group with a view to increasing system-wide coherence.

21. In 2006, upon the recommendation of the Secretary-General, the General Assembly held its first ever High-level Dialogue on International Migration and Development. In the lead-up to the High-level Dialogue, the Secretary-General appointed a Special Representative on International Migration and Development.

22. Following the High-level Dialogue, the opposition by States to the establishment of a forum within the United Nations to discuss migration led to the creation of the Global Forum on Migration and Development outside the United Nations framework.

23. In December 2008, the General Assembly decided to follow up the High-level Dialogue held in 2006 by convening a second one in 2013.

24. In 2012, Heads of State and Government, in the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil (General Assembly resolution 66/288, annex), called upon States to address international migration through international, regional or bilateral cooperation and dialogue and a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability.

25. Also in 2012, the United Nations System Task Team on the Post-2015 United Nations Development Agenda recommended three fundamental principles for the post-2015 development agenda, namely human rights, equality and sustainability. The Task Team noted that better migration governance, both in countries of origin and destination, would be essential.

26. In December 2012, the Secretary-General's Policy Committee endorsed a decision that, in order to promote a strong focus on the human rights of migrants in the lead-up to the 2013 High-level Dialogue and beyond, OHCHR, in consultation

with the Global Migration Group and other United Nations system partners, should prepare a concise analytical report by mid-2013 on migration and human rights.

B. Legal and normative framework

27. Migration is a multifaceted phenomenon, and the legal regime dealing with its different aspects has developed at different stages. This sectoral approach is partly due to States' past reluctance towards discussing all aspects of migration in a comprehensive way. Despite this reality, the Special Rapporteur believes that the international legal framework, which incorporates international human rights law, the refugee regime, international labour standards and transnational criminal law (smuggling of migrants and trafficking in persons), is a solid framework for policymaking on migration. However, the inadequate implementation of these standards at the national level remains a major problem.

1. Human rights[3]

28. All migrants, without discrimination, are protected by international human rights law. There are very few and narrowly defined exceptions to this, namely the right to vote and be elected and the right to enter and stay in a country. Even for those exceptions, procedural safeguards must be respected, as well as obligations related to non-refoulement, best interests of the child and family unity. All other rights extend to all migrants, whatever their administrative status. Any distinction must be proportionate, reasonable and serve a legitimate objective: the two human rights covenants (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) explicitly refer to "national origin" as a prohibited ground of discrimination in the enjoyment of civil, political, economic, social and cultural rights.

29. Only 46 States have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, it mainly restates rights which already follow from other treaties. All States have ratified at least one of the other core international human rights treaties and, owing to the non-discrimination principle, are thus obliged to respect the human rights of migrants, including those in an irregular situation.

2. Refugees and stateless persons

30. The global refugee regime, based on the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, prevents the expulsion of and provides a status to persons who have a well-founded fear of persecution on account of race, religion, nationality, membership of a social group or political opinion (the principle of "non-refoulement"). The expansion of the principle has led to the concept of "subsidiary protection" reaching beyond the scope of the 1951 Convention.

[3] For a more detailed overview, see the report of OHCHR entitled "Migration and human rights: improving human rights-based governance of international migration", available from www.ohchr.org/EN/Issues/Migration/Pages/HLD2013.aspx.

31. The 1954 Convention relating to the Status of Stateless Persons aims to regulate and improve the legal status of stateless persons. The 1961 Convention on the Reduction of Statelessness deals with the means of avoiding statelessness.

3. Labour standards

32. All international labour standards of the International Labour Organization (ILO) apply to migrant workers unless otherwise stated. They include the eight ILO fundamental rights conventions; the specific instruments concerned with the protection of migrant workers and the governance of labour migration, namely the Convention concerning Migration for Employment (Revised 1949) (Convention No. 97) and the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Convention No. 143) of 1975, as well as other instruments that contain specific provisions on migrant workers, such as the Convention concerning Private Employment Agencies (Convention No. 181) of 1997 and the Domestic Workers Convention (Convention No. 189) of 2011.

33. In addition, the non-binding Multilateral Framework on Labour Migration, adopted in 2005, provides guidance, inter alia, on the human rights of all migrant workers, regardless of their status, and on the regulation of recruitment agencies.

4. Trafficking in persons

34. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime contains rules concerning the prevention of trafficking, as well as assistance to and protection of victims of trafficking. It also provides that States should consider permitting victims of trafficking to remain in their territory, temporarily or permanently, in appropriate cases.

5. Migrant smuggling

35. The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, requires States parties to establish as a criminal offence the smuggling of migrants. However, the criminalization requirement does not apply to the migrants who are being smuggled. The Protocol states that migrants shall not become liable to criminal prosecution under the Protocol for the fact of having been the object of smuggling.

C. Institutional framework

36. There is no migration organization within the United Nations, and no coherent institutional framework governing migration exists.

37. States continue to attempt to govern migration largely on a unilateral basis. This has led to a lack of coherence between global, regional and national governance and retreat from binding United Nations-based frameworks, with state preference for informal processes, such as the Global Forum on Migration and Development and regional consultative processes.

38. The International Organization for Migration (IOM) promotes itself and is sometimes referred to as the global lead agency on migration.[4] However, as yet, IOM does not have a comprehensive mandate on migration issues, and especially not a legal protection mandate enshrined in its Constitution, or a clear policy on protection. Its mandate focuses primarily on providing services to States, including in relation to the return of migrants. Different United Nations agencies and entities, such as OHCHR, ILO, the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Department of Economic and Social Affairs of the Secretariat have mandates and expertise on a wide range of migration-related issues complementary to those of IOM.

1. United Nations

(a) General Assembly

39. The General Assembly has taken some crucial measures in relation to the human rights of migrants, including the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1990 and the holding of the first High-level Dialogue on International Migration and Development in 2006.

40. The Third Committee holds interactive dialogues with the Special Rapporteur, who presents annual thematic reports, and adopts annual resolutions on the protection of migrants. Likewise, the Second Committee adopts resolutions on migration and development.

41. In 2012, the General Assembly, in its resolution 67/172, requested Member States, the United Nations system, international organizations, civil society and all relevant stakeholders, especially the United Nations High Commissioner for Human Rights, the Special Rapporteur and the Global Migration Group, to ensure that the High-level Dialogue on International Migration and Development to be held in 2013 analyses the linkage between migration and development in a balanced and comprehensive manner that includes, among others, a human rights perspective.

42. The Special Rapporteur looks forward to the High-level Dialogue and hopes for an outcome document that will contribute to better protection of the human rights of migrants. Furthermore, he encourages the General Assembly to hold regular high-level dialogues.

(b) Human Rights Council

43. The Human Rights Council adopts resolutions on the human rights of migrants annually and holds interactive dialogues with the Special Rapporteur, who presents annual thematic reports and country visit reports to the Human Rights Council.

44. The Special Rapporteur believes that there is potential for more engagement by the Human Rights Council on issues relating to the human rights of migrants. Mainstreaming migrants' rights in the Council's work in relation to, inter alia, the rights of the child, women's rights, xenophobia and racial discrimination, and rights of minorities should be considered.

---

[4] See for example www.iom.int/files/live/sites/iom/files/What-We-Do/docs/2013-Global-RCP-Chairs-Summary-English.pdf.

45. The Human Rights Council should also consider holding an annual panel discussion on the human rights of migrants, with a different thematic focus each year.

(c) Global Migration Group

46. The Secretary-General created the Global Migration Group in 2006, building on the Geneva Migration Group, as a way to provide a space for inter-agency dialogue and improve the coordination of migration-related work at the United Nations. Membership of the Group currently comprises 15 United Nations entities and agencies: ILO, OHCHR, the United Nations Conference on Trade and Development, the United Nations Development Programme, UNESCO, the United Nations Population Fund, UNHCR, UNICEF, the United Nations Institute for Training and Research, the United Nations Office on Drugs and Crime (UNODC), the Department of Economic and Social Affairs, the regional commissions, the United Nations Entity for Gender Equality and the Empowerment of Women, the World Health Organization and the World Bank, as well as IOM.

47. The members of the Global Migration Group have partly overlapping mandates, and this has led to a somewhat fragmented institutional picture. While welcoming its important work, the Special Rapporteur notes the need for a clearer vision, leadership and policy coherence on the part of the Group, which has full respect for human rights as its core. In 2010, on the occasion of the meeting of the Global Forum on Migration and Development held in Mexico, the Group issued a landmark statement on the human rights of irregular migrants. The Special Rapporteur urges all member agencies of the Group to implement the approach set out in the statement.

48. The Special Rapporteur hopes that its recent internal review will lead to a strengthened Global Migration Group, with more attention given to the human rights of migrants. While OHCHR has the primary responsibility for human rights, ILO and UNHCR also have responsibilities in areas of human rights, and the human rights of migrants should also be mainstreamed in the work of all the other member agencies of the Group. In this respect, the Special Rapporteur notes with appreciation that the Global Migration Group recently established a working group on migration, human rights and gender.

2. Outside the United Nations framework

(a) Global Forum on Migration and Development

49. At the High-level Dialogue on International Migration and Development held in 2006, the Secretary-General proposed the creation of a global forum as a venue for discussing issues related to international migration and development in a systematic and comprehensive way (see A/61/515). Subsequently, the Global Forum on Migration and Development was created by States outside the United Nations framework. The Global Forum has met annually since 2007 and is seen as the most visible and high-profile forum for multilateral dialogue on migration. It is linked to the Secretary-General through his Special Representative on International Migration and Development. The interaction of United Nations agencies and entities with the Global Forum has been more sporadic, and the extent of their involvement has been largely dependent on the willingness of the Chair-in-Office to allow their participation. The Special Rapporteur notes that the involvement of some Global

Migration Group agencies has been encouraged more than others, and the Global Forum has tended to seek assistance from IOM. Furthermore, he observes the importance of including a stronger focus on human rights and a human rights framework within the mandate of the Special Representative of the Secretary-General.

50. The Global Forum on Migration and Development has tended to focus more on the economic development dimensions of migration, rather than on the rights dimension. While issues related to human rights, including the protection of migrants, are sometimes discussed, the human rights of migrants are unfortunately rarely the focus and have not always even been present in the discussions. Meetings of the Global Forum are attended largely by either ministry of interior officials or diplomats rather than by human rights or labour ministry officials. Norm-based discussions have too frequently been dismissed as divisive, allowing for the creation of a discussion space that can at times ignore the fact that States have voluntarily assumed human rights obligations. The Special Rapporteur insists on the fact that migrants should always be seen first and foremost as human beings with human rights, rather than agents for development through, inter alia, remittances.

51. The Global Forum on Migration and Development is an informal, non-binding, voluntary and government-led process[5] which provides a platform for informal dialogue between States. There is no proper record of what is being said and, therefore, no transparency. While the discussions of the Global Forum can contribute to more formal cooperation and coordination, the Special Rapporteur notes that, owing to its voluntary, informal and non-binding nature, it has so far not led to much substantive change.

52. One of the main objectives of the Global Forum is to exchange good practices and experiences,[5] but, in the absence of a normative framework to guide the discussions, this can turn into an exchange of bad practices or even a race to the bottom in terms of policies. For example, circular migration schemes frequently discussed at the Global Forum can have extremely negative consequences in terms of human rights, including on access to economic and social rights, the right to family life and protection from exploitation.

53. At its meeting in 2010, participating States agreed to conduct an assessment of the Global Forum. As noted in the consolidated assessment paper on the strategic and political analysis phase of the assessment (phase 2),[6] the Global Forum does not monitor whether or how Governments follow up on its outcomes. It has a lack of institutional memory, as the Chair alternates annually, between developed and developing countries, and despite the existence of a small support unit, it does not have a permanent secretariat. The assessment paper suggested the creation of a multi-year agenda and noted the need for appropriate and efficient supporting structures.

54. The consolidated assessment paper acknowledged that interaction with civil society stakeholders had greatly enriched the Global Forum process and recommended that interaction with civil society be improved. During each Global

[5] Global Forum on Migration and Development, “Background and objectives”. Available from www.gfmd.org/en/process/background.

[6] Available from www.gfmd.org/documents/mauritius/consolidated_assessment_paper_final_draft_30_september_2012.pdf.

Forum meeting, “civil society days” precede the official government programme. Civil society organizations are excluded from most of the Global Forum meetings, except the “common space”, which has been organized during the first morning of the meetings since 2010. Civil society organizations working on different issues relating to migration and development, such as remittances and the role of diasporas, participate in the civil society programme. However, human rights non-governmental organizations, unfortunately, are often not involved. The Special Rapporteur thus urges civil society organizations to have a more explicit human rights framing to their advocacy and activities at the Global Forum.

55. While recognizing that States wish to have some private, informal discussions at the Global Forum, the Special Rapporteur is of the opinion that civil society should have access to more of the Global Forum meetings, as this would bring different perspectives and greatly benefit the discussions.

56. While stating that consultations with international organizations, including those that are part of the Global Migration Group, have greatly benefited the Global Forum process, in particular through the provision of thematic expertise, the consolidated assessment paper concluded that the Global Migration Group, other international organizations and regional entities should not interfere with Global Forum structures and processes. Furthermore, it stated that interventions by international organizations should be limited and the agenda should be set by States and not international organizations or experts. The Special Rapporteur acknowledges that as the Global Forum is a States-led forum, it is appropriate that the agenda be set by States. However, by excluding the Global Migration Group and other organizations from the Global Forum processes, valuable expertise in terms of human rights and normative frameworks, which could greatly benefit the discussions at the Global Forum, is thus not taken into account.

57. The Special Rapporteur believes that there should be a closer link between the Global Forum on Migration and Development and the High-level Dialogue, particularly through the role and expertise of the Global Migration Group. If States decide to hold high-level dialogues more regularly, for instance every three years, the two years between dialogues could be used by States at the Global Forum and other international forums to prepare for the following High-level Dialogue.

(b) International Organization for Migration

58. IOM is a large international organization with 151 member States, 12 observer States and more than 7,800 staff members in more than 470 locations. IOM is largely operational in its mandate, acting essentially as a service provider to States, with no legal protection mandate in its Constitution. Its purposes and functions, as set out in its Constitution, include the organized transfer of migrants and the provision of migration services related to recruitment, services for voluntary return and a forum for the exchange of views and practices.

59. As set out in its strategy document, the primary goal of IOM is to facilitate the orderly and humane management of international migration. IOM provides services as requested by States, inter alia, in relation to the assisted voluntary return of migrants. Assisted voluntary return programmes have been criticized for not being genuinely voluntary, particularly when offered to migrants kept in detention centres. The Special Rapporteur stresses the importance of ensuring that they are undertaken with full respect for the human rights of migrants. Furthermore, IOM involvement

in the construction and operation of detention centres for migrants is of great concern to the Special Rapporteur, who has already made his views clear on the utility of migration detention (see A/HRC/20/24).

60. IOM is also involved in other aspects of migration, such as programmes on migrants' health and anti-trafficking, and it has developed migrants' rights training programmes for stakeholders. As IOM is project-based and its work donor-driven, its agenda is largely decided by its member States. The Special Rapporteur has met with IOM staff, both at headquarters and in the field, who take the human rights of migrants very seriously and do good and important work in that regard. However, the mandate and funding of IOM pose structural problems with regard to fully adopting a human rights framework for its work: both would need to be revised if the organization is to become a key player in the promotion and protection of the human rights of migrants.

61. The fact that the mandate of IOM is not supportive of human rights is of concern for the whole United Nations system, as IOM is part of the Global Migration Group and the United Nations country teams in many countries and is often mistakenly believed, including by migrants themselves, to be a United Nations agency.

3. Governance at the regional level

62. The unprecedented level of international migration in recent years, coupled with the lack of a global framework on migration, has contributed to enhanced activity at the regional level, including migration-related agreements within regional organizations or economic communities. Another increasingly used instrument at the regional level are regional consultative processes on migration.

(a) Regional organizations: focus on the European Union

63. Economic communities all over the world have some form of agreement or intention on the free movement of people within their region. This includes the Economic Community of West African States, the Commonwealth of Independent States and the Common Market of the South (MERCOSUR). The European Union, with its 28 member States, has the most elaborate system of all the regional economic communities and thus provides one of the most developed examples of regional migration governance.

64. The Treaty of Rome provided the right to free movement of workers within the European Economic Community, thus recognizing the economic benefits of free movement. The European Union's expansion in 2004, including to Eastern Europe, proved that free movement is also possible for countries with different levels of economic development, enhancing the benefits of mobility for all concerned.

65. Since its beginnings, the European Union has expanded considerably, both in terms of number of member States and mandate. With the entry into force of the 1999 Treaty of Amsterdam, migration and asylum policies including the Schengen acquis (the creation of a common external border with free movement inside the border) were officially incorporated into the legal framework of the European Union.

66. The European Union makes a distinction between European Union nationals, who have freedom of movement inside the whole territory and are thus not considered migrants, and "third-country nationals". Several European Union

directives concerning third-country nationals have been adopted on such issues as high-skilled labour migration and family reunification, and a draft directive on seasonal workers is being negotiated. The European Union migration policies also have an external dimension through the Global Approach to Migration and Mobility.

67. Despite the high level of integration, the individual European Union member States continue to have the jurisdiction to decide on the number of migrants they wish to admit to their territory. The European Union thus provides an interesting example of how States' sovereignty can be maintained while at the same time engaging in significant joint governance processes in the field of migration. While there are serious issues that require improvement in the European Union, including in relation to border management and the human rights of migrants in an irregular situation,[7] European Union initiatives have led to some important advances, particularly for regular migrants.

68. While other regions have already implemented, to varying degrees, free movement zones, the European Union's free movement for citizens of European Union member States can serve as an illustrative example for other regional organizations in terms of exploring how to enhance free movement within their region.

(b) Regional consultative processes[8]

69. Unlike the European Union, which adopts binding legislation and decisions with which its member States need to comply and whose implementation is monitored by the Court of Justice of the European Union, regional consultative processes provide forums for discreet informal and non-binding dialogue and information exchange on migration-related issues. Regional consultative processes bring together representatives of States, often with some international organizations as observers. They address a wide range of issues, such as migration and development, labour migration, the social integration of migrants, smuggling and trafficking, migration and health, and trade and migration, offering States a cooperation process that excludes creating new norms or formal commitments.

70. The first regional consultative process, the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, was organized in 1985 and involved 17 countries. Other major regional consultative processes include the Budapest Process; the Puebla Process; the South American Conference on Migration; the Mediterranean Transit Migration Dialogue; the Bali Process; the Colombo Process; the Abu Dhabi Dialogue; the Western Mediterranean Forum; the Migration Dialogue for West Africa; the Migration Dialogue for Southern Africa; the Intergovernmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants; and the Intergovernmental Authority on Development Regional Consultative Process on Migration.

71. Some of the regional consultative processes are driven by external actors, with funding coming from States of the global North, often channelled through IOM. IOM participates in most of the major regional consultative processes as a partner or

[7] Some of these questions are explored in the Special Rapporteur's report to the Human Rights Council on the management of the external borders of the European Union and its impact on the human rights of migrants (A/HRC/23/46).

[8] See www.iom.int/cms/en/sites/iom/home/what-we-do/regional-processes-1/rcps-by-region.html.

observer and provides secretariat services for many of the major processes. The International Centre for Migration Policy Development also provides secretariat services for some of the processes. United Nations entities, including UNODC, UNHCR and ILO, are observers in some of the processes.

72. The main purpose of the regional consultative processes is the coordination of migration, presenting a forum for States to share information, not regulation. They thus take place behind closed doors, with little involvement on the part of civil society. Governments exchange what they consider best practices, including the technological advances that they have been able to make and the processes that they have adopted, and develop forms of cooperation. Often this will include a transfer in technology or training of personnel. Regional consultative processes may sometimes contribute to elaborating bilateral, regional or trans-regional agreements. However, given the informal nature of these mechanisms, there is no detailed record of the proceedings, and accountability is therefore difficult to track. Regional consultative processes generally do not focus on human rights, although human rights are on the agenda of some of them, including the Puebla Process and the South American Conference on Migration.

73. Regional consultative processes provide the same type of informal governance as the Global Forum on Migration and Development, namely informal structures not intended to lead to any normative changes or institutional developments. This type of approach often does not embrace the complexity of migration issues and can lead to a dilution of normative standards and a lack of accountability, monitoring and oversight, thus potentially negatively affecting the human rights of migrants.

74. This is evidenced, inter alia, in the agenda of many regional consultative processes, which are heavily focused on measures to control migration through aggressive border enforcement, a preference for precarious circular migration schemes and the restriction of any reference to human rights to the lowest common denominator.

75. Regional consultative processes are often characterized by power asymmetries, whereby the most powerful countries, often destination States, dominate the discussions. Some are trans-regional, bringing together States from different geographical regions, whereby the funding, training and knowledge often come from outside the region. The involved States often have different levels of development and economic strength, thus creating an uneven level for their bargaining power.

76. There are significant overlaps between several regional consultative processes, and this has been deemed unsustainable from a political, financial and human resources perspective.[9] The overlaps create a risk of duplication and contradiction, thus requiring enhanced coordination between the different processes. The majority of them are not linked to each other, and they have different agendas. Consequently, making them come together as a whole seems unlikely. There have, however, been some efforts at coordination between the principal regional consultative processes,

[9] Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Global Approach to Migration and Mobility, 18 November 2011.

including global meetings of their Chairs and secretariats organized in collaboration with IOM.[10]

4. Bilateral migration initiatives

77. Bilateral migration governance is increasing and, in particular, has been playing an increasingly important role in the regulation of recruitment and employment of migrant workers between sending and receiving States, and regarding the return of irregularly staying migrants. Bilateral agreements cover such areas as visas, readmission, knowledge-sharing, labour migration, border management and rescue at sea. They are often entered into between neighbouring States but also between States from different regions. An example is the European Union's mobility partnerships, which comprise joint declarations, often with simultaneously negotiated visa facilitation and readmission agreements. As noted in the 2013 report of the Special Rapporteur to the Human Rights Council, readmission agreements — covering both nationals of the country of return and third-country nationals having used the country of return as a transit State — are sometimes used as a bargaining tool, are signed in exchange for visa facilitation or liberalization for nationals of the country of return, and often do not ensure respect for the human rights of migrants.

78. There has been a proliferation of actors involved in bilateral migration governance. As an example, bilateral agreements on the recruitment of migrant workers sometimes involve private agencies. States must monitor those agencies closely in order to ensure that they fully respect the human rights of the migrants concerned. The Special Rapporteur would like to remind States that all bilateral agreements must strictly uphold the human rights of migrants and that they must ensure transparency, monitoring of implementation and effective access to justice for the migrants.

79. Bilateral agreements may be useful additions to regional or global approaches, particularly for neighbouring countries where there is a high level of mobility. The Special Rapporteur notes the challenges in ensuring transparency and the human rights dimension of bilateral agreements and in monitoring their human rights impact, as they are forms of private agreement between States and subject to the aforementioned power asymmetries between negotiating States.

5. Governance at the national level

80. Migration policies are formulated mainly at the national level, despite migration being by definition transnational. Good governance at the national level is thus a basis for more effective cooperation at the regional and global levels. This can be achieved by establishing a coherent approach at the national level, addressing all stages of the migration process, coordinated across government and developed in widespread consultation with the private sector, civil society and migrants themselves.[11] Ministries responsible for, inter alia, health, education, employment, children and social policies should be fully involved in the elaboration of migration policies.

---

[10] www.iom.int/cms/en/sites/iom/home/what-we-do/regional-processes-1/global-rcp-meetings.html.

[11] Global Commission on International Migration, "Migration in an interconnected world: new directions for action".

81. Governance at the local level is also important to keep in mind, as that is often where authorities have the most direct contact with migrants. Thus, local policies may be more evidence-based than policies at the national level. For instance, some local authorities provide universal access to health care for irregular migrants despite this not being the policy at the national level because they see the benefits for the local community in terms of reduced costs by providing preventive care, rather than emergency care only, and greater social cohesion.

82. While an efficient, well-trained and human rights- and gender-sensitive immigration enforcement corps is an important component of State authority, "firewalls" between public services (health care, education, housing, labour inspection, local police) and immigration enforcement (whereby the former would be instructed not to request immigration status information unless essential and the latter would not have access to the information collected by the former relating to immigration status) should be implemented in order to allow migrants to access rights without fear of being arrested, detained or deported. The concept of a "firewall" is not only in line with a human rights framework but also in the interest of States, from the point of view of, inter alia, public health and fighting crime.

83. In addition, fighting labour exploitation of migrants by sanctioning exploitative employers often seems to be a yet-unfulfilled State obligation, although it would contribute greatly in reducing the pull factor of irregular migration and diminish the power of smugglers over migrants.

6. Impact at the global level of regional and bilateral governance

84. Regional and bilateral migration governance may lead to global change by building trust among States. Issues discussed at the bilateral or regional level may then be brought to the global level, at the United Nations or the Global Forum on Migration and Development. The Global Forum has acknowledged regional consultative and similar processes and encouraged their participants to present best practices and policies to influence global discussions and to take forward and adapt insights gained from the processes.

85. At the same time that bilateral and regional processes may contribute to global migration governance, global governance may also improve regional and bilateral processes if States agree on global standards and practices and bring those to the regional or bilateral level.

86. There are several regional organizations in the world with some form of free movement for citizens of the organization's member States. It could be envisaged that at some point some of those initiatives could connect, thus expanding the free mobility area covered. However, there is an imperative need for a central human rights framework in all these processes.

D. Need for better migration governance and a strengthened institutional framework

87. The reasons behind the lack of a comprehensive institutional framework for global migration governance are complex. Sending and receiving States often do not have a common understanding of the issues at stake despite the fact that, if governed well, they would all benefit from migration. Destination States often argue the need

to limit immigration due to economic interests, even though there are labour needs in their countries that remain unmet and often unrecognized. In addition, perceived security interests often trump States' human rights considerations despite the fact that the overwhelming majority of migrants, including those crossing borders irregularly, pose no security threat. The Special Rapporteur believes that some of the underlying reasons for States not wanting to engage more in global migration governance are due to political pressure at the national level and the populist anti-immigrant discourse which is increasingly present in countries all over the world.

88. Migration benefits not only States of origin, for example in terms of remittances and the transfer of social and cultural knowledge, but also States of destination, which often have labour shortages and rely on migrant workers, both high- and low-skilled, as well as in terms of cultural diversity and knowledge exchanges, among others. If States were to agree to cooperate more on migration governance, they would be able to maximize and better redistribute these benefits. Such cooperation would not preclude States from determining the number of labour migrants, as already noted in relation to the European Union's system.

89. Migration is one of the main manifestations of globalization, which cannot be managed unilaterally by national migration policies. International cooperation is necessary to achieve national policy goals. There is no doubt that all States will benefit from a strengthened framework on global migration governance. No State can, on its own, or even jointly with a few other States through bilateral or regional cooperation, discuss migration in a comprehensive way. The Special Rapporteur observes that States' reluctance to strengthened migration governance seems to be based on the misconception that this will limit their sovereignty.

90. States have the power to determine who enters and stays in their territory. More governance does not mean giving up this sovereignty. On the contrary, States would have more control if there was more migration governance. More governance simply means improving the coordination and cooperation between States, leading to better-governed migration that would better respect the human rights dimension, thus further protecting States from allegations of human rights abuses against migrants. As the scope and complexities of migration continue to grow, the alternative to more robust global migration governance is a highly unregulated system with a range of uncoordinated actors, including from the private sector. More migration governance would also assist States in combating the exploitation of migrants by, inter alia, traffickers, smugglers, recruitment agencies and unscrupulous employers.

91. The Special Rapporteur is of the view that sovereignty will be more limited by insufficient global migration governance, which will in fact facilitate the role of other actors, such as exploitative migrant smugglers and employers. Currently, migrants themselves, often with the help of migrant smugglers, are crossing borders regardless of State policies. They migrate irregularly owing to a lack of legal migration channels and largely in response to unrecognized needs in the labour market, as migrants are often willing to do the "dirty, difficult and dangerous" jobs that nationals will not at the exploitative wages that unscrupulous employers will offer. If States were to recognize their labour needs, including for low-skilled work, and open up more regular migration channels, this would lead to fewer irregular border crossings, less smuggling of migrants, less loss of life at borders, less labour

exploitation and fewer migrants' rights violations. States would still have the sovereignty to decide on the number of migrants they wish to admit. Global migration governance should thus be seen as reclaiming sovereignty, not ceding it.[12]

92. As stated by the European Commission, poorly managed migration has detrimental effects. Promoting effective migration governance is essential to maximise the positive and minimise the negative impacts of migration on development. In the absence of effective governance, the costs of migration may be significant.[13]

E. Need to base the institutional framework inside the United Nations

93. The Special Rapporteur is concerned that migration dialogues often take place outside the United Nations and international human rights frameworks, with a focus on the economic developmental and political aspects of migration, without properly integrating human rights concerns. He is also concerned at the lack of accountability of the Global Forum on Migration Development and regional consultative processes due to the absence of detailed records of proceedings. While noting that the Global Forum and regional consultative processes may be useful forums for informal discussions between States, this is not sufficient to lead to any significant changes or improvements relating to global migration governance. He thus remains convinced that a strengthened institutional framework is needed in addition to these informal forums. The number of international migrants is increasing, and a growing number of vulnerable migrants are abused and exploited both in transit and destination countries. Furthermore, globalization is likely to increase the scale of international migration, which is already quite substantial with an estimate of more than 232 million international migrants in the world.

94. Greater involvement on the part of the United Nations in the global debate on migration seems difficult to achieve as long as the Global Forum on Migration and Development remains the leading international forum to discuss migration as an informal, non-binding, voluntary and government-led process focused on migration and development without giving proper attention to the human rights of migrants. Consequently, there is a need to bring the migration dialogue inside the United Nations framework. The United Nations plays an important role as a forum for international collaboration, with human rights as one of its pillars: it is capable of embracing the extreme complexity of migration movements in all their dimensions. Creating a new, United Nations-based institutional framework would not preclude regional or bilateral agreements, processes or organizations outside the United Nations from also dealing with migration.

---

[12] Kathleen Newland, "The governance of international migration: mechanisms, processes and institutions", paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005.

[13] Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on maximizing the development impact of migration, 21 May 2013.

F. Benefits of a human rights framework for global migration governance

95. Migration is multidimensional and is often conceptualized together with other aspects of globalization. However, those who are most affected by migration are the migrants themselves, who are human beings with inalienable human rights, and all States are obliged to respect the Universal Declaration of Human Rights and all the human rights treaties and international labour standards to which they are party. Thus, migration cannot be conceptualized without human rights, and any framework for migration governance must duly take into account the human rights of migrants.

96. The Global Commission on International Migration stated that the human rights component of the United Nations system should be used more effectively as a means of strengthening the legal and normative framework of international migration and ensuring the protection of migrant rights.[11] Furthermore, participants at the High-level Dialogue held in 2006 recognized that international migration, development and human rights were intrinsically interconnected (A/61/515).

97. Most States recognize refugees and the principle of non-refoulement. However, many migrants also have protection needs and cannot simply be dismissed as mere "economic migrants": they may be forced to migrate to escape from poverty, widespread violence, armed conflict, or the effects of climate change (see A/67/299). Some will be at risk of torture and other serious human rights violations if returned to their countries of origin. Many migrants migrate out of a complex, and often changing, mix of voluntary and forced reasons for movement.

98. Migrants often cannot access their rights in practice. In particular, irregular migrants are often afraid to demand access to their rights or to report abuses, as they fear detection, arrest, detention and deportation.

99. Protecting the human rights of migrants is beneficial for States, as it enables migrants to become more economically productive. As noted by the Global Migration Group in its statement dated 30 September 2010 on the human rights of migrants in an irregular situation, protecting the human rights of migrants is not only a legal obligation for States but also a matter of public interest and intrinsically linked to human development.

G. Possible future models for global migration governance

100. Any future model for global migration governance should encompass several functions, including standard setting and normative oversight; capacity building and technical assistance; a platform for dialogue, collaboration and political facilitation; and the development of a knowledge base or capacity through data, indicators, and dissemination. These functions are currently carried out by a wide range of actors, both inside and outside the United Nations framework.

101. Different models have been proposed for future global migration governance. The Global Commission on International Migration took the view that a fundamental overhaul of the institutional architecture relating to international migration will be required in the longer term, both to bring together the disparate migration-related functions of existing United Nations and other agencies within a single organization, and to respond to the new and complex realities of international

migration. The Special Rapporteur has evaluated the options mentioned by the Global Commission, including creating a new agency, possibly by merging IOM and UNHCR; designating a lead agency, such as UNHCR or ILO; and bringing IOM into the United Nations system. He has also considered other measures to strengthen the current institutional framework.

1. New United Nations organization

102. Proposals have been made to establish a new United Nations organization with a specific mandate on international migration. Owing to the significant resources which would be required, this is not very likely to be accepted by States in the near future.

103. It has been suggested that, rather than creating a completely new agency, an agency could be created by merging IOM and UNHCR. The two organizations are already cooperating closely. However, a merger seems difficult to achieve, as long as UNHCR is a United Nations agency with a protection mandate based on the Convention relating to the Status of Refugees and IOM is not part of the United Nations system and has no protection mandate.

2. Expand the mandate of the Office of the United Nations High Commissioner for Refugees to cover all migrants

104. As an alternative to merging IOM and UNHCR, which seems difficult, an option that has been discussed is to expand the mandate of UNHCR to cover all migrants. The agency's mandate is currently limited to asylum seekers and refugees, stateless persons and internally displaced persons. Having one United Nations entity dealing with refugees, and none dealing exclusively with migrants, has resulted in the neglect of the rights of migrants, who are sometimes referred to as "mere" or "economic" migrants with no protection needs, even though this is often not the case.

105. While expanding the refugee agency's mandate would make sense substantially, it is to be feared that if this were to happen, migrants would not receive the same attention as refugees, as UNHCR has already built up expertise from working with refugees for more than 60 years and the normative basis for its work is the Convention relating to the Status of Refugees. Conversely, some might also fear that expanding the mandate of UNHCR would detract from its very important refugee protection mandate.

3. Creating a lead agency on migration

106. There is currently no lead agency on migration, either inside or outside the United Nations system. As long as the mandate of UNHCR does not cover all migrants, designating it as the lead agency for migration would not be advisable.

107. ILO has a constitutional mandate to protect migrant workers and is dedicating an increasing amount of its work to labour migration. While many persons cross borders to seek decent work and livelihoods, not all migrants are migrant workers, and migrants have rights and needs which expand beyond labour-related rights. This would make it difficult for ILO to have a holistic approach to migration beyond labour migration.

108. OHCHR has a robust mandate in relation to the human rights of migrants. However, the Office currently has limited human and financial resources to carry out this mandate.

4. Integrating the International Organization for Migration into the United Nations, with a revised mandate

109. The Global Commission on International Migration noted in its report that it would seem logical for IOM to become part of the United Nations system in order to maintain coherence and consistency within the multilateral system.

110. IOM already works very closely with the United Nations, including as a member of the Global Migration Group, and in many countries IOM is part of the United Nations country teams. Integrating IOM into the United Nations thus seems like an effective way to create a United Nations organization for migration.

111. Bringing IOM inside the United Nations could also lead to a more positive role taken by IOM, including holding the organization accountable for any human rights violations in which it may be involved in relation to, inter alia, the detention and return of migrants.

112. However, in order to include IOM in the United Nations, its mandate would need to be considerably revised, with a solid basis in the international human rights framework, and its entire staff, including in all field presences, would need to be properly trained in this regard. IOM would need to be given a legal protection mandate and guided by the core international human treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the principles enshrined in the Charter of the United Nations would need to be integrated into its Constitution. It would also be important for IOM to gain the membership of key countries which are currently observer States.

113. Furthermore, IOM should ensure that in principle and in practice, it does not and will not carry out any activities which are contrary to international human rights law and to the principles of the Charter. It should therefore cease any activities in relation to the construction and operation of detention centres. Rather, the Special Rapporteur urges IOM to operationalize alternatives to detention (see A/HRC/20/24). IOM should also ensure that all its assisted voluntary return programmes are genuinely voluntary and carried out in strict compliance with human rights standards.

114. In addition, predictable funding should be made available to IOM, rather than project-driven funding provided by States for specific undertakings. Currently, more than 97 per cent of IOM funding is in the form of voluntary contributions for projects: thus, the donor States have a large role in determining the organization's work and priorities.

115. The Special Rapporteur believes that the proposal to bring IOM inside the United Nations system is worthy of further discussions, taking into consideration the issues raised above. However, any halfway solution that would amount to giving IOM the role of lead agency, either outside the United Nations system or inside it but without insisting on the development of a proper protection mandate, should be avoided. Furthermore, if IOM were to be integrated into the United Nations system and entrusted with a protection mandate, its work would still need to be coordinated

with that of all other relevant United Nations entities and agencies working on migration, such as OHCHR, UNHCR, ILO and UNICEF.

116. The IOM Constitution gives it a relatively limited mandate on migration, and a new United Nations organization for migration would need to become the lead organization on migration under a legal protection/human rights mandate. Dissolving IOM and moving its functions into this new, broader agency is thus another possibility which could be considered.

5. Measures to strengthen the current institutional framework

117. It is not realistic to think that agreement on a new institutional framework for migration inside the United Nations will be reached any time soon. In the meantime, there is a need to look at measures to strengthen the current institutional framework. This could be achieved, inter alia, by holding more frequent high-level dialogues. The draft resolution of the Second Committee of the General Assembly in 2012 provided that a high-level dialogue should be held every three years. Unfortunately that proposal was not included in the final text of the resolution.

118. As proposed in the OHCHR report entitled “Migration and human rights: improving human rights-based governance of international migration”, the establishment within the United Nations of a standing platform on the human rights of migrants would enable systematic interaction between all relevant stakeholders (including Member States, Global Migration Group agencies, other international and regional organizations, civil society and migrants themselves) on a broad range of cross-cutting human rights and migration issues.

119. Furthermore, the work of the Global Migration Group should be further streamlined and its human rights framework strengthened. The mandate of OHCHR and its operational expertise on migration and human rights in this respect is crucial.

120. There have also been proposals to bring the Global Forum on Migration and Development inside the United Nations. This does not seem to be very realistic in the near future. The Special Rapporteur believes that, if a high-level dialogue could be held more frequently, for instance every three years, the Global Forum could complement this United Nations process and provide an opportunity for States to discuss informally outside the United Nations setting.

IV. Conclusions and recommendations

A. Conclusions

121. **Migration governance is becoming increasingly informal, ad hoc, non-binding and State-led, falling largely outside the United Nations framework in such forums as the Global Forum on Migration and Development and regional consultative processes. This leads to a lack of accountability, monitoring and oversight and the absence of a relationship with the formal normative monitoring mechanisms established within the United Nations.**

122. **There is thus a need to enhance the human rights dimension of global migration governance, including in terms of accountability, and to bring it back to the United Nations, including by establishing a United Nations-based**

institutional framework on migration. There has been considerable movement and interest shown over the past decade in terms of the two High-level Dialogues on International Migration and Development, the creation of the Global Forum on Migration and Development and the Global Migration Group and recent growth in IOM membership, as well as the development of regional initiatives, both through regional organizations and regional consultative processes. Thus, there seems to be some recognition of the need for more migration governance.

123. **States can commit to more migration governance while at the same time maintaining their sovereignty in relation to deciding who enters and stays in their territory.**

124. **Better global migration governance would be advantageous for all States because they cannot deal with a global phenomenon unilaterally, bilaterally or even regionally only. Enhanced governance would allow for better responsibility-sharing on the part of States associated with migration. While the Global Forum on Migration and Development provides a useful platform for informal discussions between States, it should not be seen as a substitute for discussions about migration in the United Nations. More frequent high-level dialogues could also lead to closer linkages and synergies between discussions within and those outside the United Nations.**

125. **The growing number of regional consultative processes can be trust-building exercises but can also lead to duplication and contradictions. While bilateral and regional cooperation, including through such processes, regional organizations and bilateral agreements, may contribute to the coherence of global migration governance, these initiatives must fully take into consideration respect for the human rights of migrants and, in this regard, should be transparent, with effective monitoring and accountability mechanisms.**

126. **Migrants should always be seen first and foremost as human beings with inherent human rights, rather than agents for development. In this regard, a human rights framework for global migration governance is needed. Only when conceived of in terms of human rights will migration be able to fulfil its potential as an enabler of human development. The universal human rights framework must therefore guide all development cooperation and programming in all parts of the United Nations system relevant to migration.**

B. Recommendations

1. Recommendations to States

127. **All States should establish human rights-based, coherent and comprehensive national migration policies. These policies should address the "pull" factors for irregular migration, namely the unrecognized need for migrant labour in destination States, including for low-skilled workers, and the corresponding need to open up a greater number of regular migration channels, which would lead to fewer instances of irregular migration, less smuggling of migrants, less exploitation of irregular migrants and less loss of life. In this respect, States must ensure that "irregular employers" are sanctioned, labour exploitation is punished and migrants, including those in an irregular situation,**

have access to national courts and tribunals, which should effectively apply the international human rights treaties in providing appropriate redress. States should implement a "firewall" between immigration enforcement and public services and improve data collection and indicators in all areas relevant to migration in order to make informed policy decisions.

128. **States must ensure that bilateral agreements related to migrants, and regional and trans-regional cooperation mechanisms, such as regional consultative processes, are transparent, guarantee the human rights of migrants and ensure accountability.**

129. **States should recognize the need for a stronger human rights-based institutional framework for migration at the United Nations. This could, in turn, have a positive effect on informal migration governance outside the United Nations, including the Global Forum on Migration and Development and regional consultative processes. In this respect, the Special Rapporteur urges all United Nations Member States to consider the possibility of creating a new organization with a specific mandate on international migration. This could be achieved, inter alia, by bringing IOM into the United Nations system. However, the Special Rapporteur notes that this would require that IOM be given a revised mandate that should include at its core the protection of the human rights of all migrants. The new "IOM-based" agency should also be provided with adequate resources that are not project-driven only.**

130. **States should consider ratifying all the core United Nations human rights treaties that they have not yet ratified, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as other relevant treaties, including ILO conventions, the Convention relating to the Status of Refugees and the Convention on the Reduction of Statelessness.**

131. **States should ensure that the human rights of migrants are included in the post-2015 development agenda.**

(a) Recommendations in relation to the High-level Dialogue on International Migration

132. **The High-level Dialogue on International Migration to be held in 2013 is an important moment to reflect on the mainstreaming of human rights into all aspects of the migration debate.**

133. **States should consider holding more frequent high-level dialogues, for instance every three years, which should be interactive and action-oriented, each with a rights-based negotiated outcome document.**

134. **Human rights must be a cross-cutting issue that informs all discussions at the High-level Dialogue, and States should consider raising the following issues:**

(a) **Decriminalization of irregular entry and stay, which should never be considered criminal offences;**

(b) **The move away from detention as a tool in addressing irregular migration and the development of alternatives to detention;**

(c) **Measures to ensure awareness-raising on the human rights of migrants;**

(d) **Measures to combat xenophobia and xenophobic violence against migrants;**

(e) **Measures to ensure the effective protection of the human rights of children in States of transit and destination;**

(f) **Measures to ensure the enjoyment of all economic, social and cultural rights, including the right to education, health, social security and adequate housing and labour rights, for all migrants, including irregular migrants;**

(g) **Measures to ensure the human rights of migrants at borders, both at entry and during expulsion procedures;**

(h) **Measures to guarantee that migrants have effective access to recourse to independent institutions with regard to all the human rights violations that they face.**

(b) Recommendations in relation to the Global Forum on Migration and Development

135. **States should define more concrete outcomes of the meetings of the Global Forum on Migration and Development and, in this respect, consider adopting a formal outcome document at each meeting and establish a mechanism for follow-up and monitoring of the implementation of the Global Forum's recommendations.**

136. **States should consider enhancing civil society participation at the Global Forum.**

137. **The Global Forum should focus more on human rights, with dedicated round tables on relevant human rights issues, including the rights of migrants in an irregular situation, and mainstream the human rights of migrants in all its work.**

138. **The Global Forum should also consider discussing topics related to migration in general, not necessarily seen from the development perspective.**

139. **The Global Forum should rely more on the Global Migration Group (including OHCHR) expertise, and the United Nations human rights mechanisms should be invited to be part of the Global Forum's agenda on a regular basis.**

2. Recommendations to the Human Rights Council

140. **The Special Rapporteur urges the Human Rights Council to mainstream the human rights of migrants in all its work, whenever relevant, and deal with the human rights of migrants in its annual panel discussions on, inter alia, the rights of the child and women's rights.**

141. **The Human Rights Council should consider holding an annual panel discussion on the human rights of migrants, with a different thematic focus each year.**

3. Recommendations to the Secretary-General

142. **The Special Rapporteur urges the Secretary-General to show a clear vision and strong leadership on migration and advance the migration agenda at**

the United Nations, giving it more visibility and ensuring the adoption of a human rights framework for migration inside the United Nations system.

143. **The Secretary-General should strive to strengthen the Global Migration Group through his leadership and guidance, including the Group's role in relation to the human rights of migrants.**