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Human Rights Council Resolution A/HRC/32/14 on the Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements

Reference: TESPRDD/HRESIS/LW/PO

Sweden would like to thank the OHCHR for the opportunity to share its views and relevant information.

Views on Principles and Guidelines – Draft November 2016 by the Global Migration Group.

Thank you for a most thorough and ambitious review of e.g. existing principles and relevant statements.

Paragraph 52 in the New York Declaration for Refugees and Migrants states that Member States should **consider** to develop guiding principles and voluntary guidelines using a state-led process.

We are now negotiating the modalities resolution for the GCM-process. Given the early stage in this process we have not yet decided whether guiding principles and voluntary guidelines should be part of the GCM or not (another possibility is to develop the guidelines and principles in a separate process). To avoid duplicating processes and given the fact that these guidelines has not been developed through a state-led process (not anchored enough within member states), we believe that it is premature to put forward these guidelines. We ensure an effective implementation it is important that the Member States are actively engaging in the whole process.

Regarding the concept of a “migrant in a vulnerable situation” (page 5): It is not desirable to create a new category. The guidelines should be developed within existing norms and framework. The problem with vulnerability of migrants is that any migrant person may find her/himself in a vulnerable situation during a shorter or longer period of time. Defining means exclusion: situations not covered by the definition may be neglected.

Firewalls (page 7 and 22, 33 and 48): We strongly oppose the description of firewalls as a way “not to deny human rights to persons in irregular status” etc. It seems to be based on a false notion that authorities with responsibility for the enforcement of expulsion orders are operating without human rights obligations. Better co-operation between authorities, schools, health-care etc. with respect for the integrity and the human rights of each individual may, on the contrary, be worth aiming for. The firewalls concept is one of the most worrisome parts of the draft as it shows a great distance from the reality that officials meet in dealing with irregular migrants. Furthermore it reduces the legitimacy of each State to decide who is allowed to stay on its territory, to a game of hide and seek. Instead, the best interests of the child, family life, the state of health of the third-country national concerned, and respect for the principle of non-refoulement must always be taken into account.

Detention of children (page 79) in Principle 8 “Never detain children on account of their migration status or that of their parents”. This is another troublesome suggestion.

Explicit rules and safeguards for detention of all irregular staying third country nationals are necessary. However, special treatment for children is necessary and a child-friendly perspective must be present.

Principle 1.4 “Ensure that the irregular entry and/or stay of migrants are not considered a criminal offence, (…)” (page 13). This is another suggestion that is contrary to the State-sovereignty and the right of each state to control its territory and decide who should be allowed to enter. One must separate between clandestine passing of borders and seeking refuge and safety.

Principle 12.1 (page 45) “Clearly reject the use of migration status as a basis to exclude people from accessing health care in the public system.” The suggestion may mean a disproportionate strain on the health-and medical care-services. We suggest “access to health and medical care regardless of migration status must be based on considerations of the effects on the individuals”.