

PROTECTION OF HUMAN RIGHTS WHILE ADDRESSING LARGE MOVEMENTS OF MIGRANTS AND REFUGEES

Side-event on the margins of the 32nd session of the Human Rights Council

29 June 2016, Palais des Nations, Room XXV, 15:00-17:00

Kate Gilmore, Deputy High Commissioner for Human Rights

Opening remarks

Excellencies, ladies and gentlemen,

It is a great pleasure for me to welcome all the distinguished panellists and participants to this timely event on the *protection of the human rights while addressing large movements of migrants and refugees*. I would like to thank the Government of Ireland, along with the International Detention Coalition, Caritas Internationalis and the International Catholic Migration Commission, for their generous co-sponsorship.

Ladies and gentlemen,

We are at a cross-road in our global conversation on migration and asylum, on diversity and plurality. Against a backdrop of ever more precarious journeys being taken by hundreds of thousands of desperate people criss-crossing the globe in search of safety and dignity, the public rhetoric in countries across the world is more and more divisive, xenophobic and hateful. Listening to the narrative, it can appear that the common sets of laws, the institutions - and deeper still, the values – which bind us together do not count when we speak of foreigners in our societies. That somehow their rights, their dignity and their contributions are less important than our fears. We are at a cross-road. Do we choose the path of intolerance, exclusion and hatred? Or do we choose to embrace the vision of the human rights-based approach – to accept the simple truth that we have more in common than that which divides us? That respect for universal principles of non-discrimination, equality, justice and dignity is more likely to reap sustainable benefits, that extend to our societies as well as to the migrants and refugees that we welcome into them, than whipping up a ‘moral panic’ that is based not on facts, not on principles, but on fear, and cynical manipulation of that fear.

Our intention in holding this discussion today is to underscore the human rights of all people on the move, ahead of the General Assembly’s High-Level Meeting on Addressing Large Movements of Refugees and Migrants. This must be a central thread that runs through the discussion on 19 September. The Secretary-General, in his report *In Safety and Dignity*, has underlined that the human rights of all those who leave their countries, whatever their migratory status, is a fundamental tenet (para 53), and urged States to ensure the protection, dignity and human rights of migrants and refugees in accordance with their legal obligations (para 100a).

Ladies and gentlemen,

On the part of the Office of the High Commissioner for Human Rights, we are calling for three key points to be taken into consideration in the framing of and discussions within this landmark meeting:

The **first** is the primacy of human rights. All people, every individual, in these large-scale, irregular and precarious movements, is a rights-holder. Every woman, man and child is entitled to specific protection of their human rights as they move; in countries of origin, transit and destination. This fundamental point applies regardless of the motives people have for crossing international borders, how they do so and where they are.

This simple but essential fact is often forgotten, sometimes even denied, in too many discussions on migration. The reason why it is so fundamental is that when we talk about people, regardless of what their status is, it is their dignity and their rights that should instruct what laws and policies are adopted and how they are treated. We must avoid seeing migrants solely as security threats or economic commodities or even just as helpless and powerless ‘victims’. All migrants and refugees are rights-holders. They are entitled to claim their rights.

A human rights-based approach leads us to specific policies and responses to large-scale and precarious movements. That detention is never in the best interests of the child. That reasonable accommodation should be made for persons with disabilities. That pregnant women should have access to maternal and reproductive health services and to adequate pre- and post-natal care. That all responses to large movements of migrants must be effectively monitored to ensure that there is no negative human rights impact, and that all migrants must be able to access justice.

My **second** point is that because of the very nature of these ‘large’ movements they must be approached first and foremost through a human rights protection lens. Everyone in these desperate movements is in need of some form of protection. Indeed, it would be difficult to describe many – if not most - of the people caught up in today’s large-scale movements as moving “voluntarily”. When hundreds of thousands of people are making long and brutal journeys across inhospitable deserts and treacherous seas, putting their lives and the lives of their children at risk, it’s safe to assume that they feel they have no other choice. Refugees are fleeing persecution or conflict. Others are fleeing drivers no less perilous to human dignity; extreme poverty, lack of access to their right to decent work, education and healthcare, or due to the consequences of environmental degradation and climate change.

Stringent migration control measures, coupled with a lack of safe, accessible, regular channels for entry, are restricting options for movement and compelling many to seek out irregular channels.

We know that migrants who move out of necessity rather than free choice are at greater risk of human rights violations throughout their journey and at destination. They are less likely to

be able to formulate exit strategies when their migration does not go to plan. And they are more likely to move in conditions that do not respect the dignity of the human being.

The research that OHCHR has recently carried out on the situation of migrants in transit has highlighted that those people who lack access to financial and material resources or are otherwise at risk of discrimination are more likely to experience dangerous journeys and a lengthier, more precarious time in transit than those who are able to pay for faster and safer transport to their destination. They are less able to navigate the increasingly high, and even arbitrary, barriers to migration that range from push-backs and interception, the use of unlawful force at borders, and the externalisation of control from carrier sanctions to disproportionate visa requirements.

Many migrants are, therefore, in “vulnerable situations” as a result firstly of the conditions they are leaving behind and secondly the circumstances in which they are compelled to move. Children, persons with disabilities, older persons and women at risk can be inherently vulnerable.

Vulnerable migrants in these large movements will often require specific protection interventions. Survivors of torture, violence or trauma, regardless of their status, will need appropriate and competent medical and psycho-social services. The rights of all children on the move must be protected equally as children, first and foremost. At international borders, every person is entitled to an individual determination of their circumstances and to be free of discrimination, violence, and arbitrary detention. No one is ever allowed to be returned to a situation in which they will face torture, persecution or other serious human rights violations. Non refoulement, we must remember, is a norm of international human rights law, and applies without discrimination to all migrants.

Ladies and gentlemen,

Our **third** key message is the urgent need for comprehensive, human rights-based migration and asylum governance measures. Such a system of governance would;

- Be migrant-centred. While respecting specific regimes of law, it would avoid the message that some migrants were more ‘deserving’ of rights than others.
- It would ensure measures that are based in law and that aim to enhance respect, protection and fulfilment of migrants’ rights;
- It would be participatory and inclusive, hearing the voices of migrants as well as the communities into which they arrive;
- Finally, such a system of governance would require all policies and agreements on migration to be transparent and accountable. Independent monitoring systems would be in place and all migrants would enjoy effective access to justice.

We know that rights-based and responsive migration governance measures are as important to have in place as fair and effective asylum procedures.

Ladies and gentlemen,

The Human Rights Council plays a crucial role in the promotion and protection of the human rights of all migrants, including in the context of large movements. We call on the Member States of the Council to ensure that a robust human rights focus guides the agenda and outcome of the High-Level meeting on 19 September. OHCHR stands ready to assist the Members of this Council in that regard.

We have seen, particularly in the course of recent ‘large movements’ that there is significant gap in the understanding of the standards of protection to which migrants moving in large numbers are entitled, as well as to how States can operationalize these standards in practice. Therefore as co-Chair of the inter-agency *Global Migration Group Working Group on Human Rights and Gender Equality*, and in partnership with our sister agencies in the UN System, civil society, academia and States, we are developing a set of principles and practical guidance based on existing laws and standards on the protection of human rights in large and/or mixed movements. This initiative has a particular emphasis on the human rights protection gaps experienced by migrants in vulnerable situations who will not benefit from refugee protection. It is designed to assist States and other stakeholders to implement their human rights obligations in devising rights-based responses to large-scale, irregular and precarious movements of migrants and refugees.

Ladies and gentlemen,

Turning vulnerable and voiceless people into scapegoats for a raft of unrelated social problems is not only unethical, it is also remarkably self-destructive. You cannot build a strong and principled society by turning on its weakest members, and history tells us with awful clarity the consequences of continuing down a path of intolerance and discrimination. In his report, the Secretary General has called for a campaign to confront xenophobia against migrants and refugees. At OHCHR we are recommending that such a campaign should seek foremost to tell the stories of migrants and of the people who are affected by migration – the people they leave behind, those they meet along the way, the societies into which they come and which are enriched by their presence. For the evidence is beyond doubt that, when their rights are protected, when they are able to exercise true choice to move and live in conditions of safety and dignity, migrants are an overwhelming force for good in societies and communities.

We are at a cross-roads. It is my hope that we, the international community, will choose to use this troubled moment to reject the politics and semantics of fear and exclusion, and instead to fulfil the promise of the international human rights framework to come together and “leave no one behind”.

I thank you, and look forward to a constructive discussion today, and in the months that lie ahead.