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Subject: Protecting the human rights of migrants and refugees in large movements. United Nations Summit for Refugees and Migrants, 19 September 2016

Excellency,

Millions of women, men and children around the globe are embarking on precarious journeys in search of safety, dignity and respect for their human rights. More than 4,200 people have perished along migratory routes in the first eight months of this year alone. Thousands more suffer serious injuries, xenophobia and discrimination as they move.

Given this backdrop, the upcoming high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants (the United Nations Summit for Refugees and Migrants) is urgently needed. **Every migrant and refugee is a human rights-holder entitled to claim their rights, and every state is obliged to respect these rights.** Regardless of the motives people have for crossing international borders, how they do so and where they are, States have binding obligations towards all people on the move at all stages of their migration. Indeed, robust protection of human rights and fundamental freedoms would ensure that people are not compelled to leave their homes and communities to embark on these desperate, precarious journeys in the first place.

I welcome the consensus reached by Member States on the New York Declaration for Refugees and Migrants, and I urge you to take targeted action at the summit, and in the development of the global compacts on refugee responsibility-sharing and safe migration that will follow, to:

- address human rights protection gaps for migrants in vulnerable situations,
- challenge the criminalization of migrants and move to end immigration detention,
- take immediate steps to end the detention of children,
- confront xenophobia against migrants and refugees, and
- initiate a paradigm shift in the governance of migration.

Addressing human rights protection gaps for migrants in vulnerable situations

When people take to the seas in overcrowded and fragile vessels or walk death-defying trails, we should acknowledge their movement is not fully “voluntary.” Clearly, they feel they have no other reasonable choice. Some are fleeing persecution and conflict. Others are escaping conditions such as extreme poverty, discrimination, violence or exploitation, or the consequences of climate change. As recognized in the New York Declaration, many move for a combination of these reasons. Migrants can also find themselves in vulnerable situations during their journey, while in transit, and as they seek to enter countries of destination. As they move, some people are inherently more vulnerable than others, including children.

To all Permanent Missions in New York and Geneva



Given these facts, we should not divide these human beings into 'deserving' and 'undeserving' categories, juxtaposing one vulnerable individual against another. All people in these large-scale and precarious movements are in need of protection. **Although they might fall outside the specific legal category of a refugee, 'migrants in a vulnerable situation' nevertheless require the specific attention of the international community.**

Member States have committed to address and consider the development of guidelines on migrants in vulnerable situations who are travelling within large movements. I urge you in this regard to use the principles and practical guidelines being developed by my Office, in consultation with sister agencies in the UN and other stakeholders, *on the human rights protection of migrants in vulnerable situations within large and/or mixed movements*, which are based on existing laws and standards.

Non-criminalization of migration

I am deeply concerned about the disturbing trend to criminalize migrants and militarize the response to migration, including through enhanced barriers to entry at borders, increased detention and accelerated returns with limited scrutiny and oversight. Desperate people who are left with no regular migration options will continue to risk their lives in search of safety and dignity. Migrants in detention can be exposed to severely inadequate conditions, including inadequate medical care, violence, poor sanitary facilities, and inadequate nutrition, with the potential to cause serious physical and mental health issues.

States have pledged to consider reviewing policies that criminalize cross-border movements. With that commitment in mind, I have urged States to **end immigration detention** by establishing a presumption against immigration detention in law and implementing human rights-based, non-custodial, community-based alternatives to detention.

In particular, detention of a child on the basis of their or their parents' migration status violates the child's rights as it is never in their best interests. The New York Declaration is unequivocal in affirming that children should not be criminalized or subject to punitive measures because of their or their parents' migration status. I call on all States to **expeditiously and completely cease the practice of child immigration detention.**

Confronting xenophobia against migrants and refugees

I have called for all of us to speak up and to **challenge the hostile and often blatantly xenophobic public narrative on migration** which is being fuelled by political, media, and societal figures keen to gain political or other advantage.

The draft New York Declaration strongly condemns xenophobia against refugees and migrants, States need now to take urgent steps to convert that commitment to counter such attitudes and behaviour, in particular to confront hate crimes, hate speech, violence, stigmatisation, discrimination, social exclusion and other manifestations of xenophobia against migrants. Reframing the public narrative on migrants and migration will require principled political leadership and a collaborative multi-stakeholder effort to challenge the misperceptions, prejudice and fear that lie at the heart of these narratives.

I also call on States to **establish firewalls between public service providers and immigration enforcement authorities**, so that migrants are able to access essential services and justice, and to report hate crimes to police authorities or confront abusive employers without fear of retaliation and other repercussions.



A paradigm shift in migration governance

As is apparent today, measures that seek only to manage migration unilaterally, that criminalize or commodify migrants, or that do not take into account the motivations of migrants as well as those of the communities that receive them, are clearly destined not to succeed.

A defining feature of the New York Declaration is its recognition of the crucial need to expand safe channels for regular migration, and in this regard to facilitate opportunities for labour mobility at all skills levels, for family reunification, resettlement and education-related opportunities. States have acknowledged the importance of promoting holistic approaches that take into account the causes and consequences of the phenomenon of migration, recognising also the important contributions made by migrants, as well as the need to ensure respect for their rights and dignity. States have also agreed to consider policies to regularize the status of migrants. I welcome the implicit acknowledgement in the New York Declaration that human rights-based, safe and responsive systems of migration governance are as important as fair and effective asylum systems and refugee responsibility-sharing frameworks.

In these commitments lie the foundations of a paradigm shift in migration governance.

A **human rights-based migration governance framework** should include attention to addressing the **drivers of precarious migration**, such as climate change and extreme poverty. It should ensure due attention to **saving lives in transit** and ensuring **human rights at borders**. It should **enhance safe and regular pathways** to entry. Measures should be taken which provide **specific protection of the rights of migrants**, and would include measures to **decriminalize irregular migration** and to **regularize the status of irregular migrants**. And it should seek to **collect disaggregated data** on the human rights situation of migrants, including specific data on migrants killed, injured, or victims of crime while attempting to cross maritime, land or air borders.

Excellency,

The world has looked on in shame at the suffering that migrants and refugees have been allowed to endure in recent years, from the shores of the Mediterranean to the deserts of the Americas, from southern Africa to Australia, and from the Balkans to the Bay of Bengal. At times, the values of humanity, solidarity, and human rights—the values of the United Nations—have seemed to be crumbling under a global wave of xenophobia, chauvinism, and fear. Evidence has been made to bow before prejudice, and empathy before an ever-growing wall of exclusion. And still the bombs fall, the weapons exports flow, unfair trade deals are struck, and fossil fuels are burned. The root causes of despair are a growth industry, while pathways to safety and dignity continue to shrink.

This month, in New York, we can take the first, urgent steps to ending this destructive cycle. I urge you to seize this moment with the principle, ambition, and resolve that this crisis demands.

Sincerely,

Zeid Ra'ad Al Hussein
High Commissioner for Human Rights