

**9th session of the Ad Hoc Committee on the Elaboration of
Complementary Standards**

**Item 5: Protection of migrants against racist, discriminatory and
xenophobic practices**

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Commissioner for Human Rights
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Excellencies, Experts, Colleagues,

Thank you very much for the invitation to make a brief presentation today on an issue which – unfortunately – could not be timelier. In many States, racism and xenophobia are on the rise. Discrimination, distinction, exclusion and marginalization are extremely destructive to the day to day lives of millions of children, women and men who face abuse ranging from the continual onslaught of hurtful comments and remarks to life-threatening assaults. Xenophobia's reach extends beyond those directly attacked – it is an incredibly destructive force within our societies that undermines our economies, our stability, and our future.

As, the HC said not long ago: *“Around the world, I see national newspapers stigmatising groups of vulnerable refugees as “cockroaches” and “organised invaders”. [...] Leaders who declare that only people with specific religious beliefs need apply for residency in their country. States that refuse citizenship, and even university education, to members of certain ethnic minorities, though they have lived in the country for generations. Political parties that have begun to veer towards xenophobia, arousing nationalism and a hatred of minorities - ethnic, religious and sexual.”*

Therefore, the role of this Committee, established almost 9 years ago by the Human Rights Council to elaborate complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination, is as important as ever. You can help find ways to strengthen the protection of all persons from racism, racial discrimination, xenophobia and related intolerance. You can help ensure that the international community pays commensurate attention to the needs of victims of these scourges. Indeed this Committee is a tool to adapt our responses to the rapidly changing contemporary environment – political, social and economic - and the evolving circumstances in which discrimination, xenophobia and intolerance occur. This is no small task – OHCHR is happy to support you in making a real difference on the ground.

Against that backdrop I have been asked to speak to the protection of migrants against racism and xenophobia and explain what OHCHR has done in that area.

Excellencies, Experts, Colleagues,

Migration is a universal phenomenon – migrants can be found in practically all countries. Migration can be a positive and empowering experience for many migrants. Yet, all too often migrant women, men, boys and girls find themselves in a precarious situation, suffering the consequences of severe human rights protection gaps along migratory routes and in countries of transit and destination.

Increasingly restrictive measures are being taken across the world, which prevent migrants from accessing their rights, disproportionately impacting the most vulnerable migrants. Such measures include discriminatory laws and practices which exclude migrants from accessing public services;

xenophobic rhetoric that encourages violence against irregular migrants; and immigration enforcement laws that allow the police to profile migrants with impunity.

Migration is further the subject of intense debate in the media, in political circles and in public discussions. The public narrative on migration is deeply polarised as a result of the many myths, misunderstandings and even falsehoods that have taken the place of facts and evidence in the debate. The terms used to describe and define migrants are often hateful and demeaning. And it is not just a matter of words. In countries where anti-migrant rhetoric is at its strongest and harshest, we have also seen a jump in violence and hate speech against people who are, or who are perceived to be, foreigners. An increase in anti-migrant sentiment and discriminatory practices often mark periods of crises – whether these are real or perceived.

For example, UK Government statistics showed a sharp increase in reported hate crime in the weeks following the referendum on the UK's membership of the European Union, in which immigration was a dominant issue. Data in the US indicates that migrants were among the groups most affected by a rise in hate crimes in the immediate aftermath of the US presidential election. In Germany in 2016, there were approximately 10 attacks a day on migrants and refugees, a rise of 42 per cent on 2015.¹ Further, studies in some European countries reveal significant and widespread discrimination against migrants in their access to employment. For example, job candidates of immigrant background had to make three to

¹ Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein International Day for the Elimination of Racial Discrimination, 21 March 2017, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21407&LangID=E#sthash.3cCC46h1.dpuf>

five times more applications than “native profile” candidates to obtain a positive response.²

Three issues strike me as being of particular significance:

The language we use and how we frame the narrative on migration and migrants:

Terminology plays an important role in shaping the migration narrative and inciting hatred against migrants. Terminology has long been used to distance migrants and their communities from the mainstream, to marginalize and stigmatise them as the unknown “Other”, through the false attribution of criminality or of negative social characteristics, or even to dehumanise migrants and induce fear by using threatening or disaster imagery, such as floods, swarms, invasions and hordes. Terms such as ‘illegal migrant’ are used by many, including the media, categorizing people rather than actions, criminalizing and stigmatizing men, women and children indiscriminately.

While migration governance measures should be based on evidence and disaggregated data, countering negative public narratives with messages based on evidence and standards is only part of the picture as people can be more frame-driven than fact-driven. Migration is an issue that raises strong – often visceral – emotions. Our challenge is how to frame narratives on migrants and migration that are based in evidence and on principles, but that resonate with a broad public. To face this challenge we need to pay attention to the language we use to describe migrants and migratory phenomena, for example, irregular migration is not a crime and no migrant should be called illegal; to ensure the presence of migrants’ voices and

² L. Simeone, P. Taran and A. Gächter, “‘Situation-Testing’: Discrimination in Access to Employment based on ILO Methodology”, International Migration Programme, International Labour Office, May 2007 (updated March 2010), p. 4.

agency in the public narrative; to acknowledge and untangle the real concerns of different sectors of society, so migrants cannot serve as scapegoats for cheap political gains.

At the same time, the concept of xenophobia lacks a universal, legal definition. Most commonly, the term ‘xenophobia’ has been used to describe attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity. Linking the concept more closely to the specific situation of migrants, it has also been defined as “negative perceptions and practices that discriminate against non-citizen groups on the basis of their foreign origin or nationality”.³ As pervasive as xenophobia is, the term ‘xenophobia’ is not a word used in popular discourse, it is not well understood, nor does it resonate with most people. To galvanize response to the horrible acts that constitute xenophobia we need to evince a visceral response to these violations, as we do to racism and discrimination”.

Lack of data and evidence

In the migration context, **data gaps** are more glaring than in other areas as migrants and, in particular irregular migrants, often are not reached by data collection methods. Yet, that glaring absence of data characterises much of the debate and indeed policy-making on migration. When data are available, they are rarely indicative of human rights circumstances. A critical lack of data collection on the rights of migrants often conceals exclusion and makes it difficult to dismantle patterns of discrimination.

Criminalization of migrants and discriminatory practices

³ UNAOC, PANOS: *Media-Friendly Glossary on Migration* (2014).

Public policies which **criminalize** irregular migration and those who provide services to migrants stigmatize, marginalize and exclude migrants and their communities and put them at further risk of abuse and exploitation by leaving them without protection, support and assistance. Irregular migrants are vulnerable to falling prey to traffickers, since they lack legal status which pushes them to seek work in the irregular market, then they become easy targets for exploitation.

Discrimination and xenophobia violate human rights and impede the effective integration of migrants into host communities. For instance, migrants in a vulnerable situation can be afraid to access public services for fear of being targeted at the places where these services are available. They can also be excluded from civic engagement and participation in residents' associations, religious organizations or other forums that would enable them to integrate into the community. Moreover, hate speech and provocative language can further exacerbate the vulnerability of the target groups to violence, often because such rhetoric feeds the perception that such violence is somehow justified and that perpetrators can commit criminal acts with impunity.

What does international law say?

As you know, migrants are protected by all United Nations human rights treaties, including the ICERD, and States are required to respect, protect and fulfil the human rights of all migrants, regardless of their status and without discrimination. Last September, Member States have reaffirmed and committed to fully protect the human rights of all migrants, regardless of their migratory status (New York Declaration, Annex II, 8i). They have further condemned acts and manifestations of racism, racial discrimination,

xenophobia and related intolerance against migrants, and the stereotypes often applied to them (New York Declaration, para 14).

Migrants are protected by human rights norms and standards from discrimination or racism. However, we continue to struggle with inadequate implementation of these legal obligations and with measures that negatively impact on migrants' human rights.

What measures and tools are there to strengthen protection?

OHCHR and the human rights mechanisms have recommended a number of concrete and practical steps that governments and other stakeholders can take in order to challenge discrimination, racism and xenophobia and to protect the rights of all migrants. Such measures range from **strengthening law enforcement and criminal justice responses, putting in place accessible complaints mechanisms in order to ensure access to justice for victims, collecting better data on racist crimes, and developing awareness raising initiatives** which focus on inclusiveness, diversity and human rights. Concretely,

States are called upon to promulgate **robust anti-discrimination and equality legislation** that protects migrants from all forms of discrimination including on grounds of nationality or migrant status, **establish national specialized bodies** in this respect, and **develop benchmarks** for the elimination of xenophobia against migrants. They should provide accessible legal, medical, psychological and social assistance to migrants affected by racism, xenophobia and discrimination. Integration and anti-discrimination policies should be developed through the participation of migrants and other relevant stakeholders.

States should develop and **implement clear and binding procedures and standards on the establishment of "firewalls" between immigration enforcement and public services** at all levels, in the fields of access to justice, housing, health care, education, social protection and social and labour services for migrants. In the context of racism and xenophobia, this means that migrants, independently of their status need to have access to mechanisms to challenge racist and discriminatory acts and bring perpetrators to justice.

Partnerships should be established with political leaders and parties, media, private sector, local communities, trade unions and other public actors, **to promote tolerance, and respect for all migrants**, regardless of their status. Other responses could include public education measures, child rights education programs and education curricula, and conduct targeted awareness campaigns in order to combat prejudice against and the social stigmatization of migrants.

OHCHR has developed a number of tools, which contain the aforementioned practical guidance to States and other stakeholders:

- OHCHR published [Recommended Principles and Guidelines on Human Rights at International Borders](#) in 2014 with a view to translating the international human rights framework into practical border guidance measures.
- *Draft Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations within large and/or mixed movements* have been developed through the GMG Working Group on Human Rights and Gender.
- OHCHR published the [Economic, Social and Cultural Rights of Migrants in an Irregular Situation](#) in 2014, to highlight the obstacles irregular migrants face in accessing these rights and providing

- examples of best practices developed in different countries to ensure effective access to enjoyment of economic, social and cultural rights.
- OHCHR produced the short film “[*I am not here*](#)” to bring the realities lived by migrant domestic workers in an irregular situation to a broader public. OHCHR also published “[*Behind Closed Doors*](#)” in 2015, highlighting the particular challenges faced by migrant domestic workers in an irregular situation and giving examples of achievements in respecting and protecting the human rights of these persons.
 - OHCHR, upon the request of the Human Rights Council, produced a report on the [*Promotion and protection of the human rights of migrants in the context of large movements*](#) as well as on the [*Situation of migrants in transit*](#).
 - The High Commissioner has intervened as a third party before the European Court of Human Rights in the cases of [*Hirsi Jamaa and others v. Italy*](#), [*N.D. and N.T. v. Spain*](#), and [*Raoufi and others v. Greece*](#) .
 - We will develop **an audio-visual project that brings to life the stories of migrants who are compelled to leave their homes for reasons other than conflict or persecution**, as well as the stories of those who are 'affected' by their migration - neighbours, family left behind, employers, teachers- in order to build empathy and confront prejudice and discrimination against migrants. Story-telling is firmly grounded in the methodology of human rights education, and the particular perspective of such migrants is not one that is very visible today.

The Global Compact on Safe, Orderly and Regular Migration

On 19 September 2016, at the high-level Summit of the General Assembly on addressing large movements of refugees and migrants, at a time of worrying political tension on migration issues worldwide, 193 States unanimously adopted the New York Declaration for Refugees and Migrants.

In this landmark Declaration, States acknowledged a shared responsibility to govern large-scale movements in a humane, sensitive, compassionate and people-centred manner, recalling their obligations to fully protect the human rights of all refugees and migrants as rights-holders, regardless of their status.

States recalled their obligations to prohibit discrimination of any kind on the basis of race, colour ... or any other status (para 13) and committed to combatting xenophobia and discrimination against refugees and migrants, including through ensuring their access to education, health care and justice as a way to improve their integration and reduce the risks of marginalization (para 39).

States further committed to developing national policies relating to integration and inclusion in conjunction with relevant civil society organizations, including faith-based organizations, the private sector, employers' and workers' organizations and other stakeholders (para 39).

After years of approaching migration as an issue related solely to national sovereignty to be addressed primarily through national approaches, States have now recognized that better global cooperation and governance on migration is needed. They have thus decided to launch a major intergovernmental process, under the auspices of the United Nations, to craft a global compact for safe, orderly and regular migration by 2018, which would set out principles, commitments and understandings among States regarding international migration in all its dimensions.

Our main challenge going forward is to translate the aspirational words of the Summit and the New York Declaration into a concrete plan of action. The proposed global compact on safe migration can provide that concrete plan.

What is clear is that we have moved beyond a discussion of whether or not human rights apply, to a discussion of how human rights are to be upheld; how the Global Compact can make migration safer for all.

A General Assembly Resolution on Modalities for the intergovernmental negotiations of the global compact adopted by the General Assembly on 6 April outlines that the preparatory process shall be structured in three phases:

Phase I (consultations): April 2017 to November 2017, including six informal thematic sessions, regional consultations and a number of multi-stakeholder meetings

Phase II (stocktaking): November 2017 to January 2018

Phase III (intergovernmental negotiations): February 2018 to July 2018

The first thematic session will focus on the **Human rights of all migrants, social inclusion, cohesion, and all forms of discrimination, including racism xenophobia and intolerance**. This session will be held in Geneva on **8-9 May 2017**. The session will examine, inter alia, ways to confront discrimination, racism, xenophobia and other forms of intolerance against migrants, including through national law that protects their rights, ensures equal access to justice, and through public discourse that supports a positive attitude towards migrants. In this regard, it is important to note that the GA Resolution on Modalities emphasises the need to take into consideration throughout phase I all human rights of migrants, as well as the needs of migrants in vulnerable situations.

Within the informal thematic sessions, Member States are encouraged to reflect on effective national, regional and international policies, key policy priorities, data collection and disaggregation (by age, sex and migratory status) as well as capacities for implementation. Participants are encouraged to provide examples of good practices and multi-stakeholder partnerships and to present actions and commitments to inform the global compact for safe, orderly and regular migration.

On the part of OHCHR, we think that to remain true to the promise of the New York Declaration and to the existing human rights obligations of States, the Global Compact should strive to foster a human rights-based approach to migration, premised on the principles of universality, indivisibility and interdependence, participation, non-discrimination and accountability.

Excellencies, Experts, Colleagues,

I started by stressing how timely today's discussion is – and referred to the many bad news relating to racism and xenophobia. But the reverse is also true: There are many good stories about migrants and migration – they just remain invisible. Migrants in fact contribute enormously to their host countries. Migration makes us and our societies richer. We need to invest more in compiling the evidence of the contributions of migration and diversity. This is our challenge. If we succeed in identifying language and approaches that resonate with different audiences; if we succeed in building the understanding that diversity makes us stronger, we will ultimately all benefit.

In conclusion,

I am aware that the road that this Committee has travelled has not been easy - in no small part because the issues it considers are sensitive and complex. I also understand that there has been much debate on whether or not gaps exist in the current normative framework.

Our Office takes note of the recent General Assembly and Human Rights Council which are asking the Committee to "ensure the commencement of the negotiations on the draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature during [its]tenth session".

In an effort to stimulate the work of this Committee to enhance protection for victims of racism and discrimination, be they migrants, refugees, returnees or otherwise Member States could consider looking more thoroughly and openly at the issue of the need to enhance the international framework.

I am pleased that experts from academia, civil society, national institutions and intergovernmental arena are giving thought to these issues with the intention to assist the Committee's thinking and help inform the positions of Governments.

In the past few sessions, this Committee has been adopting, by consensus, its programme of work, and you have been agreeing on topics for consideration so as to move forward. Our Office looks forward to more pragmatic progress during this session, so as to provide guidance on ways to address racism, racial discrimination, xenophobia and related intolerance more effectively.