

CHAPTER

9

**Office of the High
Commissioner for
Human Rights**



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR)¹ has a unique mandate from the international community to promote and protect all human rights. The Office strives to achieve the protection of all human rights for all people, empower people to realize their rights and assist those responsible for upholding such rights in ensuring that they are implemented. The High Commissioner works to mainstream human rights standards throughout all UN programmes, to ensure that peace and security, development and human rights – the three essential pillars of the UN system – are interlinked and mutually reinforcing, and that human rights form the bedrock of all UN activities.

Migration is one of six thematic priorities of OHCHR. Its revised strategy on migration for 2012 to 2013 centres on promoting and contributing to the protection of the human rights of all migrants, regardless of their legal status. The strategy asserts that there is an urgent need for coherent, comprehensive and better-coordinated frameworks based on international human rights law to address migration at the national, regional and international levels. Underlying the strategy, therefore, is the recognition of the need to reframe the current global discussion on migration. OHCHR promotes the integration of human rights norms and standards in all aspects of migration policy at the national, regional and international levels. It advocates for migration policymaking to be grounded in the international legal framework and calls on States to respect the internationally guaranteed human rights of all migrants, to protect them against abuse and fulfill the rights necessary for migrants to enjoy a safe and dignified life.

1. Migration activities undertaken since the 2006 High-level Dialogue

OHCHR is building and strengthening its advocacy, analysis and technical assistance on issues of migration and human rights. Over the last few years, it has begun to develop capacity-building tools, such as learning packages and information materials on key issues; conducted research and consultation with a wide variety of stakeholders on migration, and highlighted key advocacy issues at the national, regional and international levels. Through its field presence, OHCHR has also increasingly engaged in migration-related human rights work through, among other initiatives, training, advocacy, technical advice, monitoring and protection, and the promotion of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and other relevant human rights instruments. The following sections comprise a non-exhaustive, illustrative list of activities in the sphere of migration carried out by OHCHR since 2006.

¹ OHCHR was established by the UN General Assembly (UNGA) on 20 December 1993 through UNGA resolution 48/141. The Office is part of the Secretariat of the United Nations and is led by the High Commissioner for Human Rights, who is the principal human rights official of the United Nations. OHCHR coordinates human rights activities throughout the UN system. The official website of OHCHR is www.ohchr.org.

Capacity-building and technical assistance

OHCHR has developed tools on migration and human rights for governments, judges, lawyers, national human rights institutions and civil society organizations. It has provided technical assistance to governments and lawmakers to develop and reform legal and administrative frameworks related to migration, to become compliant with international human rights standards. Around the world, national human rights institutions are becoming increasingly involved in the protection and promotion of the human rights of migrants.

In 2009 OHCHR provided technical support in Guatemala for the reform of national legislation and regulations on migration issues and for the preparation of the country's initial report to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). The Office also provided support through workshops with the national human rights institutions and non-governmental organizations, to facilitate civil society participation in this process. In addition, it provided technical assistance and advice to the Guatemalan Congress through various commissions, to ensure compliance of the legal reforms with international standards. In 2012 the Office worked closely with the National Commission on Migrants, relevant authorities and civil society on the reforms to the country's law on migration.

In November 2009, in West Africa, OHCHR organized a capacity-building workshop on the role that national human rights institutions could play in the context of migration in the region. The workshop focused on following up on the commitments made within the Santa Cruz Declaration, which was adopted during the eighth International Conference of National Institutions for the Promotion and Protection of Human Rights. In 2012 the Office collaborated with the Mixed Migration Working Group of the UN Country Team in Senegal to carry out a mapping of actors involved in mixed migration in the country. Currently, OHCHR is developing a leaflet for Senegalese border guards on the human rights of migrants. The Mixed Migration Working Group publishes a regular electronic newsletter on protection in mixed migration contexts.

In June 2010 OHCHR started a project in South Africa to strengthen the South African Human Rights Commission (SAHRC) in its work in combating discrimination and xenophobia against migrants. The project aimed to build the capacity of the SAHRC to provide legal support to migrants; protect the rights of non-nationals in detention facilities; prevent xenophobia and violence against non-nationals through awareness-raising and capacity-building activities and support the work of the SAHRC in relation to racism and other forms of discrimination, including the implementation of the National Plan of Action for Racial Justice, which arose from the Durban Declaration and Programme of Action.

Since 2011 OHCHR has provided technical assistance to, and cooperated with, the European Agency for the Management of Operational Cooperation at the External

Borders of the Member States of the European Union (FRONTEX) in developing human rights training materials for border guards. In Lebanon, a draft law on migrant domestic workers was adopted by the Lebanese Ministry of Labour in January 2011. Together with ILO, OHCHR made significant inputs to the draft and is continuing to assist the Ministry of Labour in improving compliance of national law with international human rights standards.

In May 2011 Mexico's new immigration act, which takes into account the recommendations of various UN human rights mechanisms, entered into force, establishing the protection of the rights of all migrants regardless of their immigration status. OHCHR accompanied the drafting process and facilitated the access of the UN High Commissioner for Refugees (UNHCR) to it, so that it could also provide technical input and guidance.

In 2012 OHCHR initiated a joint project with Mexico's National Institute of Migration to assess the human rights training programme used by the institute. In the same year, OHCHR and INM published *A Guide for Civil Servants on the Human Rights of Migrants*. OHCHR also provided public and practical support to human rights defenders in Mexico working to promote migrants' rights.

OHCHR has developed a number of information tools to build the capacity of civil society actors to promote migrants' rights. A publication entitled *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (the revised second edition of which was published by OHCHR in 2008) explains how civil society can engage with UN human rights mechanisms, including human rights treaty bodies, the Human Rights Council and the Universal Periodic Review, and Special Procedures mandates.²

OHCHR is developing training materials on migration and human rights, including a trainer's guide, for the use of States, civil society and other actors. In October 2011, in collaboration with the Diplomacy Training Programme and Migrant Forum in Asia, OHCHR organized a training workshop on the human rights of migrants in order to pilot these materials. The workshop was attended by 25 participants from national human rights institutions and non-governmental organizations in the Asia-Pacific region. In March 2012 OHCHR supported the launch of a civil society campaign to end the immigration detention of children.

Monitoring, advocacy and public information

OHCHR raises awareness about human rights issues relating to migration, including through public advocacy by the High Commissioner and thematic reports and studies for the Human Rights Council and the UN General Assembly. The Office has produced

² The handbook is available for download from the following link: www.ohchr.org/EN/PublicationsResources/Pages/HumanRightsProgramme.aspx.

a number of publications on various human rights issues of relevance to migration, including fact sheets on the right to adequate housing, the right to health and the International Convention on Migrant Workers and the Committee on Migrant Workers.

The High Commissioner has made a number of statements on previous International Migrants' Days (18 December annually) in which she highlighted the important human dimension of migration, and called on States to protect, respect and fulfill the human rights of all migrants.³ A public information campaign highlighting human rights concerns related to immigration detention was launched as part of "Dignity and Justice for Detainees" Week, which ran from 6 to 12 October 2008.

In 2009 OHCHR prepared a background note for the working group on "Respecting the human rights of people on the move irrespective of their status" at the Regional Conference on Refugee Protection and International Migration in the Americas (San José, Costa Rica, November 2009). OHCHR was also represented at the second Ibero-American Forum on Migration and Development (July 2010), in El Salvador, where the Regional Representative delivered a speech on the rights of migrants in the context of the economic crisis.

In December 2010 OHCHR organized the first dialogue on human rights and migration in Central Africa. Follow-up on this by OHCHR, governments and other partners is ongoing.

In May 2011 the High Commissioner welcomed the February 2012 decision of the European Court of Human Rights in the case of *Hirsi Jamaa and others v. Italy*, which reaffirmed the human rights of all migrants at sea. OHCHR had submitted a legal brief before the Court as an intervening party.⁴

OHCHR highlights migration and human rights themes at key meetings at the regional and international levels. In 2011, at the annual conference of the EU Agency for Fundamental Rights, with the theme "Dignity and Rights of Irregular Migrants," the Deputy High Commissioner, as a keynote speaker, stressed that irregular migration is not a crime. In addition, OHCHR organized a panel discussion New York on the issue of migration, racism and discrimination, as a prelude to the UN General Assembly's Informal Thematic Debate on International Migration and Development in May 2011.

During her visit to Australia in May 2011, the High Commissioner advocated for changes to Australia's immigration policy and opposed a planned agreement between Australia and Malaysia on migration management. A subsequent decision by Australia's High Court confirmed this position, and the Government abandoned the agreement. Following

³ These statements, as well as the statements by the Secretary General and the human rights mechanisms, are available at www.ohchr.org/EN/Issues/Migration/Pages/Statements.aspx.

⁴ The intervener brief is available from www.ohchr.org/EN/Issues/Migration/Pages/StudiesAndReports.aspx.

the High Commissioner's visit, the Government also decided that more migrants and asylum-seekers would be released from mandatory immigration detention.

In April 2012 OHCHR intervened in the thematic discussion on violence against migrants, migrant workers and their families during the twenty-first session of the UN Commission on Crime Prevention and Criminal Justice, stressing that the border can be a site of significant violence against migrants, perpetrated by both State and non-State actors.

OHCHR supports efforts to promote the ratification of the ICRMW, including through the International Steering Committee of the Global Campaign for Ratification of the Convention on Rights of Migrants, which is coordinated by OHCHR. In April 2009, the Steering Committee published a guide on the ratification of the Convention.⁵ On the twentieth anniversary of the ICRMW in 2010, the International Steering Committee launched a global campaign, calling on governments to act immediately to end widespread human rights violations against migrants around the world by ratifying the ICRMW. In line with this, a poster and other campaign material were developed, and a petition was launched through the Steering Committee's website. Member organizations of the Steering Committee supported the campaign further by organizing local activities in the countries targeted by the campaign.

A number of OHCHR field presences commemorated the twentieth anniversary of the ICRMW through seminars and other public activities. In West Africa, for example, OHCHR organized an event on International Migrants' Day in 2010 to promote the ratification of the Convention by Senegal

Research and consultation

OHCHR develops research-based materials on international human rights standards related to migration, and raises awareness about migrants' rights through consultations with States and other stakeholders. In 2008, an International Meeting on the Protection of the Rights of Children in the Context of International Migration was organized by OHCHR in cooperation with the Government of Mexico. In its Resolution 11/9 (18 June 2009), the Human Rights Council decided to hold a panel discussion on the human rights of migrants in detention centres at its twelfth session. The panel discussion, held in Geneva in September 2009, addressed increasing concerns related to the recourse by States to the administrative detention of migrants.

An open-ended expert consultation on the protection of the rights of the child in the context of migration was held in May 2010 in Geneva, with the support of UNICEF. Expert panelists drawn from UN agencies, NGOs and academia addressed such issues

⁵ See the Guide on Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (April 2009), available from www.migrantsrights.org/documents/SCRatificationGuide4-2009Final.pdf.

as children in immigration detention; child protection systems and best interest determinations; and the economic, social and cultural rights of migrant children.⁶ A study on the “...challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration” (A/HRC/15/29) was prepared by OHCHR for submission to the Human Rights Council at its fifteenth Session in September 2010.

In June 2010 OHCHR presented a report to the UN Economic and Social Council on the economic, social and cultural rights of migrants (E/2010/89). In May 2010 the OHCHR Regional Office for Europe, with the participation of the ILO, both based in Brussels, organized a judicial colloquium on the application of international human rights instruments and their applicability to the promotion and protection of the human rights of women migrant domestic workers in Europe. Also in 2010, the Human Rights Adviser in the Republic of Moldova intervened in a landmark case regarding the right to family life of migrants living with HIV, through the provision of a range of legal materials to the Supreme Court of Justice of the Republic of Moldova. On 22 December 2010, the Supreme Court ruled in favor of the petitioner.

In May 2011 the two-day Global Roundtable on Alternatives to the Detention of Asylum-seekers, Refugees, Migrants and Stateless Persons was organized by OHCHR in partnership with the UNHCR.⁷ The OHCHR Europe regional office organized in 2011, in cooperation with UNHCR and UNICEF, a Judicial Colloquium on the Implementation of Article 3 (best interest of the child) of the Convention on the Rights of the Child (CRC) in Europe with regard to the situation of migrant children. Following this colloquium, OHCHR launched a study in 2012 on the implementation of Article 3 of the CRC in this respect. The launch took the form of a discussion during a plenary session of the Committee on Civil Liberties of the European Parliament.

In June 2011 OHCHR joined with the Global Alliance against Traffic in Women to organize a round table on human smuggling in the Asia-Pacific region. Through its participation in the UN Regional Thematic Working Group on International Migration, OHCHR contributed a chapter on migration and human rights for inclusion in the 2011 UN Situation Report on Migration in South and South-west Asia. The Office presented a study to the eighteenth session of the Human Rights Council on the human rights situation of migrants and asylum-seekers fleeing events in North Africa (A/HRC/18/54) in 2011. The study received contributions from governments, UN agencies and NGOs, and presented a substantive set of recommendations to the international community.

In 2012 OHCHR held an expert meeting entitled “Human Rights at International Borders: Exploring Gaps in Policy and Practice.” A background paper prepared by OHCHR for the

⁶ For the text of the report, an informal summary of the consultation, links to the expert presentations and interventions from participants in the audience, see www.ohchr.org/EN/Issues/Migration/Pages/Consultationbestpracticeschildmigration.aspx.

⁷ The summary conclusions of this round table are available from www.ohchr.org/EN/Issues/Migration/Pages/Roundtable.aspx.

meeting identified international borders as sites of significant human rights violations against migrants, including arbitrary detention, perpetrated by State and non-State actors. Informal summary conclusions of the meeting, which was attended by experts from governments, international and regional organizations, civil society and academia, called on OHCHR to develop principles and guidelines on the issue of human rights at borders. OHCHR has begun drawing up such guidance in 2013.⁸

Coordination and coherence

Through its active participation in the GMG, within UN Country Teams and other relevant forums at the country and regional levels, OHCHR has sought to promote and mainstream a human rights approach to migration within the UN system. OHCHR also contributed to the organization of a GMG Practitioners' Symposium with the theme "Overcoming Barriers: Building Partnerships for Migration and Human Development," in May 2009 in Geneva. For this symposium, OHCHR prepared a background paper entitled "Rooting migration policies in human rights: Ensuring the rights of all migrants and improving human development outcomes," and facilitated the proceedings of a workshop on the human rights of migrants.

From July to December 2010, the High Commissioner for Human Rights chaired the GMG. The thematic focus of her term was the human rights of all migrants, particularly those in an irregular situation. A landmark joint statement,⁹ adopted by the GMG Principals in September, called on the international community to end discrimination and abuses against migrants in an irregular situation. The statement made the important point that the irregular situation in which international migrants may find themselves should not deprive them of either their humanity or their rights. A full-day GMG expert meeting on the human rights of irregular migrants organized by OHCHR in October 2010 also generated policy recommendations on the issue of human rights and irregular migration which were widely disseminated.

As a member of the GMG Troika in the first half of 2011, OHCHR organized a round table on combating xenophobia and discrimination against migrants in the context of a GMG Practitioners' Symposium entitled "Migration and Youth: Harnessing Opportunities for Development," organized by UNICEF in May 2011.

OHCHR assisted the joint advocacy of the UN Country Team (UNCT) in Thailand, with the Ministry of Foreign Affairs of Thailand and other authorities, particularly in regard to protecting migrants affected by flooding in the country in 2011. The Office highlighted the relevant legal standards and recommendations of human rights mechanisms and provided other guidance and methodological tools to the Country Team. In Lebanon, the OHCHR Middle East Regional Office joined the local UNCT in adopting a voluntary

⁸ Informal summary conclusions of this meeting are available at www.ohchr.org/EN/Issues/Migration/Pages/OHCHRExpertconsultationExploringGapsinPolicyandPractice.aspx.

⁹ The statement is available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10396&LangID=E.

code of conduct for UN staff members who employ domestic workers, which requires them to abide by 21 specific standards for the employment of people who care for families and households. In Angola, following allegations of serious human rights violations committed against irregular migrants from the Democratic Republic of the Congo, and following the advocacy of OHCHR, and a visit by the Special Representative of the Secretary General on Sexual Violence in Conflict, the UN Country Team identified the protection of the rights of migrants as a priority area.

Through its research, advocacy and mainstreaming work, and through the work of treaty bodies and Special Procedures that it supports, OHCHR has stressed that human rights are essential to achieving and sustaining development. In an open letter to all permanent missions in New York and Geneva sent in advance of the Rio+ 20 UN Conference on Sustainable Development in 2012, the High Commissioner urged that all policy measures taken to advance development objectives must take care to prevent and remedy any negative impacts on the human rights of vulnerable and marginalized groups, including migrants.¹⁰

On 18 December 2012, the Secretary General's Policy Committee held a discussion on international migration, led jointly by OHCHR and UN DESA. Following this discussion, the Policy Committee endorsed a set of human rights-based key messages on migration, and decided that OHCHR would lead the preparation in 2013 (in consultation with the GMG and the UN system) of a concise analytical report on migration and human rights, which would specifically consider how attention to the rights of migrants can be strengthened within the governance framework of migration at the international level. The report endorsed by the Policy Committee aims to bring more focused attention to the human rights of migrants within the upcoming 2013 High-level Dialogue (HLD) on International Migration and Development and beyond that to the post-2015 development agenda. OHCHR, in collaboration with the Global Migration Policy Associates, held an expert meeting in September 2012 entitled "An informal conversation on global governance, migration and human rights," in order to seek the views of experts from governments, international organizations, academia and civil society.

OHCHR has been an active member of the GMG, and, in 2012, played a key role in the context of the GMG internal review process. Through its input, OHCHR attempted to enhance and strengthen inter-agency coordination of migration, and to bolster the mandate of the GMG to promote the wider application of all relevant instruments and norms relating to migration. As a result, the inter-agency body paid more attention to the human rights framework. One of the decisions made in the GMG Principals' Meeting in 2012 was that the GMG should consider the establishment of a Working Group on Migration, Gender and Human Rights, with OHCHR as the co-Chair.

¹⁰ The open letter is available at www.ohchr.org/EN/NewsEvents/Rio20/Pages/Statementspeeches.aspx.

UN human rights mechanisms

OHCHR supports the work of the human rights mechanisms on migration, including the Special Rapporteur on the Human Rights of Migrants and the CMW. It assists governments in implementing recommendations relevant to migration by UN human rights treaty bodies, Special Procedures and the Universal Periodic Review process.

On 14 October 2009 the CMW held a Day of General Discussion on the topic of migrant domestic workers. It adopted General Comment No. 1 (“on migrant domestic workers”) at its thirteenth session, recognizing the particular vulnerability of migrant workers employed in private homes.

In September 2011 the CMW held a Day of General Discussion on the rights of migrant workers in an irregular situation and members of their families. The committee drafted its General Comment No. 2 (“on the rights of migrant workers in an irregular situation and members of their families”), which it aims to adopt in 2013. On 22 April 2013, the CMW held a Day of General Discussion on the role of migration statistics for treaty reporting and migration policies. On 28 September 2012 the Committee on the Rights of the Child (CRC) held a Day of General Discussion on the theme “The Rights of All Children in the Context of International Migration.” In its final report, the CRC addressed a number of recommendations to States and other stakeholders.¹¹ The CMW has also periodically addressed specific situations where migrant workers were vulnerable to human rights violations; for example, the Committee expressed alarm in April 2011 at the situation of thousands of migrant workers who had fled armed conflict in Libya.

A number of other treaty bodies have also addressed the issue of migration and human rights in their “Concluding Observations to States Party” reports and in their communications with governments, as well as in their general comments. For example, the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 20, on non-discrimination in economic, social and cultural rights (Article 2, Paragraph 2 of the International Covenant on Economic, Social and Cultural Rights), in 2009, which explicitly recognizes that the ground of nationality shall not bar access to the rights recognized in the covenant. In 2008 the Committee on the Elimination of All Forms of Discrimination against Women adopted its General Comment No. 26, on women migrant workers.

Special Procedures mandate-holders from the UN Human Rights Council have addressed the issue of migration from various perspectives. In 2009 the Working Group on Arbitrary Detention considered the detention of migrants in irregular situations in its report entitled “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development” (A/HRC/10/21). The Special Rapporteur on the Right to Education devoted his 2010 report

¹¹ The report on this Day of General Discussion is available at www.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf.

to the Human Rights Council entitled “The right to education of migrants, refugees and asylum-seekers (A/HRC/14/25). Also in 2010, the Special Rapporteur on the Right to Adequate Housing presented her report to the Human Rights Council on migration and the right to adequate housing (A/65/261).

In August 2011 the Special Rapporteur on the Human Rights of Migrants, Mr Francois Crépeau, took up his mandate. His main activities include country visits, thematic reports to the Human Rights Council and the General Assembly and communications to States. Mr Crépeau undertook his first country visit, to Albania, in December 2011; in June 2012 he presented his report to the Human Rights Council on the detention of migrants in an irregular situation (A/HRC/20/24). The Special Rapporteur will present a separate report on his activities for consideration by the UN Chief Executives Board.

2. Support provided to the Global Forum on Migration and Development

From the first meeting of the Global Forum on Migration and Development (GFMD), OHCHR has advocated within the forum for more cross-cutting and specific attention to be given to the human rights dimension of migration.

In October 2009 OHCHR held an open-ended expert consultation in Geneva to explore the relationship between the human rights of migrants – specifically, the inclusion, acceptance and integration of migrants in host societies – and migrants’ contributions to development in both their origin and destination countries. The meeting aimed to support States and other stakeholders preparing for a round table discussion during the third GFMD in Athens on 4 and 5 November 2009, dedicated to the theme “Inclusion, Protection and Acceptance of Migrants in Society – Linking Human Rights and Migrant Empowerment for Development.”

As Chair of the GMG, the UN High Commissioner for Human Rights addressed the fourth GFMD in Puerto Vallarta, Mexico, in November 2010. In her statement, the High Commissioner called for an end to the criminalization of irregular migrants and urged all States to ratify and effectively implement the core international human rights instruments protecting the human rights of migrants, particularly the ICRMW. OHCHR led the organization of a side event at the GFMD to commemorate and call for the ratification of the ICRMW.

At the fifth GFMD in Geneva in December 2011, OHCHR participated in the official round table discussions and organized a side event on addressing irregular migration through a human rights-based approach. Earlier, in November 2011, OHCHR and the Friedrich Ebert Foundation organized a side event during the GFMD Civil Society Days entitled “The Rights of Migrants in an Irregular Situation: Engaging with the UN Human Rights Mechanisms.” The Chair of the Committee on Migrant Workers and the Special Rapporteur on the Human Rights of Migrants participated in this side event.

OHCHR provided substantive technical assistance to various round tables held at the sixth GFMD in Mauritius in November 2012. In particular, OHCHR ensured a human rights focus to background documentation and discussions held in the context of Round table session 3.1 (“Improving Public Perceptions of Migrants and Migration”) and session 3.2 (“Migrant Protection as Integral to Migration Management”). OHCHR held a side event in Mauritius entitled “Public Perceptions, Migration and Human Rights,” and produced a short brochure on this topic for dissemination to participants of the GFMD, which increased their understanding of the links between public perceptions of migration, xenophobia and human rights.

3. Identified good practices

In order to ensure that the human rights of all migrants on their territory are respected, protected and fulfilled, States should, inter alia:

- (a) Ratify and effectively implement all relevant international human rights instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- (b) Include in their reports to all human rights treaty bodies, as well as their reports to the universal periodic review mechanism of the Human Rights Council, information on measures to protect the human rights of migrants.
- (c) Adopt comprehensive national plans of action, informed by international human rights standards, to strengthen the protection of migrants. National strategies and plans of action should be put in place on such issues as eliminating xenophobia against migrants and protecting the whole range of human rights – including economic, social and cultural rights – of all migrants regardless of status.
- (d) Take steps to protect the human rights of migrants in an irregular situation; this includes avoiding and repealing laws and administrative regulations that require public officials (including those in the field of service provision, the local police and the judiciary) to report the presence of irregular migrants to migration authorities, as well as those that criminalize assistance to irregular migrants.
- (e) Ensure that effective measures are put in place to protect the human rights of all children in the context of migration, including coordinated child protection policies and systems across borders that are in full compliance with international human rights standards.

4. Challenges identified in carrying out OHCHR work

The main message of OHCHR on migration is that human rights standards provide an extensive baseline of protection for all migrants and constitute a framework of action, as well as a set of guidelines and tools for migration policymakers. Human rights-based actions are not just legal obligations for governments, but also make sound public and migration policy sense. OHCHR concretely strives to assist States and other stakeholders to promote and protect the human rights of migrants by filling normative and implementation gaps at the national, regional and international levels. OHCHR is also starting to develop and strengthen its capacity to engage at the operational and field levels in order to monitor and address human rights violations in the context of migration, including through supporting the implementation of the recommendations of the human rights mechanisms. OHCHR has identified a number of challenges in carrying out its work on migration and human rights, which are briefly described in the succeeding paragraphs:

At a contextual level, rising anxieties and fears about foreigners have been exacerbated in recent years by the financial and economic crises and the deteriorating political and social environment in some countries. As a result, we have witnessed increasing xenophobia and declining respect for the human rights of migrants around the globe. This, in turn, has reduced the public and political space in which the human rights of migrants can be discussed.

At the intergovernmental level, there are few processes (bilateral, regional or international) in which the human rights framework on migration is given more than cursory attention. The ICRMW remains the least ratified instrument of all the core international human rights instruments, and States can be reluctant to recognize that the protection of universal human rights norms apply equally to all migrants. The GFMD, as a voluntary, non-binding and State-led process, has been traditionally hesitant to conduct a normative discussion of migration and has not been inclined to commit States to concrete action in regard to human rights issues. While important advances have recently been made in this context, without dedicated attention to the issue, human rights will remain purely rhetorical rather than become effectively mainstreamed.

5. Gaps evident within the migration and development sphere

OHCHR identifies the following among the most obvious gaps in the field of migration and development for policymakers and practitioners to address as follows:

- (a) The issue of migration and development lacks clear definitions and parameters.
- (b) It is accordingly unclear how and where human rights issues specifically fit into an agenda which formally pays little concrete attention to norms and standards.

- (c) Despite the efforts of UN agencies and others through the years, and despite increasing reference to the concept of human development, there continues to be a strong focus on development as an economic phenomenon.
- (d) The debate within this sphere, in relation to the human rights content, is more often at the level of rhetoric than reality. The inclusion of human rights issues and human rights mainstreaming has been largely absent from the GFMD, despite rhetorical commitment to the issue.
- (e) There is a continuing lack of effective space for civil society, as well as the voice of migrants themselves, in the international migration and development debate.

6. Recommendations for the 2013 High-level Dialogue

OHCHR proposes that the following actions be considered in the context of the 2013 HLD and beyond:

- (a) A limited set of thematic recommendations on migration and human rights issues should be developed in advance of the 2013 HLD. At a minimum, these recommendations should include attention to particularly vulnerable groups of migrants, such as children, women at risk and migrants in an irregular situation, as well as situations in which migrants are particularly vulnerable (for example, in immigration detention, at international borders and in relation to access to basic public services).
- (b) These recommendations should provide the basis for a concrete and substantive agenda for action on migration and human rights, to emerge from the 2013 HLD.
- (c) More robust institutionalization of the migration and human rights agenda is urgently needed at the international level. The 2013 HLD could consider initiating a structured global discussion of migration and human rights under the auspices of the United Nations.
- (d) Increased resources should be committed to build the capacity of States and other stakeholders to address their duties and obligations as regards the issue of migrants' rights.
- (e) National human rights institutions and civil society, including migrants' organizations, should be enabled to participate fully and effectively in the 2013 HLD.

