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Human rights at international borders: exploring gaps in policy and practice

Expert Consultation

22-23 March 2012

Geneva, Switzerland

International migration is a contested issue within and between States and as a consequence the global governance of international migration has often been criticised as incoherent and ineffective. Migration management policies can be based on flawed assumptions, populist fears and misperceptions, and it is at international borders where the human rights implications of these policies can be felt most deeply, particularly in the context of migration policies which are premised almost exclusively on border control.

The Office of the High Commissioner for Human Rights has estimated that in the first eight months of 2011, more than 1400 people lost their lives in the sea between North Africa and Europe.¹ Concerns have been raised in various regions that ships are leaving migrants to die at sea, and that border security forces are using excessive force against migrants including orders to “shoot at sight”. At land, sea and air borders around the world, migrants experience violence, torture, dangerous interception practices, summary pushbacks and prolonged detention.

Arriving at these international borders are various groups of persons on the move. So-called “mixed flows” include people who fit into existing protection categories; refugees and asylum seekers, trafficked persons, unaccompanied and separated children, and stateless persons. Moving also within these movements are people who cannot easily be placed in established legal categories; including migrants in search of reunification with family, those fleeing hunger, poverty, environmental devastation and discrimination, as well as those in search of economic opportunity. Many of these migrants are in an irregular situation, and a significant number will have been smuggled. Typifying the often dynamic characteristic of the migration experience, some people will move between different legal categories, or even inhabit more than one category at the same time, as their situation and need for protection change during the course of their journey.

Increasingly tough controls at international borders have escalated the risks and raised the stakes of movement, forcing many migrants into dangerous modes of travel. There are often high levels of violence at borders and border guards can operate with impunity.

Opaque and overly onerous bureaucratic migration procedures also create the conditions and incentives for migrant to turn to facilitated movement and the services of smugglers. While some smugglers operate a consensual remunerated service for migrants, and can even provide a necessary safety valve for people escaping

¹ See UN Human Rights Council, The situation of migrants and asylum-seekers fleeing recent events in North Africa: Report of the United Nations High Commissioner for Human Rights, 1 September 2011, A/HRC/18/54, available at: <http://www.unhcr.org/refworld/docid/4e7335392.html>

human rights violations, in other circumstances smugglers are deeply implicated in perpetrating violence, including sexual assault of migrants, extortion, theft and racketeering against the migrants themselves.

An expert consultation, which will be organised by the **Office of the High Commissioner for Human Rights** in cooperation with the **Global Alliance Against Traffic in Women**, will explore the human rights situation at international borders as well as the need for enhanced human rights guidance in this respect.

The following key questions will guide the meeting:

- What are the human rights issues of concern in respect to the protection of the rights of migrants at international borders?
- Is the existing normative framework of protection sufficient to meet the challenges? What are the gaps, if any, in this framework?
- What are the policy gaps?
- What are the implementation gaps?
- What can be done to fill these gaps, particularly in terms of normative guidance and technical assistance?

The consultation will take place on 22-23 March in Geneva. Around 25 expert participants will be invited to attend. A legal concept paper will form the basis of the discussion at the expert meeting, and will be circulated to participants in advance of the meeting.

Background

On 20-22 June 2011, the Global Alliance Against Traffic in Women (GAATW) and the Office of the High Commissioner for Human Rights (OHCHR) jointly organized a Roundtable on Human Smuggling.² Key observations from the meeting were that “anti-smuggling” discourse is increasingly being used by States to justify a range of actions from interception and push-backs on the high seas to detention and criminalization of migrants, leading to serious protection gaps for migrants. The meeting recommended that future analysis of this issue consider the possibility of developing rights-based guidance in respect of human rights, human smuggling and border security.

Ensuring the realisation of human rights in the context of migration is a thematic priority for the **Office of the High Commissioner for Human Rights** within its work programme for 2012-2013. OHCHR is concerned that as governments seek to confront irregular migration through strengthened controls, borders can become the site of violence, discrimination and abuse against migrants. Within its thematic priority on migration, OHCHR focuses on protecting human rights in the context of mixed migration flows at international borders.

The Global Alliance Against Traffic in Women (GAATW) is concerned with violations of trafficked persons and all migrants, particularly in smuggling and other migration situations, in which protections and recourse to justice are minimal or nonexistent. GAATW has seen that border security measures increase trafficked persons’ vulnerability as dependency relationships increase. GAATW hopes that possible new policy guidance on border security measures will influence States, including at international crime control fora, such as the Conference of State Parties to the UN Convention Against Transnational Organised Crime.

² GAATW, Smuggling Roundtable meeting report, Smuggling Roundtable, Global Alliance Against Traffic in Women (GAATW) in collaboration with the UN Office of the High Commissioner for Human Rights (OHCHR), 20-22 June 2011, Bangkok, Thailand, http://www.gaatw.org/index.php?option=com_content&view=article&id=639:smuggling-roundtable-meeting-report&catid=68:GAATW%20News