



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

In Search of Dignity

Summary Report on the human rights of migrants at Europe's borders



Introduction

During 2016, the UN High Commissioner for Human Rights dispatched monitoring missions to transit and border sites in Greece, Italy, Bulgaria, the former Yugoslav Republic of Macedonia and France in order to examine and identify the human rights challenges and protection gaps faced by migrants in these locations.

This report summarises the common concerns the monitoring teams identified throughout the countries visited, as well as the recommendations provided to the countries visited and to the European Union to better protect the human rights of migrants.

The full report and further information on the missions can be found at: <http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationReport.aspx>





Findings and Recommendations

Criminalisation of irregular entry and/or stay

The teams found that the criminalisation of irregular entry and stay has had grave impacts on the situation of migrants throughout all border locations visited. This led to increased detention, the prosecution and imprisonment of migrants in an irregular situation, sometimes alongside foreign criminal offenders. Migrants in detention faced common challenges stemming from a lack of access to information, legal aid services and medical care. Criminalising migrants for crossing borders without authorisation also fosters a security-focused response to migration, closing borders and using other punitive measures that fail to provide adequate protection to migrants, often placing them at a higher risk of suffering abuse and exploitation. This in turn benefits the business of smugglers and deprives migrants of access to services and to justice for crimes and human rights violations committed against them, as they fear deportation or imprisonment.

Recommendations to States included:

*Decriminalise irregular migration, provide **protection status** to any migrant who cannot be returned, **regularize** the status of migrants who have settled in the country or grant other forms of **temporary residence status**.*

Prohibition of arbitrary or collective expulsion and the principle of non-refoulement

The teams found that the safeguards to prevent violations of the principle of non-refoulement and the prohibition of arbitrary and collective expulsions were either absent, weak or not adhered to in practice. In countries along the Balkan land route, the closure of possibilities for transit during 2016 led to a significant ramping up of arbitrary and collective expulsions by authorities outside any judicial or other formal process. Many expulsions involved violence and some resulted in death or serious injury.

Recommendations to States included:

***Prohibit collective expulsions** and dangerous interception measures and ensure that **adequate procedural safeguards** are made available to migrants regarding deportation decisions. The **European Union** should ensure that the EU migration policies and decisions do not negatively impact Member States' obligations to conduct individual assessments. The EU should take measures to **integrate into individual assessments** all factors that could mitigate against an individual's return, in particular the risk of torture or other serious human rights violations upon return.*



Identification of vulnerabilities and access to services

The teams found that the vast majority of migrants in border and transit areas were in a situation of vulnerability. The process of identifying vulnerabilities was however lacking and largely based upon visibly identifiable vulnerabilities – e.g. visibly pregnant women and persons with visibly apparent disabilities were able to access necessary support, while women who were in the early stages of their pregnancy, persons with psychosocial disabilities or survivors of trauma or sexual and gender-based violence who did not have easily visible scars and were hesitant to self-identify, were often not. There was also a scarcity of trained staff dedicated to conduct vulnerability screenings and assessments and to respond appropriately to the protection needs of migrants.

Recommendations to States included:

Put in place robust procedures to permit the rapid and appropriate identification of persons in vulnerable situations; make arrangements to effectively provide protection in facilities where migrants in vulnerable situations are staying; ensure the provision of sufficient and accessible physical and mental health care and services, as well as comprehensive, adequate and accessible sexual and reproductive health services.



The right to information

In all countries visited, the teams observed a general lack of access to meaningful information for migrants regarding their rights and situation. Many migrants did not know what would happen to them next; why they were being detained, moved, or left stranded in a particular place. Many lacked information regarding asylum procedures, what services were available to them; or the options they had within the legal procedures for reuniting with their families, for relocation, or regarding their rights in return procedures.

Recommendations to States included:

*Provide migrants with **meaningful information to enable them to make informed decisions.***

Information should be provided in a language migrants can understand or with the help of translators.

***Information focal points** should be established to provide accessible and meaningful information to migrants.*



The rights to liberty, due process and fair trial

Migrants, including children, were subject to detention practices in all of the countries visited, including mandatory detention in some jurisdictions. Individual assessments to determine the necessity and proportionality of detention or to identify less restrictive alternative measures were not conducted. Most migrants were held for multiple days, and sometimes for weeks or months, in immigration detention facilities, often without understanding the reasons for their detention or the possibility to challenge their detention. In certain instances, the deprivation of liberty contravened national constitutions and international human rights law with no legal basis provided for the detention of migrants beyond an initial 48 or 72 hours time limit. In the ‘hotspots’ in Italy and Greece migrants were detained without detention orders or other procedural safeguards, making it more difficult for them to challenge the lawfulness of their detention.

Many migrants reported inadequate access to information, legal aid and assistance, limited availability of lawyers and a lack of adequate translation services, including in criminal, expulsion or deportation proceedings. Authorities informed the teams that detention was intended to be “exceptional” and temporary in order to manage and maintain some control over the increasing numbers of arrivals. However, the teams found that largely, reception systems have increasingly been replaced by detention, eroding the right to liberty.

Recommendations to States included:

End all mandatory detention policies and practices immediately, implement robust due process and fair trial guarantees and develop national action plans to implement human rights-compliant, non-custodial, community-based alternatives to detention based on an ethic of care rather than enforcement.



Conditions in immigration detention

The teams encountered poor conditions in detention, some of which could amount to inhuman and degrading treatment. The facilities visited did not provide a reception environment or reflect appropriately the administrative nature of immigration detention. Rather, the centres were generally heavily securitised, surrounded by razor and barbed wire fences, with surveillance carried out by armed police, military or other security guards and sometimes containing separate enclosures where migrants were “detained in detention” based on age or nationality.

Recommendations to States included:

*provide **safe accommodation arrangements for migrants**, ensure sufficient **water and food** beyond the mere nutritionally required minimum and repair dysfunctional **toilets and showers**, ensuring their location does not pose a risk for the **safety of women and girls**. States should take measures to ensure that **facilities do not resemble prisons** and that there is a reasonable balance between the **numbers of security staff and those providing services for migrants**.*



Conditions in settlements, camps or other locations of migrants

The monitoring teams visited formal, semi-formal and informal settlements in a number of countries and found that the infrastructure, service and material provisions in the various settlements were very minimal. The teams noted concerns with regard to migrants' access to adequate food and shelter, to education, health services as well as access to information and legal assistance in the various settlements visited. The teams heard reports of violence in some camps committed by other migrants as well as smugglers and other criminal actors.

The temporary arrangement of these settlements further meant that dismantlement and relocation were constant threats, and coupled with a lack of information, this exacerbated the situation of uncertainty migrants were facing.

Recommendations to States included:

*Take specific measures to **prevent discrimination** of any kind in the **distribution and accessibility** of goods and services, take **specific safety arrangements** and **facilitate living in the community**.*



Protection of children

While certain progress could be observed in some countries, the teams found that overwhelmingly, the responses of States to ensure protection of the rights of migrant children were inadequate. The lack of effective protection of migrant children's rights was observed in informal, formal, open and closed facilities. There was a widespread lack of standardized systems to ensure appropriate best interests determination for migrant children and the use of arbitrary age determination procedures in some cases. Migrant children were not able to benefit from human rights-compliant child protection services, as there

were only few or no trained child protection officers, delays in reuniting them with their families, and barriers for them to access essential services such as healthcare and education.

Children were also subjected to arbitrary and prolonged immigration detention and abusive treatment and inhuman conditions in detention, without access to education, health services or meaningful recreational activities. The lack of information and understanding about why they were being held or what was going to happen to them further exacerbated the risks to their mental health.

In some cases, the teams were concerned that ostensibly protective measures put in place by the authorities were having an unintentionally negative impact on children, as they failed to take into account the migration project and agency of the child and were placing children at severe risk of ill health, abuse and exploitation.



Recommendations to States included:

End all forms of detention of migrant children, create suitable shelter spaces for families with children or unaccompanied and separated children, establish standardised systems for the determination of the best interests of the child, and make available qualified and trained child protection staff at all stages of the migration journey.

Xenophobia, incitement to hatred, and violence against migrants

Anti-migrant sentiments were observed in all locations visited, in certain instances fuelled by segments of the media, as well as high-level officials, members of parliament and politicians, or members of the clergy. Left unaddressed, the teams found this contributed to signalling that violence against migrants was somehow justified. The teams heard reports of assaults on human rights defenders who advocate for the human rights of migrants. There were also instances of disproportionate use of force against migrants by immigration officials during fingerprinting or forced returns. At the time of the visits, violations and abuses had rarely led to conclusive investigations or prosecutions, partly due to a lack of safe reporting channels for migrants and the dismissal of cases for various reasons. As a result, victims were left without access to justice or an effective remedy and an environment of impunity ensued.

Recommendations to States included:

Condemn and take effective measures against racism, racial discrimination and stereotypes applied to migrants. They should also prohibit and prosecute dangerous border control practices, excessive use of force and hate crimes and establish gender- and child-sensitive violence protection programmes. To make sure migrants have access to justice, firewalls should be put in place to help migrants report crimes against them and to be able to have an effective remedy.

Human Rights Monitoring

The teams noted positively that in some countries national human rights and/or ombudspersons institutions were allowed to visit immigration detention facilities. However, they were concerned at the absence of systematic independent monitoring of the human rights situation of migrants at borders, which should cover detention facilities as well as screening and interview procedures, relocations and evictions, and procedures related to access to protection and assistance services. The teams observed limited commitment by the countries visited to cooperate with civil society actors to improve monitoring and ultimately, the human rights situation of migrants.

Recommendations to States included:

Ensure and facilitate unrestricted access of independent monitoring bodies to monitor the human rights situation of migrants in all locations and to enable civil society actors to participate. Migrants should have access to complaints mechanisms and there should be effective accountability of private actors carrying out migration governance functions.



III. Conclusion

The report concludes that States are too often relying on an emergency and security-focused approach to migration governance over one that is migrant-centred and human rights-based. Restrictive laws and policies, criminalisation of irregular entry, the increased use of detention practices or swift return procedures without robust due process guarantees, have far-reaching impacts on migrants' safety, health and ultimately, their dignity.

Responses to migration, which are insufficiently sensitive to the human rights protection needs of the migrants seeking safety and dignity in Europe, lead to a number of protection gaps, in particular for unaccompanied and separated children. The limited avenues available to identify migrants in situations of vulnerability, as well as a scarcity of referral mechanisms, qualified staff or access to services, all indicated inadequate attention and commitment to ensuring the human rights of migrants.

The teams found that the lack of adherence to minimum standards under international human rights law of particular migration measures invariably had a knock-on effect, leading to negative impacts on a range of migrants' human rights.

The States visited and the European Union institutions should therefore take urgent action in implementing their human rights obligations towards migrants and the recommendations resulting from the missions provide practical guidance on how to achieve this. The Office of the UN High Commissioner for Human Rights will continue its dialogue with the relevant States and the European Union in following up on the implementation of the recommendations. It will work closely with other international organizations to support the human rights of migrants, as well as with Governments, national human rights institutions and ombudspersons, relevant civil society partners and migrant associations to advance the human rights of migrants in practice.



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