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Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil
political, economic, social and cultural rights,
including the right to development**

Resolution adopted by the Human Rights Council*

15/16

Human rights of migrants

The Human Rights Council,

Reaffirming the Universal Declaration of Human Rights, which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Vienna Convention on Consular Relations, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

Recalling also the United Nations Convention against Transnational Organized Crime and the Protocols thereto, reaffirming the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and recalling the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its fifteenth session (A/HRC/15/60), chap. I.

Recalling further previous resolutions of the General Assembly, the Commission on Human Rights and the Council on the protection of the human rights of migrants, the most recent being Council resolution 12/6 of 1 October 2009 and Assembly resolution 64/166 of 18 December 2009, and recalling also the work of various special mechanisms of the Council that have reported on the situation of human rights and fundamental freedoms of migrants,

Reaffirming that everyone has the right to freedom of movement and residence within the borders of each State, and to leave any country, including his own, and to return to his country,

Concerned at the large and growing number of migrants, especially women and children, who attempt to cross international borders without the required travel documents, which places them in a particularly vulnerable situation, and recognizing the obligation of States to respect the human rights of those migrants,

Bearing in mind the obligations of States under international law, as applicable, to exercise due diligence to prevent crimes against migrants, to investigate and punish perpetrators and, in accordance with applicable law, to rescue victims and to provide for their protection, and that not doing so violates and impairs or nullifies the enjoyment of the human rights and fundamental freedoms of victims,

Bearing in mind also that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, as well as full respect for the human rights and fundamental freedoms of migrants,

Affirming that crimes against migrants and trafficking in persons continue to pose a serious challenge and require a concerted international assessment and response and genuine multilateral cooperation among countries of origin, transit and destination for its eradication,

Aware that, as criminals take advantage of migratory flows and attempt to circumvent restrictive immigration policies, migrants become more vulnerable to, inter alia, kidnapping, extortion, forced labour, sexual exploitation, physical assault, debt servitude and abandonment,

Stressing the obligation of States to protect the human rights of migrants regardless of their legal status, and expressing its concern at measures which, including in the context of policies aimed at reducing irregular migration, treat irregular migration as a criminal rather than an administrative offence where the effect of doing so is to deny migrants full enjoyment of their human rights and fundamental freedoms,

Emphasizing the global character of the migratory phenomenon, the importance of international, regional and bilateral cooperation and the need to protect the human rights of migrants, particularly at a time in which migration flows have increased in the globalized economy and take place in a context of new security concerns,

1. *Takes note with appreciation of the study of the Office of the United Nations High Commissioner for Human Rights on 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,¹ and invites States to take into account the conclusions and recommendations of the study when designing and implementing their migration policies;*

¹ A/HRC/15/29.

2. *Takes note* of the work undertaken by the special procedures on the right to health and adequate housing in the context of migration;

3. *Calls upon* States that have not yet done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a matter of priority, and requests the Secretary-General to continue his efforts to promote and raise awareness of the Convention;

4. *Calls upon* States parties to the United Nations Convention against Transnational Organized Crime and the supplementing protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, to implement them fully, and calls upon States that have not yet ratified or acceded to them to consider doing so as a matter of priority;

5. *Encourages* Member States that have not already done so to enact domestic legislation and take further effective measures to combat international trafficking in and smuggling of migrants, recognizing that these crimes may endanger the lives of migrants or subject them to harm, servitude or exploitation, which may also include debt bondage, slavery, sexual exploitation or forced labour, and also encourages Member States to strengthen international cooperation to combat such trafficking and smuggling;

6. *Requests* States, recognizing the efforts made in this regard, to ensure respect for the human rights and fundamental freedoms of migrants, and:

(a) To effectively promote and protect the human rights and fundamental freedoms of all migrants, including, in particular, the right to life and physical integrity, especially that of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party;

(b) To adopt concrete measures to prevent violations of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants and their families respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants and their families, such as arbitrary detention, torture and violations of the right to life, including extrajudicial executions, during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

(c) To undertake, in cooperation with relevant organizations, information campaigns aimed at clarifying prospects, limitations, potential risks and rights in the event of migration in order to enable everyone, in particular women and children and their family members, to make informed decisions and to prevent them from becoming victims of trafficking or falling prey to transnational organized networks of smugglers or organized criminal groups;

7. *Expresses its concern* at legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants, and reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants;

8. *Calls upon* all States to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention and, where necessary, to review detention periods in order to avoid excessive detention of irregular migrants, and to adopt, where applicable, alternative measures to detention;

9. *Reiterates its concern at:*

(a) The increasing activities of transnational and national organized crime and others who profit from crimes against migrants, especially women and children, without regard for dangerous and inhumane conditions and in flagrant violation of domestic laws and international law and contrary to international standards;

(b) The high level of impunity enjoyed by traffickers and their accomplices as well as other members of organized crime and, in this context, the denial of rights and justice to migrants who have suffered from abuse;

10. *Encourages States to protect victims of national and transnational organized crime, including kidnapping, trafficking and, in some instances, smuggling, through, where applicable, the implementation of programmes and policies that guarantee protection and access to medical, psychosocial and legal assistance;*

11. *Recalls that the Universal Declaration on Human Rights recognizes that everyone has the right to an effective remedy by the competent national tribunals for acts violating their fundamental rights, and therefore:*

(a) Requests States to prosecute, in conformity with applicable law, any crime against or violation of the human rights of migrants and their families, *inter alia*, arbitrary detention, torture and violations of the right to life, including extrajudicial executions, during their transit from their country of origin to the country of destination and vice versa, including through national borders;

(b) Affirms that it is essential to place the protection of human rights at the centre of measures taken to prevent and end abuses against migrants, and to protect, assist and provide access to adequate redress to victims, in accordance with applicable law, including the possibility of obtaining compensation;

12. *Reaffirms the rights set forth in the Universal Declaration of Human Rights and the obligation of States under the International Covenants on Human Rights, and in this regard strongly condemns the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, including on the basis of religion or belief, and urges States to apply and, where needed, reinforce the existing laws when xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts;*

13. *Stresses the importance of international, regional and bilateral cooperation in the protection of the human rights of migrants, and therefore:*

(a) Encourages States to participate in international and regional dialogues on migration that include countries of origin, transit and destination, and invites them to consider negotiating bilateral and regional agreements on migrant workers within the framework of applicable human rights law and designing and implementing programmes with States of other regions to protect the rights of migrants;

(b) Also encourages States to take the necessary measures to achieve policy coherence on migration at the national, regional and international levels, including by ensuring coordinated child protection policies and systems across borders that are in full compliance with international human rights law;

(c) Further encourages States to strengthen further their cooperation in protecting witnesses and victims of smugglers and traffickers;

(d) Encourages States to allow persons claiming to be in need of protection to enter without delay the applicable national procedure for protection, including the national asylum procedure, in the country where they are present;

14. *Takes note* of actions taken by several special procedures of the Council and treaty bodies towards the effective prevention of violations of the human rights of migrants, including through joint statements and urgent appeals, and encourages them to continue with their collaborative efforts to this end, within their respective mandates;

15. *Decides* to remain seized of the matter.

*31st meeting
30 September 2010*
[Adopted without a vote.]
