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

Angola, Argentina, Belarus*, Benin, Bolivia (Plurinational State of)*, Colombia*, Costa Rica, Djibouti*, Ecuador, El Salvador*, Guatemala, Honduras*, Kyrgyzstan*, Mali*, Mexico*, Morocco*, Nigeria*, Paraguay*, Peru, Somalia*, Sri Lanka*, State of Palestine*, Uruguay*: draft resolution

23/...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, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status,

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 previous resolutions of the General Assembly, the Commission on Human Rights and the Human Rights Council on the protection of the human rights of migrants and the work of various special mechanisms of the Council that have reported on the situation of human rights and fundamental freedoms of migrants,

Bearing in mind the High-level Dialogue on International Migration and Development that will be held during the sixty-eighth session of the General Assembly, which provides a unique opportunity to work towards a global agenda for effective,

* Non-Member State of the Human Rights Council.

inclusive migration governance and to identify measures that promote the role of migrants as agents of innovation and development,

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

Recognizing the valuable economic, social and cultural contributions of migrants to the communities of countries of origin and destination,

Reaffirming that everyone is entitled to all human rights and fundamental freedoms, without distinction of any kind, including the right to life, liberty and security of person, wherever the person is and regardless of his or her immigration status,

Reaffirming also that States have the obligation to respect the principle of non-refoulement and the prohibition of collective expulsion,

Recognizing that States are responsible for promoting and protecting the human rights of all persons, including irregular migrants, who are in their territory and subject to their jurisdiction,

Deeply concerned at the large and growing number of migrants, including women and children, who have lost their lives in attempting irregular border crossings, and recognizing the obligation of States to protect and respect the human rights of those attempting irregular border crossings,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to border control and the orderly management of migration, must be in accordance with international human rights obligations in order to uphold the human rights and fundamental freedoms of all migrants,

Expressing its concern at measures that, 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 the 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, built on a partnership approach, and the need to protect the human rights of migrants, particularly at a time in which the increased regional and global mobility of persons, the structural changes in the global economy, and the current economic crisis generate new opportunities and challenges for countries of origin, transit and destination,

Stressing that criminalization and restrictive migratory policies increase the irregular crossings, may increase vulnerability to organized crime, and may benefit criminal organizations,

Expressing concern at the systematic detention of migrants to pursue migration policies, the use of prolonged detention of persons without prospect of removal, the detention of children and pregnant women, and the absence of alternatives to detention, and that return procedures often fail to provide the necessary safeguards,

Stressing the need for States to develop adequate procedures for detention that ensure respect for legal, procedural and substantive guarantees and the development and use of alternatives to detention,

1. *Takes note with appreciation* of the report of the Special Rapporteur on the human rights of migrants,¹ and welcomes his work;

2. *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;

3. *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 migration 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 all migrants;

4. *Calls upon* States and regional and international organizations with competence in the field of regulating migration and implementing migration policies:

(a) To effectively promote and protect the human rights and fundamental freedoms of all migrants, including, in particular, the right to life, liberty and security of person, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international human rights 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 their obligations under international human rights law, and to pay particular attention to women and girls, who may be exposed to sexually-based violence;

(c) 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;

(d) To regularly assess their policies of migratory control and enforcement with regard to the risks they may pose for the loss of life of migrants, in order to do their utmost to avoid such situations;

(e) To guarantee the full enjoyment of all persons to the right to the highest attainable standard of physical and mental health without distinction of any kind, and to this end to provide emergency medical and first-aid attention for migrants who need it, regardless of their immigration status, and to create a safe and enabling environment in which individuals and organizations that provide such attention can operate free from hindrance and insecurity;

(f) To take care that domestic law and administrative provisions and their application facilitate the work of humanitarian workers and human rights defenders providing humanitarian assistance to and defending the human rights of irregular migrants, including by avoiding any criminalization, stigmatization, impediments, obstructions or restrictions thereof contrary to international human rights law;

¹ A/HRC/23/46.

(g) To avoid criminalization of irregular migrants in language, policies and practice, and to refrain from using incorrect terminology such as “illegal migrant”;

(h) To respect the human rights and the inherent dignity of migrants, to put an end to arbitrary arrest and detention, to review detention periods in order to avoid excessive detention of irregular migrants and to resort to detention only when there are no viable alternative measures to detention;

(i) To respect in all circumstances the principle of non-refoulement and the prohibition of collective expulsion;

(j) To put in place, if they have not yet done so, independent oversight mechanisms that can easily be applied in order to ensure full compliance with international human rights law by all programmes and institutions in the field of migration;

(k) To participate in international and regional dialogues on migration that include countries of origin, transit and destination;

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

6. *Requests* the Special Rapporteur to continue to pay attention to the topic of the universal enjoyment of human rights for all migrants;

7. *Encourages* States, and regional and international organizations to enhance cooperation with the Special Rapporteur;

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