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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

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

## Summary of the intersessional panel discussion on the human rights of migrants in vulnerable situations

### Report of the Office of the United Nations High Commissioner for Human Rights\*

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 47/12 of 26 July 2021, in which the Council requested the Office of the United Nations High Commissioner for Human Rights to convene an intersessional panel discussion on the human rights of migrants in vulnerable situations, with a particular focus on the experiences of migrants, highlighting best practices and challenges in this regard, and to prepare a summary report on the panel discussion, which was held on 21 February 2022.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Background

1. In its resolutions 35/17 and 47/12, the Human Rights Council expressed serious concern about the vulnerable situations faced by migrants. They can result from the reasons for leaving their country of origin, circumstances encountered by migrants en route, at borders or at destination, discrimination related to specific aspects of their identity or circumstance, or a combination of those factors. The Human Rights Council, in its resolutions 32/14 and 35/17, requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations on the basis of existing legal norms. The initiative was aimed at addressing critical protection gaps in relation to the human rights of migrants who fall outside existing legal protection categories. At its thirty-fourth session, in 2017, the United Nations High Commissioner for Human Rights submitted to the Council his report containing the principles and practical guidance on the protection of the human rights of migrants in vulnerable situations.<sup>1</sup> Drawn directly from international human rights law and related international standards, the principles and guidelines present a comprehensive framework for understanding how migrants may find themselves in vulnerable situations and at increased risk of suffering violations and abuse, and provide practical guidance for addressing those situations.

2. In the Global Compact for Safe, Orderly and Regular Migration,<sup>2</sup> Member States acknowledged that situations of vulnerability faced by migrants may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination. Under Objective 7 of the Global Compact, Member States committed to address and reduce vulnerabilities in migration and to protect the human rights of migrants in situations of vulnerability, in accordance with obligations under international law. To realize this commitment, the Global Compact recommends that Member States, inter alia, develop national policies and programmes to address the needs of migrants in situations of vulnerability by taking into consideration relevant recommendations of the above-referenced principles and guidelines. As a complementary tool, the United Nations Network on Migration has published a guidance note on regular pathways for admission and stay for migrants in situations of vulnerability, to promote pathways for admission and stay that address and reduce situations of vulnerability. Furthermore, in his report on the Global Compact,<sup>3</sup> the Secretary-General stressed the need to prevent and address situations of vulnerability in migration and to better protect, empower and promote the rights of migrants in vulnerable situations.

3. In its resolution 47/12, the Council requested OHCHR to convene an intersessional panel discussion on the human rights of migrants in vulnerable situations, with a particular focus on the experiences of migrants, highlighting best practices and challenges in this regard. The panel discussion was held on 21 February 2022, with a view to illustrating how situations of vulnerability can be associated with the drivers of migration, circumstances encountered in transit, at borders and at their destinations, discrimination related to specific aspects of a person's identity or circumstances, or a combination of those factors. The aim was also to highlight challenges and promising practices in relation to the respect, protection and fulfilment of the human rights of migrants in vulnerable situations; to determine means and ways to prevent, identify and address situations of vulnerability; to seek recommendations on how the Human Rights Council could move forward to ensure the protection of the human rights of migrants in vulnerable situations; and to inform preparations for the International Migration Review Forum and its progress declaration.

4. In the same resolution, the Human Rights Council requested OHCHR to prepare a summary report on the discussion held on 21 February 2022, to submit it to the Council at its fiftieth session and to the General Assembly at its seventy-seventh session, and to bring the

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<sup>1</sup> [A/HRC/34/31](https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session34/list-reports); see also the attached conference room paper, available at <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session34/list-reports>.

<sup>2</sup> General Assembly resolution 73/195, annex.

<sup>3</sup> [A/76/642](https://www.un.org/press/en/2022/sgsmr19202201.doc1).

report to the attention of the International Migration Review Forum and the United Nations Network on Migration. The present report is submitted to the Council pursuant to that request.

## II. Opening remarks 4

5. The High Commissioner for Human Rights, Michelle Bachelet, opened the intersessional panel discussion. She expressed her concern for the tens of millions of migrants who lived in the shadows, facing violations and abuses of their human rights and lethal disregard for their dignity. She pointed to the criminalization of migration and of the provision of support and assistance to migrants. She referred to gender-based violence, arbitrary detention, family separation, loss of lives, and harmful and dehumanizing narratives. The High Commissioner underscored that migrants might become vulnerable to human rights violations and abuses owing to a number of factors. First, there were reasons that compelled people to move. Migrants who left their countries out of necessity rather than by free choice were at greater risk of human rights violations, and might do so as a result of family separation, the adverse effects of climate change and a lack of economic and social rights. A second factor involved the precarious circumstances that migrants faced in transit, at borders or in countries of destination; lack of access to regular pathways, immigration detention, pushbacks and unsustainable returns were among those policies and practices that created or exacerbated situations of vulnerability. Thirdly, situations of vulnerability might be associated with personal factors. The High Commissioner recalled that, although migrants were not inherently vulnerable, many continued to suffer pervasive discrimination owing to personal factors, including age, gender or disability.

6. The High Commissioner highlighted that human rights-based migration policies could reduce the situations of vulnerability faced by migrants. She commended concrete action taken by States during the coronavirus disease (COVID-19) pandemic to reduce vulnerabilities, including providing migrants, regardless of their status, with access to health-care services related to combating COVID-19; extending visa and residence permits to forestall falling into irregular status; and creating alternatives to immigration detention. She concluded by pointing to critical actions to address and reduce situations of vulnerability in migration, such as regularization mechanisms based on human rights and humanitarian grounds, psychosocial counselling at international borders and “firewalls” to separate immigration enforcement from public service provision.

7. The High Commissioner encouraged the Human Rights Council and its subsidiary bodies and mechanisms to strengthen the promotion and protection of the human rights of migrants. She suggested that an annual panel discussion on the human rights of migrants be included on the Council’s agenda.

8. The Vice-Minister of Multilateral Affairs and Human Rights, Ministry of Foreign Affairs of Mexico, Martha Delgado Peralta, recalled that, in its resolution 47/12, the Human Rights Council focused on the protection of the human rights of migrants in vulnerable situations, who were more exposed to discrimination, marginalization and exploitation, and who had suffered the most from the impacts of the COVID-19 pandemic. In the resolution, the Human Rights Council highlighted the importance of equitable access to health care and other basic services, and expressed concern about pushback practices, as well as other policies that had led to the violation of migrants’ human rights and increase discrimination, inequality and the vulnerabilities of migrants. The Council recognized that all migrants, regardless of their migration status, were human rights holders, and reaffirmed the need to protect those rights. The Council called upon States to ensure that their actions were consistent with international law and to adopt a comprehensive and integral approach to migration policies, to facilitate safe, orderly, regular and responsible migration, and urged all countries to avoid approaches that might aggravate vulnerable situations. It also called upon all States to cooperate at the international level.

9. Ms. Delgado Peralta emphasized that Mexico faced important challenges in addressing the specific and differentiated needs of people in mixed migration, including women, as well as children and adolescents, LGBTQI+ persons, older persons, persons with disabilities, persons in poor health and indigenous people. She noted that Mexico had specific

legal frameworks, programmes and actions in place to ensure respect for human rights and provide comprehensive assistance to people in mixed migratory movements. For instance, reformed legal frameworks prohibited the immigration detention of children; operational protocols were developed and fully considered or privileged the best interests of children, family unity and reunification; and accommodations were designed to provide dignified and safe spaces. Moreover, she noted that Mexico had strengthened its action to combat gender-based violence, trafficking in persons and discrimination against migrant women and girls.

10. Ms. Delgado Peralta stressed that the pandemic had highlighted the valuable contribution of migrants, but also their heightened vulnerability to human rights violations and abuses, and underlined the need to urgently translate international commitments into concrete actions that promoted and protected the dignity and human rights of migrants. She highlighted the Global Compact as a key framework to guide the design of laws, policies and practices needed to achieve humane and rights-based governance of migration. She concluded by echoing the Secretary-General on the need to focus action in the area by achieving inclusive societies, facilitating regular and safe migration and reducing the vulnerabilities of migrants, thus ensuring their protection.

### **III. Situations of vulnerability that migrants encounter in transit, at borders and at their destinations**

#### **A. Statements by panellists**

11. The moderator of the first session, the Permanent Representative of the Philippines to the United Nations Office and other international organizations in Geneva, Evan P. Garcia, reiterated that all migrants, regardless of status, were entitled to the protection of their human rights. He noted that it was the responsibility of States, communities and individuals to ensure that the human rights of migrants were respected and upheld. Mr. Garcia commended the multidimensional and inter-agency work that had been carried out in the crucial area of human rights protection of migrants in vulnerable situations. He called for high-level commitment to promote the human rights of migrants and to strengthen international cooperation and dialogue in this regard.

12. The Special Rapporteur on the human rights of migrants, Felipe González Morales, emphasized that restrictive migration and asylum policies, including limited safe and regular pathways, lack of effective and adequate protection measures and lack of access to services, contributed to the specific situations of vulnerability migrants face in countries of origin, transit and destination. He underscored that such situations of vulnerability had negative impacts on migrants' ability to exercise their human rights and exacerbated pre-existing discriminatory social and cultural norms, as well as inequality. The Special Rapporteur further underlined situations of vulnerability migrants encountered on their journey, including pushback practices which deprived migrants of an individualized assessment of vulnerabilities and protection needs under international law, heightened the risk of refoulement and increased the risk of further human rights violations. Situations of vulnerability also included the separation of migrant children from their families, immigration detention of children and families, forced returns undertaken without screening mechanisms and limited access to health-care and other essential services. The Special Rapporteur emphasized that these situations of vulnerability resulted from laws, policies and practices that fell short of relevant international human rights norms and standards. He called upon States to develop human rights-based, gender-responsive and child-sensitive approaches to migration and border governance. He recalled that crossing an international border in an irregular manner should not constitute a crime, and did not deprive migrants of their human rights, including due process guarantees. The Special Rapporteur encouraged States to offer special residence permits and regularization processes for those in vulnerable situations who did not qualify as refugees; to provide training for officials in contact with migrants; and to put into place screening and referral mechanisms to identify and provide appropriate protection to migrants in vulnerable situations. He stressed that individualized assessment of vulnerabilities and protection needs was key to ensuring that those in need of

safety, assistance and support were effectively identified and given appropriate protection procedures and services.

13. The Associate Director of the Refugee Law Lab of York University, Petra Molnar, stressed that the development of migration management and border technologies occurred in a broader context, increasingly characterized by the criminalization of migrants, anti-migrant sentiments, and practices such as pushbacks, which led to thousands of deaths at borders. She spoke of automated and artificial intelligence-powered surveillance towers and artificial intelligence surveillance technology, including the use of robo-dogs at the United States of America/Mexico border. She also referred to algorithmic motion and risk detection surveillance, finger-print scanners and virtual reality technology currently being used to monitor migrants in reception centres at the European Union external border. She underlined the human rights concerns those surveillance technologies presented to people crossing borders and added that surveillance and smart borders did not deter dangerous crossings, but instead exacerbated the vulnerability of migrants, particularly those in irregular situations. She noted that facial recognition technology was racially discriminatory, and artificial intelligence-type lie detectors had failed to address such complex factors as cross-cultural communication or the impact of trauma on memory. She stressed that more regulation, oversight and accountability mechanisms for border technologies were needed. She noted that new and emerging border technologies did not address the systemic and historical reasons why people were marginalized and compelled to migrate.

14. The Commissioner and Vice-Chairperson of the National Human Rights Commission of Malaysia, Jerald Joseph, outlined key situations of vulnerability for migrants in countries of destination, including forced labour, child labour, unpaid or deducted salaries, debt bondage, withholding of passports and other personal documentation, use of force by employers, sexual harassment and human trafficking. He noted that the COVID-19 pandemic had exacerbated the situations of vulnerability faced by migrant workers, who were often living in crowded spaces, at risk of losing their jobs, afraid to access health care due to large-scale migration enforcement raids and exposed to increasing xenophobia and anti-migrant narratives. To address situations of vulnerability of migrants, he recommended that States reform legislation to protect against forced labour and improve implementation; ensure due diligence within supply chains of all businesses; establish accessible complaint mechanisms for migrants; enhance access to consular services; and ensure that migration governance was trauma-informed, victim-centred, gender-responsive and age-appropriate and did not criminalize victims.

15. The Director of the Platform for International Cooperation on Undocumented Migrants, Michele LeVoy, drew upon the voice of an undocumented migrant living in Belgium to illustrate the feeling of powerlessness felt by migrants in irregular situations. She noted that having an irregular migration status was strongly correlated with social and economic insecurity. Drawing on European examples, she further highlighted barriers and solutions for undocumented migrants to access health services and justice and regularization processes. In her view, the experiences of several countries that adopted legislation enabling undocumented migrants to have access to health care, such as Belgium, France, Italy and Sweden, showed that it was feasible. She noted, however, that challenges existed in terms of implementation, including the risk of immigration enforcement when migrants accessed health care services. Ms. LeVoy recommended the adoption of legislative and practical firewalls between the provision of basic services and immigration enforcement. In relation to access to justice, she stressed that immigration enforcement was currently being prioritized over labour rights and victim protection. She identified promising practices, such as a recent measure introduced in Spain to ensure that women were able to safely report domestic violence without fearing deportation and were also granted access to a residence permit. She recommended holistic approaches that supported undocumented migrants' recovery and integration, including by enforcing labour and victims' rights for all migrants, regardless of status, and addressing violations and abuses committed against them. Ms. LeVoy also noted that Governments were extending or issuing secure residence and work permits to prevent migrants from falling into irregular situations and experiencing further social exclusion. She noted that a study by the European Migration Network of the European Commission found that in European Union member States, along with the United Kingdom of Great Britain and Northern Ireland and Norway, 60 different national protection procedures existed at the end

of 2018, including procedures based on humanitarian grounds, exceptional circumstances, medical grounds, child protection, non-refoulement and climate change. Ms. LeVoy echoed the call of the Secretary-General for cooperation through State-led and other regional, subregional and trans-regional processes and platforms to expand and diversify rights-based pathways for regular migration, including regularization.

## **B. Plenary discussion**

16. During the first session, representatives of the following States and organizations took part in the discussion: Australia, Bangladesh, Belarus, Chile, China, Colombia, Cuba, Croatia, Egypt, El Salvador, Guatemala, Haiti, Malaysia, Panama, Switzerland, European Union, Comisión Argentina para Refugiados y Migrantes, Commission nationale des droits humains of the Niger, National Human Rights Council of Morocco, Justice Centre of Hong Kong, Doctors without Borders, United Nations Office on Drugs and Crime and Special Rapporteur on trafficking in persons, especially women and children. Written statements were received from the following participants who were unable to participate owing to time constraints: the representatives of Tunisia, European Network on Statelessness, International Committee of the Red Cross, Red Jesuita con Migrantes: America Latina y el Caribe, Centre for Human Rights of Andrés Bello Catholic University and Maat for Peace, Development and Human Rights.

17. Several participants reiterated that all migrants, regardless of status, were entitled to all human rights. Many highlighted States' obligations under international law to uphold the human rights of migrants and the commitment to ensure the effective respect, protection and fulfilment of the human rights of migrants, regardless of status, at all stages of migration. Several participants called for greater efforts to protect the human rights of migrants in vulnerable situations. The role of the Human Rights Council and the importance of addressing migration issues within the Council were highlighted. Some participants also emphasized the importance of human rights-compliant implementation of the Global Compact, consistent with its guiding principles. Other participants stressed the need to strengthen international cooperation to protect the lives, safety and dignity of migrants, and responsibility-sharing to address migration issues and challenges. The importance of ensuring a whole-of-Government and whole-of-society approach to integration, protection and assistance was also underscored.

18. It was recognized that migrants were not inherently vulnerable but that, instead, vulnerability arose when migrants were exposed to situations where their human rights were violated, which could happen at all stages of migration. Situations of vulnerability could be created, exacerbated or alleviated by State laws, policies and practices. To prevent, identify and address such situations of vulnerability, several participants emphasized the need for migration laws, policies and practices to put the protection of the human rights of migrants at the centre of the discussion, guaranteeing non-discrimination and inclusion in accordance with international standards. Many participants referred to the importance of, *inter alia*, providing assistance, protection, psychological support and comprehensive care to migrants in situations of vulnerability, ensuring access to information, fostering integration, guaranteeing access to justice and upholding the rights to family life, family reunification and the best interests of the child. The need for States to adopt targeted measures that responded to increased vulnerability due to age, gender, disability and other personal characteristics was also noted. Reference was made to Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations,<sup>4</sup> and States and other stakeholders were invited to use this guidance to close gaps in human rights protection for migrants.

19. Several participants expressed particular concern for the situations of vulnerability that migrants encountered in transit and at borders. They stressed that restrictive border governance measures did not prevent irregular migration but instead compelled migrants to take more dangerous and precarious journeys and ultimately exacerbated situations of

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<sup>4</sup> Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.

vulnerability. Other participants noted that such measures, including failures to search for and rescue migrants in distress, excessive use of force, efforts to criminalize or obstruct the work of humanitarian organizations and human rights defenders, and a lack of pathways for regular migration were correlated with increased mortality rates and continued deaths and enforced disappearance of migrants at sea and on land. Some participants demanded that States cooperate in efforts to provide life-saving humanitarian assistance to migrants and cease actions that hinder or criminalize such efforts.

20. Many participants referred to instances of violence perpetrated against migrants, including by State and non-State actors. They referred to the situations of migrants in transit and at international borders, who faced starvation, prolonged exposure to extreme weather conditions, kidnappings, robbery, extortions, gender-based violence, killings, torture and ill-treatment, family separation and systematic arbitrary detention in inhumane conditions. It was recommended that more attention be paid to safeguarding human rights at international borders, including by investigating allegations of human rights violations and abuses committed against migrants and ensuring accountability. Preserving access for humanitarian actors, civil society organizations, national human rights institutions and other relevant stakeholders to migrants at international borders was also highlighted as a recommendation.

21. Many participants expressed concern relative to pushbacks, collective expulsions and voluntary returns, which failed to uphold the principle of free, prior and informed consent. Some participants recalled international human rights and refugee law and noted limited mechanisms for individual assessment at borders, including refusals by some authorities to consider applications for protection, or lack of access to legal representation and interpretation. Other participants noted that voluntary return practices were sometimes accompanied by coercion, threats or a denial of migrants' human rights, including arbitrary detention. The detrimental impact of immigration detention on migrants' physical and mental health was underscored. Some participants referred to the human rights impact of unsustainable return practices, including forced returns to countries of origin where migrants lacked support networks and experienced family separation, violence, lack of access to food, water and other basic services, or where their physical and mental health were at risk. Other participants emphasized that all such border governance practices failed to protect migrants' human rights and perpetuated an avoidable cycle of violence, abuse and loss of human lives. Some participants recommended that States end not only the criminalization of irregular migration, but also the harmful practice of immigration detention, including by abolishing in law and in practice the immigration detention of children, and stopping family separation in the context of border governance.

22. Migrants may be subjected to enforced disappearance or go missing under a variety of circumstances in the context of migration, including at sea, in detention, at borders or while transiting through countries experiencing armed conflict or other violence. Some participants highlighted the need for greater efforts to prevent family separation and enforced disappearance, including by reviewing restrictive migration policies and laws to ensure they did not exacerbate the risk of migrants going missing or perishing. Many participants called for expanded pathways for safe and regular migration to prevent loss of lives along migratory routes. Where migrants did go missing, States were called upon to cooperate, including with affected families, in the setting up of search and rescue mechanisms that enabled information exchange and coordination along migratory routes, while prioritizing the rights of migrants and the needs of affected families.

23. Among the vulnerabilities faced by migrants in transit, at borders and at their destinations, some participants highlighted the risk of statelessness, often as a consequence of barriers to birth registration for children born in transit, or of a lack of nationality status soon after birth, and recommended putting into place dedicated statelessness determination procedures to identify and record statelessness on arrival.

24. Some participants underlined that, when utilized in relation to migration governance, existing, new and emerging technologies must be used in a manner and for objectives consistent with international human rights law, including to avoid creating or exacerbating situations of vulnerability. Some participants stressed the importance of ensuring that surveillance technologies or efforts to measure, predict and track migratory movements not have the impact of compelling migrants into even more perilous migratory routes; that such

technologies not have a discriminatory impact on migrants; that the collection, use, sharing and storage of biometric and personal information not facilitate arbitrary detention, collective expulsion, refoulement or other human rights violations; and that all existing, new and emerging technologies uphold at all times the right to privacy and protection of migrants' personal data.

25. Several participants urged States to prevent trafficking in persons and smuggling of migrants, ensure the effective prosecution of perpetrators and protect victims. It was emphasized that the prevention of trafficking and smuggling required an expansion of pathways for safe and regular migration, non-punishment of victims, and appropriate protection for all migrants, regardless of status. Some participants also recognized that to break the cycle of trafficking it was essential that migrants have access to work, housing, health care and livelihoods without discrimination. There was a need for a greater focus on the prosecution of aggravated smuggling offences to protect the life, safety and human rights of migrants while refraining from the criminalization of migrants for having been the object of smuggling, or of humanitarian organizations and human rights defenders who assisted migrants in need.

26. The need for expanding pathways for regular migration that facilitated safe admission and stay, including regularization, was reiterated throughout the discussion, as a key tool for preventing and addressing situations of vulnerability along migratory routes and ensuring migrants' socioeconomic integration.

27. Several participants also highlighted that migrants in irregular situations were often highly vulnerable to discrimination, abuse and marginalization, lived and worked in the shadows, and were deprived of their human rights. They were also particularly affected by depression, fear, anxiety and symptoms of post-traumatic stress disorder. States were urged to ensure full and equal access to education, health care, justice and social protection, which could happen if legal, administrative and practical barriers were removed, and migrants and their families had no fear of being reported to migration authorities when accessing services.

28. Many participants noted with concern that the COVID-19 pandemic aggravated vulnerable situations to which migrants are exposed. During the pandemic, migrants were confronted with discrimination, xenophobia, loss of livelihoods and a lack of access to health care, social protection and assistance. Other participants expressed concern about ongoing border closures, restrictions on entry, suspension of the right to asylum and forced returns carried out during the pandemic. In their efforts to recover from the pandemic, States were called upon to combat racial discrimination, xenophobia, religious intolerance and hate crimes against migrants, to support measures to improve integration and social cohesion and to ensure non-discriminatory access to justice, education, health, decent work, social security and essential services.

29. Promising practices were mentioned during the panel discussion. The representative of Australia provided information about the country's annual regular migration programme, with economic, family and humanitarian pathways. The representative of Chile noted that the country's consular authorities were able to issue letters of safe conduct to facilitate family reunification. The representative of Colombia reported on the regularization programme for migrants from the Bolivarian Republic of Venezuela and the adoption of specific measures to prevent statelessness of migrant children. The representative of Guatemala noted that the national migration law recognized equal access to public services. The representative of Croatia indicated that it cooperates closely with civil society, religious communities, local communities and migrants for a successful integration system. The representative of El Salvador referred to the development of a consular monitoring mechanism to verify contracting companies' compliance with relevant standards and prevent situations of vulnerability in destination countries. The representative of Malaysia reported that the country was developing a national action plan on business and human rights to prevent and address human rights violations caused by business activities, including against migrants. The representative of Tunisia highlighted efforts made in cooperation with civil society and international organizations to assist migrants arriving on its territory, and to provide them with social, education and health services, including COVID-19 vaccination. The representative of Egypt reported that during the pandemic a complaint mechanism for migrant women victims of violence was kept open. The representative of Malaysia stated that

its free COVID-19 vaccination programme was extended to all foreigners residing in the country.

30. In the closing remarks for the first session, Mr. González Morales stressed again the crucial need for regularization processes and other regular migration pathways, which could address and reduce vulnerabilities and facilitate migrants' access to public services. He recommended that emergency regularization processes put in place during the pandemic become lasting tools of States' migration governance, and also urged States to ensure that independent monitoring of the human rights of migrants could be carried out, including by national human rights institutions and civil society. Ms. Molnar reiterated the importance of focusing on the lives and experiences of migrants who were impacted by State migration policies, including by ensuring that their perspectives were represented in relevant policy discussions. Mr. Joseph pointed to the need for anti-corruption measures within labour supply chains and hiring industries. He noted that migrant workers were often afraid to submit a complaint and that their right to redress must be taken seriously to prevent exploitation. Ms. LeVoy reiterated the importance of ensuring access to services for all migrants regardless of their status, and of enhancing the availability and accessibility of regular pathways and regularization processes. She also called for independent mechanisms to monitor human rights violations at international borders. In respect of migration governance, Mr. Garcia concluded by recalling the importance of maintaining whole-of-government, whole-of-society and whole-of-United Nations efforts. He recommended continued discussions on situations of vulnerability impacting migrants and urged all actors to take responsibility, and find ways to scale up international cooperation and to address harmful narratives against migrants and migration, including through the implementation of the Global Compact.

## **IV. Situations of vulnerability arising from the reasons for migration**

### **A. Statements by panellists**

31. The moderator of the second session of the panel discussion, the Permanent Representative of Morocco to the United Nations Office and other international organizations in Geneva, Omar Zniber, expressed concern at the alarming rate of persons perishing at sea and at the prevalence of practices incompatible with international law such as pushbacks, failure to search for and rescue migrants in distress, and denial of access to asylum procedures. He stressed that a multidimensional approach to mixed movements was crucial, including by providing assistance to migrants in situations of vulnerability. Mr. Zniber referred to the experience of Morocco with assistance to migrants in vulnerable situations, for instance through established referral mechanisms for victims of trafficking and through collaboration with OHCHR on strengthening the capacity of law enforcement officials at borders on human rights issues. He noted that discriminatory legislation in countries of destination and politicized public narratives on migration exacerbated the vulnerabilities of migrants. Underlining the commitment on data collection and evidence-based policies set out in the Global Compact, he noted that Morocco hosted the African Migration Observatory, which developed accurate data on migration in the African continent and provided technical guidance to African States on ways to establish more effective migration policies. Mr. Zniber called for active participation in the first International Migration Review Forum of the Global Compact.

32. The Envoy of the Chair of the Platform on Disaster Displacement, Walter Kaelin, emphasized that people moving across borders in the context of the adverse effects of climate change and disasters often found themselves in vulnerable situations. To illustrate how States could act to prevent and address situations of vulnerability in that context, Mr. Kaelin highlighted the example of Namibia, where the Government, through the Namibia Red Cross Society, facilitated lifesaving humanitarian assistance to people compelled to leave drought-affected regions in Angola through the provision of non-discriminatory access to food and shelter, regardless of the manner in which they had crossed the border, regular or irregular. He underlined that being granted admission and stay in countries where lifesaving assistance

could be provided was a primary need of people who moved across borders in the context of disasters and the adverse effect of climate change. He added that people were exposed to heightened vulnerability to human rights violations and abuses when they were compelled to resort to irregular channels. In contrast, he indicated that providing pathways for safe and regular migration in accordance with commitments in the Global Compact was an effective means to prevent and address vulnerabilities. He noted that pathways for safe and regular migration already existed in the practice and legislation of some countries, for example providing for humanitarian visas or temporary protection. He indicated that domestic immigration quotas providing for long-term or permanent residency for people from climate-vulnerable regions could be another tool, but that such quotas rarely existed. He added that free movement agreements also had a huge potential to provide regular migration pathways to people anticipating or affected by the impacts of climate change and disasters, noting that they allowed affected people to find refuge and access to employment, and to avoid dependency on humanitarian assistance. He called for greater predictability when States used such available tools as humanitarian visas, temporary protection, immigration quotas or free movement agreements as a key strategy for addressing and reducing vulnerability. Mr. Kaelin stressed that the possibility of a human rights-based prohibition of forcible returns to situations of environmentally induced serious harm had been recognized by the Human Rights Committee but had not yet been applied. He underlined the importance of any human rights-based approach to human mobility in this age of climate change in promoting, adopting and systematically implementing pathways for the admission and stay of people displaced and moving across borders owing to climate change.

33. The Director of the Nepal Institute of Social and Environmental Research, Anita Ghimire, outlined how drivers of migration can create and exacerbate situations of vulnerability. She noted that economic insecurity, including the seasonality of work and lack of savings, often drive migration. Ms. Ghimire also stressed that such social drivers as family and peer influence, the practice of dowry and the need to support the extended family, could push people to migrate, including through precarious and irregular migration channels. She stressed that family members who were left behind were also confronted with situations of vulnerability, including family breakdowns, high rates of school dropout and children entering into early marriage or struggling with drug addiction. To prevent and address situations of vulnerability in the context of labour migration, Ms. Ghimire recommended improvement of employment and entrepreneurship programmes; in corridors where human rights violation existed and labour migration was high, placing migrants' human rights at the forefront of diplomatic dialogues; strict monitoring of harmful intermediary processes and agencies in countries of origin and destination; and enhanced pre-employment orientation to migrants and their families.

34. The Senior Advocacy Manager at United We Dream, Juliana Macedo do Nascimento, shared her own and her family's experiences as undocumented migrants. She described her family's struggle and recognized the looming cycle of poverty that so many people found themselves in. She explained that her parents' decision to migrate, knowing they would be undocumented for an indeterminate and unforeseeable amount of time, was based on the fear of losing the minimum standard of living they were providing for the family in their country of origin and the desire to provide a better future for their children. Ms. Macedo do Nascimento stated that permanent regularization was the most effective way to address migrants' vulnerabilities in countries of destination, while leaving people in situations of irregularity made them more vulnerable to abuse, violence and exploitation. She stressed that migrants in irregular situations tended to live in the shadows, without access to such essential services as health care, in fear of law enforcement and deportation, and were easy prey for exploitative employers. She also highlighted the shortcomings of temporary regularization programmes of which she was a beneficiary, including concerns related to access to social safety nets and health care, and the continued vulnerability to deportation. She also added that not being able to make long-term plans, owing to precarious migration status, and the inability to vote had harmful effects in the individual life of migrants. Those issues prevented them from achieving their potential and fully contributing to the communities they grew up and lived in. She urged Governments to recognize that migration is an undeniable and normal human phenomenon, and to create new pathways to regularization and citizenship, to ensure the inclusion of migrants and not to miss out on the contributions they can make.

35. Pablo Ceriani, a member of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, stated that many people were compelled to migrate as a result of the situations of vulnerability in which they found themselves in their countries of origin owing to lack of enjoyment of their human rights. He stressed that human rights were often denied or restricted owing to structural discrimination and inequalities within and between countries, which compelled many people to migrate and which were also associated with limited opportunities to migrate in a safe and regular manner. He explained that, often, the greater the situation of vulnerability, the harder it is to exercise the right to leave a country. Mr. Ceriani highlighted that obstacles and restrictions to regular migration could lead to the difficult decision to separate from the family and migrate through irregular channels, stressing that irregularity and family separation are indicators of vulnerability in the context of migration. He noted that family reunification procedures were often lacking or inaccessible, even for migrants in regular situations, as they imposed criteria that were impossible to meet for people in situations of vulnerability. He noted with concern that owing to the lack of regular pathways, the right to family reunification was often only able to be achieved through irregular and precarious migratory journeys. Mr. Ceriani made several recommendations for preventing family separation and facilitating family reunification. As the members of the Committee on the Rights of the Child and the Committee on Migrant Workers had pointed out, he recalled that States must avoid unnecessary and unreasonable restrictions and requirements on the ability to migrate with one's family or to reunify with family members abroad. He recommended that States design and implement efficient and accessible procedures of family reunification as an essential component of their enjoyment of the human right to family life. Procedures should not impose conditions that exclude those in situations of vulnerability. He added that States should also put into place permanent and predictable regularization mechanisms, based on various criteria, including work, family, length of residence, humanitarian reasons and exercise of the right to asylum, among others. Mr. Ceriani emphasized that regularization facilitated family reunification, prevented irregular migration, promoted social inclusion and was an effective tool to address and reduce situations of vulnerability.

## **B. Plenary discussion**

36. During the second session of the intersessional panel discussion, representatives of the following States and organizations made statements: Algeria, Angola, Plurinational State of Bolivia, Brazil, Cameroon, Greece, Portugal, Turkey, Bolivarian Republic of Venezuela, Asia Displacement Solutions Platform, Asociacion de Pensionados y Jubilados de Venezuela en Uruguay, Centre for Innovative and Pragmatic Development Initiative, European Network on Statelessness, Federal Public Defenders' Office of Brazil, Friends World Committee for Consultation, Kanlungan Centre Foundation, Justice Centre Hong Kong, Maat for Peace, Development and Human Rights, Mixed Migration Centre, Open Society Foundations, Joint United Nations Programme on HIV/AIDS, NGO Committee on Migration, Save the Children and Warbe Development Foundation. Written statements were received from the representatives of the Islamic Republic of Iran and the Immigrant Defence Project, who were unable to make a statement owing to time constraints.

37. During the discussion, it was reiterated that migration strategies and approaches should be fundamentally oriented to the promotion and protection of international human rights law, promote inclusion, include economic, social and cultural rights, and be human rights-based, child-sensitive and gender-responsive. Some participants expressed concern for situations of vulnerability associated with the reasons for leaving one's country of origin, stressing that migrants had multiple and often interrelated reasons for migrating, including lack of access to economic and social rights, poverty, family separation and inequalities, including gender inequalities. Other participants underscored that the impossibility of enjoying the right to an adequate standard of living, food, health, housing and basic services compelled many people to leave in search of dignity. The adverse impacts of climate change and environmental degradation were highlighted as significant drivers of migration. Some participants also pointed to statelessness as a reason for migration, noting that stateless persons may be excluded from regular the labour market, health services, education, social security, property ownership and even the protection of the law.

38. Some participants noted that the combination of the complex drivers set out above and their adverse human rights impacts meant that people were often in situations of vulnerability before making the decision to migrate. Other participants stressed that situations of vulnerability arise from the reasons that compel people to leave as well as the conditions in which they are able to move. Several participants noted that migration is often an important resilience or coping mechanism to reduce or escape existing situations of vulnerability; however, pathways for safe and regular migration of people compelled to move by such situations are extremely limited. Some noted that persons compelled to migrate often have no other option than to embark on irregular journeys and are at increased risk of human rights violations and abuses. Many participants highlighted that the most vulnerable are often those who are not able to access safe and regular migration pathways and pointed to a direct link between enhancing the availability of pathways for regular migration and addressing situations of vulnerability. Several participants emphasized the need to minimize the adverse drivers and structural factors that compel people to leave their country of origin, including through humanitarian and development assistance, international solidarity and through stronger international cooperation between countries of origin, transit and destination that promotes sustainable development and is based on human rights.

39. Some participants pointed to the specific situations of vulnerability faced by older persons, including lack of pensions, dependence on their children and relatives, challenges faced in finding decent work and lack of access to health care needed to treat complex illnesses. It was recommended that specific programmes be implemented to address the situations of vulnerability faced by older migrants.

40. Many participants recalled that all human beings are born free and equal in dignity and rights, including all migrants, irrespective of their migration status. Several delegations shared promising practices on migrants' access to economic, social and cultural rights. The representative of Angola shared information on their social protection legislation, which provides for the protection of vulnerable persons living in Angola, including migrants. The representative of Brazil shared information on efforts to expand access to health care and enhanced social protection coverage for migrants. The representative of Greece reaffirmed its commitment to ensuring that no migrant child was left out of school. The representative of Portugal shared that all migrants, regardless of status, had access to health and education without discrimination. The representative of Turkey contributed information on the provision of public services, including health and education, free of charge to all residents, including migrants. States were encouraged to expand regularization programmes as a key strategy to increase access to human rights and related services. It was noted that regularization opportunities should not exclude people based on past contact with the criminal justice system, as this could exacerbate the impact of systemic racism, discrimination and exclusion. Participants also recommended that undocumented migrants not be criminalized on the basis of their migration status, including for their irregular entry and stay, and that firewalls between access to services and immigration enforcement be established.

41. It was noted that during the COVID-19 pandemic, migrants were among the most severely impacted and were disproportionately affected as persons already in vulnerable situations. Mobility was restricted by border closures and decreased remittances, and migrants were deprived of contact with their families. Lack of access to social security, loss of jobs and migrants falling into irregular status during the pandemic exacerbated situations of vulnerability. The pandemic also accelerated instances of racism, xenophobia and related intolerance, with migrants and minorities associated with migration often scapegoated for spreading the virus. States were urged to take all necessary steps to ensure that migrants were equally included in their COVID-19 responses. The importance of consular assistance and protection to migrants was highlighted. The representatives of many States shared examples of promising practices to address vulnerable situations of migrants during the pandemic. The representative of Algeria reported on efforts to provide migrants with access to COVID-19 vaccination. The representative of Angola referred to the extension of visas and residence permits. The representative of the Plurinational State of Bolivia shared efforts to strengthen officials' capacity to provide consular assistance and protection to Bolivian migrants in countries of destination. The representative of Brazil reported that all migrants, regardless of status, were included in COVID-19 national vaccination plans. The representative of the

Islamic Republic of Iran stated that migrants had free access to COVID-19 tests, treatment and vaccines, irrespective of their status. The representative of Portugal informed the participants about measures providing further protection to migrants, including granting or extending temporary residency permits to all.

42. Migration was considered by many participants as a global phenomenon that should be approached through a commitment to multilateralism and international cooperation by finding common goals and shared solutions, in compliance with international law and standards. Several participants pointed to the upcoming International Migration Review Forum as a key opportunity to take stock of the progress and challenges in effectively implementing the objectives of the Global Compact, bringing a holistic approach to preventing and addressing situations of vulnerability. Other participants pointed out that a whole-of-society approach required that the voices and views of those most affected be heard, and recommended the participation of migrants, including migrant children and youth, in the design and monitoring of migration-related policies at the national, regional and global levels, including at the Human Rights Council.

43. Some participants encouraged discussions of ways in which the Human Rights Council could most effectively contribute to further preventing and addressing situations of vulnerability in the context of migration. In particular, reflections concerned how the Human Rights Council could further consider the human rights challenges faced by migrants, including, *inter alia*, by continuing to hold panel discussions to urgently hear from migrants and respond to human rights violations and abuses in the context of migration; by responding to reports received from the Special Procedures it has mandated; by building on and complementing the work of the Special Rapporteur on the human rights of migrants; and by supporting, strengthening and establishing independent human rights monitoring mechanisms at international borders. It was noted that the many topics emerging from the intersessional panel discussion would benefit from further expert exploration and panel discussions at the Council, including on access to safe and regular pathways and regularization opportunities, on the impact of new and emerging technologies on migration, on safe and dignified return and sustainable reintegration and on effective firewalls to ensure migrants can access basic services. Some participants also encouraged OHCHR to continue prioritizing and advocating for the human rights of migrants in vulnerable situations.

44. In the closing remarks for the second session, Mr. Kaelin reiterated that providing regular pathways was crucial to safeguarding the human rights of migrants in vulnerable situations. Ms. Ghimire recommended that attention be paid to the families of labour migrants that have been left behind, who face barriers to family reunification in countries of destination. Ms. Macedo do Nascimento stressed the importance of migrant representation, including the ability of migrants from different backgrounds to be afforded the possibility of participating in the discussions. Mr. Ceriani stressed that a lack of access to human rights in countries of origin creates vulnerable situations that compel people to migrate. He stated that regular and permanent pathways to migration for migrants in situations of vulnerability must be created or improved, that responses to irregular migration should be aimed at the protection of human rights of migrants in vulnerable situations and that such policies and practices as the criminalization of irregular migration only exacerbate the harms suffered by migrants. Mr. Zniber concluded by stressing the urgency to address situations of vulnerability in the context of migration.

## V. Concluding remarks

45. In concluding the panel discussion, the Coordinator of the International Team at the Centre for Legal and Social Studies, Camila Barretto Maia, highlighted three key points and recommendations that emerged from the discussion. First, vulnerable situations for migrants are to a large extent created and exacerbated by State policies. Against that background, efforts to broaden regular channels for migration are key to reducing vulnerable situations for migrants. Secondly, the COVID-19 pandemic showed the crucial importance of comprehensive access to economic, social and cultural rights and essential services to address vulnerable situations. Finally, she recalled the concern for the worrying trends of securitization in border controls, including pushbacks and the use of new and emerging

technologies. Ms. Barretto Maia echoed the call for independent human rights monitoring mechanisms at international borders. She affirmed that the panel discussion had shown the important role of the Human Rights Council in promoting and protecting the human rights of migrants. She added that, while significant steps remained to fully implement the Global Compact, it was clear that safe, orderly and regular migration could be achieved only through policies that responded to the lived reality of migrants and that aimed to further their protection and inclusion.

46. The Permanent Representative of Luxembourg to the United Nations Office and other international organizations in Geneva, Marc Bichler, highlighted how Luxembourg, one of the Global Compact champion countries and co-facilitator of the Progress Declaration<sup>5</sup> on the implementation of the Global Compact, aims to implement a coherent approach to migration governance, which integrates the human rights of migrants at all levels and sectors. He noted that at the national level, Luxembourg had adopted measures to support migrants in vulnerable situations, including access to the country's social security system for international protection, access to interpreters and specialized educators to improve the provision of psychosocial support, and access to information on health services in a non-discriminatory and gender-sensitive manner.

47. Mr. Bichler reiterated the concerns raised by the High Commissioner for Human Rights regarding the conditions that compel migrants to leave their homelands, the precarious situations they face during transits and at borders and the discrimination to which they are often subjected to at their destination. He also reiterated the views of Ms. Delgado Peralta on the need for increased attention to the human rights of migrants, the importance of international cooperation in that respect, and the need to translate these rights into adequate legal and regulatory provisions at national level to promote and protect migrants' human rights.

48. Mr. Bichler concluded by recalling key findings and recommendations from the first session. They included concerns regarding the practice of refoulement; the need for comprehensive protection regimes that can identify and address situations of vulnerability during transit, at borders and destination; the dangers of misuse of digital technologies; and the important role of national human rights institutions. Mr. Bichler highlighted key findings and recommendations from the second session, including such key drivers of compelled and precarious migration as the impact of climate change, economic insecurity and family separation. Mr. Bichler also stressed that migrants in vulnerable situations needed more than empathy. He recalled that migrants in vulnerable situations need the international community to understand the reasons why they migrate, the variety of challenges they face along their journey, especially in transit and upon arrival, and the range of measures that are needed to respond adequately to those challenges.

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<sup>5</sup> General Assembly resolution 73/326.