

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Contribution to the 2030 Sustainable Development Goals in response to a call for inputs by the High-Level Political Forum on Sustainable Development (HLPF)

19th April 2018

1. An assessment of the situation regarding the principle of “ensuring that no one is left behind” at the global level

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW; hereafter “the Committee”) is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State parties (hereafter “the Convention”). The Convention is a comprehensive international treaty focusing on the protection of migrant workers’ rights. It emphasizes the link between migration and human rights – a human and social phenomenon that is drawing increasing attention worldwide.

The Committee is aware that the respect and promotion of rights of migrant workers and members of their families contributes to resilient and sustainable societies, in which migrant workers and their families are valued and protected members of society.

The framework of protection set out in the Convention

Entered into force on 1 July 2003, the Convention opens a new chapter in the history of determining the rights of migrant workers and ensuring that those rights are protected and respected. It sets standards for the laws and the judicial and administrative procedures of individual States. Governments of States that ratify or accede to the Convention undertake to apply its provisions by adopting the necessary measures. They also undertake to ensure that migrant workers whose rights have been violated may seek an effective remedy.

Non-discrimination as a key principle of the Convention

Art. 1 (1) and Art. 7 of the Convention prohibit “distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”. It hereby defines non-discrimination as one of the key principles of the Convention.

Migration and the principle of “ensuring that no one is left behind”

From Art 1(1) and Art 7 follows a clear commitment by the Convention to the principle of “ensuring that no one is left behind”. While migration remains a much discussed topic, some groups and individuals associated with migration, such as migrants in transit, in irregular situations and family members of migrants who stay in countries of origin, receive insufficient attention. Overall, migrants remain less well protected than nationals of transit countries and countries of destination. Hereby, particularly the rights of

women migrant workers, including domestic workers, and migrant children require positive action by governments to protect their rights.

Links to the Sustainable Development Goals (SDGs)

There are innumerable links between migration-related challenges and the SDGs, including the push factors for regular and irregular migration, but also challenges faced by host communities and transit countries. They impact the lives of an increasing number of people. According to the International Migration Report by the United Nations for 2017, the number of international migrants continues to grow rapidly, increasing from 173 million in 2000 and 220 million in 2010 to 258 million last year. 48 per cent of migrants are women and girls.

The SDGs include a range of migration-related goals and targets that directly refer to migration:

Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

- 8.8 Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

Goal 10. Reduce inequality within and among countries

- 10.7 Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.
- 10.c By 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent.

Further, there are direct links between the spirit, principles and provisions of the Convention and several other goals and targets of the SDGs:

Goal 5. Achieve gender equality and empower all women and girls

- 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

- 8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

- 16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children.
- 16.9 By 2030, provide legal identity for all, including birth registration.

Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development

- 17.18 By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity,

migratory status, disability, geographic location and other characteristics relevant in national contexts.

Particularly the Sustainable Development Goals (SDGs) in focus for this year's High-Level Political Forum have an important nexus to migration.

Whether it is the eradication of poverty, ensuring inclusive and quality education, ensuring gender equality, to ensuring decent work conditions and bringing about innovation, sustainable industrialization, reduced inequalities, and upholding human dignity, migrant workers are at the core of these goals, as direct contributors to host societies as well as countries of origin. Their contribution goes to improving the conditions that the SDGs seek to rectify.

Conditions affected by the availability of drinking water, access to energy and ecosystems that are under pressure as a result of climate changes determine in many cases the decisions and options by migrants to stay in or leave their countries of origin. Equally, the context of sustainable consumption and production patterns is of great importance. Finally, the inclusivity, safety, resilience and sustainability of cities and human settlements are crucial in migrants' decision-making. Hereby, the needs of particularly vulnerable groups associated with migration have to be addressed through affirmative government measures, in line with the principle of non-discrimination enshrined in the Convention.

At the same time, these SDGs are also crucial with regard to the resilience and sustainability of host communities. A lack of government policies on migration can lead to shortages of drinking water, sanitation and affordable energy, as well as strains on the ecosystem of host communities. Likewise, planning that does not account for migration flows might make it difficult to ensure sustainable consumption and production patterns and to provide affordable housing and other services to migrants, potentially leading to isolation of migrations in specific parts of cities and towns. These challenges are frequently exacerbated with regard to migrants in irregular situations due to an often greater gap in data collection, planning and targeted policies by host governments.

Overall, these and other targets of the SDGs define challenges and opportunities for migrants to successfully integrate into host communities. Only by ensuring the integration of migrant workers and their families, can (host) societies become sustainable and resilient. Conversely, an exclusion of migrant workers based on their status limits the opportunities to implement the SDGs. The integration of migrant workers and members of their families is a precondition for the full implementation of the SDGs.

Engagement of the Committee

The Committee contributes in a number of ways to the SDGs by:

1. Promoting the ratification of the Convention and calling on States to implement it, as a means to ensure the protection of rights of migrant workers and members of their families and thus contributing to the SDGs in general and specifically to target 10.7;
2. Increasing cooperation with other treaty bodies in the area of migration with reference to the SDGs;
3. Regularly calling on State parties in its Concluding Observations to take action in line with the SDGs, particularly targets 10.7, 10.c, 8.7, 8.8 and 17.18;

4. Placing emphasis on the protection of women migrant workers and female members of migrant families, as well as migrant children in line with targets 5.2, 8.7, 16.2 and 16.9;
5. Calling attention to those individuals and groups associated with migration who are not always the focus of discussions (e.g. migrants in transit, migrants in irregular situations, members of migrant families who stay in the country of origin etc.);
6. Placing specific emphasis on the integration of migrants in host communities, in view of contributing to sustainable and resilient societies;
7. Offering guidance on the interpretation of the Convention through several General Comments (GCs) on migrants' rights related to domestic workers (GC 1), migrants in irregular situations (GC 2) and children in the context of migration (GCs 3-4); and by
8. Conducting advocacy and the promotion of the SDGs through the regular participation of Committee members in conferences, roundtables and debates on human rights.

2. The identification of gaps, areas requiring urgent attention, risks and challenges

Insufficient ratification of the existing legal framework on migrants' rights

The Convention provides a comprehensive international treaty on the rights of migrants and members of their families, including migrants in regular and irregular situations. The legal framework has thus been adopted and is promoted by the Committee, OHCHR and other stakeholders. To this date, 51 States have ratified the Convention with a concentration on countries of origin, but little ratification among transit countries and countries of destination. The Committee is also regularly calling on State parties to comply with the Convention through its Concluding Observations and General Comments which provide further guidance on the Convention. On the one hand, the existence of the Convention underlines the commitment by States to protect migrant workers' rights. On the other hand, the lack of ratification of the Convention sends a message of continuing vulnerability and discrimination of migrants' rights vis-à-vis those of nationals that hamper efforts to make societies sustainable and resilient. Overall, a global framework on a rights-based migration governance has to be developed and established, in line with and in support of the SDGs.

Increasing global levels of conflict and policies that address migration under a 'security' lens

Rising levels of inter- and particularly intra-state conflict over the last years is contributing to an increase in migration, both regular and irregular. Faced with migration and refugee flows, host societies tend to view both population groups as part of one phenomenon without – at times – proper distinction between the protection regimes developed for migrants and refugees respectively. At the same time, the increasing levels of terrorism create a climate in which migration is often addressed under a 'security' lens. The rights of migrants are thus frequently being disregarded with reference to security concerns. In view of a public discourse among politicians, the media and other stakeholders that can at times (over-) emphasize the need for anti-terrorism measures, the violation of migrants' rights have almost become a by-product regarded as acceptable in times of global terrorism.

Insufficient attention to some groups and individuals associated with migration

The protection of migrants' rights remains a topic that lacks attention by governments and other stakeholders. Particularly some groups and individuals associated with migration are rarely the focus of

attention. These include members of the families of migrant workers who stay in the country of origin, migrants in transit and migrants in regular situations who often continue to face challenges, when integrating into host communities. In a great number of countries, there are still gaps in legislation that protect the rights of these individuals, as well as a lack of positive government policies. Other particularly vulnerable groups whose rights need increased protection are women migrant workers and children in both regular and irregular situations.

Diaspora/return of migrants

While there is attention on the way migrants contribute to host societies, diaspora engagement, policies targeting returned migrants, and the situation with families left behind need to be brought to the fore.

Lack of access to justice

One aspect of the lack of protection of rights of the above mentioned groups and individuals is a gap in access to justice. Often migrants can neither access information on their rights nor seek effective remedy. This leads to frequent discrimination regarding their right to health care, social and other benefits, and particularly disadvantages women, children and persons with disabilities.

Insufficient transitional justice mechanisms

One particular aspect of this challenge is the lack of transitional justice mechanisms and/or their implementation in post-conflict contexts. Often, victims of human rights violations during armed conflict feel that their right to justice, truth and reparation has not been fully addressed, nor that non-recurrence has been guaranteed during the post-conflict phase. This contributes to the decision by some victims to become migrants; thus, leading to migration-related challenges in both countries of origin, transit and destination. Addressing human rights violations in situations of armed conflict through context-specific transitional justice mechanisms thus contributes to resilient and sustainable societies.

Migrants in detention

The Convention seeks to prevent maltreatment of migrants, given their special vulnerability as a group. For instance, the Convention aims to protect them in cases when they are under administrative detention – a rarer occurrence for nationals – and criminal proceedings. In this context, whenever a migrant is ‘deprived of his or her liberty’, the Convention provides that state authorities should pay attention to potential problems encountered by family members especially spouses and minor children. Migrants in detention are to enjoy the same rights as nationals in particular with respect to visits by members of their families and are protected against being made to bear any cost arising from detention. However, there are occurrences of domestic law provisions for detainees to bear the cost of detention. In some countries, migrants placed in pre-deportation immigration detention have to bear the cost for transport back to their country of origin and at times face indefinite detention when they are unable to pay for those costs. The last general comment for Migrant Children encourage all states to never detain a child and to develop alternative measures to unaccompanied children that guaranty their integrity and safety.

Lack of migration-related data in support of the SDGs

The Committee regularly calls on state parties to establish or improve centralized and comprehensive data collection systems. However, to date the collection of data on the status of migrant workers in countries of destination, both documented and undocumented, migrant workers in transit and nationals working

abroad remains insufficient. In line with target 17.18, this data should be disaggregated by sex, age, nationality, reason for entry and departure from the country, and the type of work performed, in order to contribute relevant, migration-related information to improve government policies and the implementation of the SDGs.

3. Valuable lessons learned on transformation towards sustainable and resilient societies

Shift the paradigm away from thinking of migrants as commodities to attaining a particular goal towards thinking of them in intrinsic terms, as individuals with inherent rights, dignity

While there are substantial benefits that societies draw from migration, such as boosting development and economic growth of states and promoting multiculturalism of societies, the protection of human rights of migrants also poses a significant challenge that has to be addressed. During the migration process, individuals suffer from a number of human rights violations precisely because of their status of migrants. Specifically, it is common to think of migrants as factors of production, in a similar manner as capital and land. However, this is a reductionist and instrumental approach to thinking of migrants, and especially of the situation they occupy in both host and countries of origin. Instead, taking an intrinsic approach in thinking of migrants as individuals with inherent rights and dignity as human beings is imperative. And in this context, the Convention creates the institutional framework with international benchmarks on the treatment of migrant workers and members of their families.

Migration and knowhow

Research shows that societies transform through knowledge, and knowledge is a type of technology alongside tools and blueprints. Migrant workers are bearers of that tacit knowledge, and societies develop as they adopt a more open-door policy to migration and create conducive conditions for learning. Furthermore, women migrant workers make a significant contribution to sustainable development and social changes in countries of origin, transit and destination. Therefore, the SDGs should recognize and underline the importance and leadership of women as direct contributors to economic growth and human development, particularly when women and girls are socially and politically empowered at all stages of migration.

Importance of International Law Mechanisms

International law mechanisms, such as the Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, create an international discourse on the situation of migrant workers with benchmarks, sets of rights and duties, and reporting mechanisms to assess how migrants' rights are being complied with. Such mechanisms enable that aspirations and goals contained in international strategies and policy documents are actually implemented by states, and foster partnerships with the civil societies, international organizations, and State actors.

4. Emerging issues likely to affect building resilient and sustainable societies

Discrimination, xenophobia and insufficient inclusion of migrants and other societal groups

In recent years, messages of discrimination and xenophobia have increasingly become part of public discourse in many countries. These are directed against societal groups, including migrants, based on racial, ethnic, religious or nationality based discrimination. These sentiments are increasingly expressed in politics, media and other forms of public discourse, resulting in a climate of violence and hate crimes against societal groups, including migrants and minorities associated with migration. There have also been reports of discriminatory treatment of migrant workers based on language and physical appearance by migration police and government officials dealing with labour affairs as well as of discriminatory treatment to which migrant workers are subjected by employers relating to wages, time-off and other conditions of work. Such a climate hinders the integration of migrants into host (or transit) communities, leading to parallel societies and further migration. Such host (or transit) communities are at risk of fragmentation, inner-societal tensions and conflict. In the same time, societies that have embraced strong positive action towards inclusion of migrants and other societal groups have become more resilient and sustainable.

Lack of engagement on SDGs, including on the nexus with challenges faced by migrant workers and members of their families

Even though the 2030 Agenda was adopted about three years ago, it seems that the understanding of the SDGs and their impact on societies remains insufficient among relevant national stakeholders, including within societies as such. Civil society, including the media, academia, NGOs and national human rights institutions, could contribute tremendously to such an understanding. However, it seems that in many instances, the SDGs are seen as aspirational goals rather than a minimum standard that has to be achieved. This includes those SDGs which directly address the situation of migrants, such as targets 8.8, 10.7 and 10.c. It equally concerns an understanding of the nexus between migration and other SDGs, such as targets 5.2, 8.7, 16.2 and 16.9. The overall lack of understanding among national stakeholders in many States on the SDGs and the link to challenges and opportunities around migration hampers the implementation of the SDGs overall.

Lower rates of ratification of the Convention on the Protection of Rights of All Migrant Workers and Members of Their Families

As mentioned above, the Convention forges a discourse on an international level on the rights of migrant workers and seeks to build inclusive societies. Lower ratification rates of the Convention and problems with its implementation reproduce divisiveness in societies, hierarchies, and double standards that undermine the resilience and sustainability of societies.

5. Areas where political guidance by the High-level Political Forum on Sustainable Development is required

Addressing increasing discrimination, xenophobia and a lack of inclusion of migrant workers

The issue of increasing discrimination, xenophobia and a lack of inclusion of some population groups remains an issue of concern, including for migrants and minorities associated with migration. The Committee considers this issue as one of the main challenges in strengthening the development towards sustainable and resilient societies. Political guidance by the High-Level Political Forum on Sustainable Development would be crucial to encourage positive action by governments and other relevant

stakeholders. This includes clear statements by politicians and government policies that prevent discrimination and xenophobia, including against migrants. Additionally, it also necessitates positive engagement by governments towards inclusive societies that welcome migrants and respect their rights. The High-Level Political Forum's political guidance could provide an essential impetus for a strategic discussion on this issue.

The need for increased engagement by national stakeholders to promote the implementation of the SDGs, including issues linked to migration

National stakeholders, particularly governments, but also civil society, media, academia, NGOs and national human rights institutions, play a crucial role in strengthening the understanding of the SDG's and their nexus with migration. The High-Level Political Forum on Sustainable Development could play an essential role in this regard by providing political guidance on this issue. Governments should be encouraged to hold regular ministerial-level meetings and include statements in official declarations and other documents in favor of the implementation of the SDG's, including a consideration of the nexus with migration and other cross-cutting challenges. Additionally, regional-level meetings that account for the cultural, economic, political and migration-related specificities of the region should be encouraged.

6. Policy recommendations on ways to accelerate progress in establishing sustainable and resilient societies

Sustainable and resilient societies can only be established, if migrants and all members of their families are fully included in the societies of countries of origin, transit and destination.

The Committee makes the following recommendations for the consideration of the High-Level Political Forum:

1. To promote the Convention as a comprehensive international treaty on the rights of migrants and members of their families;
2. To help ensure that the principle of non-discrimination enshrined in Art 1(1) and 7 of the Convention becomes a guiding principle in government policy on migration by State parties and non-State parties;
3. To help put an emphasis on increased discrimination and xenophobia directed against migrants and minorities associated with migration as one of the key challenges associated with migration and the implementation of the SDGs, and to engage with governments in a strategic dialogue on both preventive measures and positive action towards inclusive societies, including measures supportive of women migrant workers and migrant children;
4. To encourage governments to promote understanding of the SDGs and their nexus with cross-cutting issues such as migration and to strengthen measures for their full implementation; among others, through ministerial-level and regional meetings and inclusion of statements in official declarations and documents;
5. To encourage governments, particularly of countries of destination and origin, to ensure that the rights of migrant are protected in the context of increasing levels of particularly intra-state conflict; this includes

- a. Clear legislative frameworks and positive measures towards the integration of migrants into host countries that clearly distinguish between different groups of vulnerable persons, such as refugees, regular and irregular migrants, asylum seekers, IDPs and other groups of people impacted by conflict; and
 - b. Adherence to the Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disasters (MICIC) to focus on saving lives, and protecting and respecting human rights of migrants;
6. To promote access to justice for migrant workers and members of their families;
 7. To promote the establishment and implementation of context-specific transitional justice mechanisms to help prevent that an insufficient response to human rights violations during armed conflict becomes a push factor for involuntary migration;
 8. To help address drivers of involuntary migration, including those reflected in the SDGs which are the focus of the discussions of the High-Level Political Form this year, namely the availability of water and affordable energy, inclusive and safe cities and human settlements, sustainable consumption and the protection of ecosystems;
 9. To recognize climate change as one of the main factors contributing to involuntary migration and to engage governments in a constructive dialogue on this issue;
 10. To promote a more inclusive notion of society that includes migrants into the definition of national identity of host and transit countries and thus contributes to the protection of rights of migrants and members of their family, helping societies become more sustainable and resilient;
 11. To help promote previous recommendations by the Committee in relation to the SDGs and enshrined in the Committee's Concluding Observations, namely:
 - a. In line with target 17.18 and based on article 73 of the Convention, the establishment of centralized and comprehensive data collection systems in all countries covering all aspects of the Convention, including the status of migrant workers in the State party, both documented and undocumented, migrant workers in transit and nationals working abroad, and collecting data, disaggregated by sex, age, nationality, reason for entry and departure from the country, and the type of work performed;
 - b. In line with targets 8.7 and 16.2 and based on article 11 of the Convention, the increase of labour inspections and prosecution, punishment and sanctioning of persons or groups exploiting child migrant workers or subjecting them to forced labour and abuse, especially in the informal economy, as well as the provision of adequate assistance, protection and rehabilitation, including psychosocial rehabilitation, to children who have been victims of labour exploitation;
 - c. In line with target 16.2 and based on the General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, the adoption and implementation of legislation prohibiting acts including abuse, exploitation, trafficking and all forms of violence; effective investigation of cases of abuse and neglect; prosecution and punishment of those responsible with appropriate punishments; provision of adequate reparation to victims and members of their families; provision of human rights training for public officials; and effective monitoring of the conduct of State agents and regulation of that of private persons and entities with a view to preventing such acts;
 - d. In line with targets 8.8 and 16.2, the promotion of key international legal standards, including the Convention, the ILO Conventions no. 87, 97, 143, 181 and 189, the ILO

- Declaration on Fundamental Principles and Rights at Work, the ILO Forced labour Protocol and the 2011 United Nations Guiding Principles on Business and Human Rights;
- e. In line with target 8.8 and based on Art 25 of the Convention and on the General Comment No. 1 on domestic migrant workers, undertaking efforts to ensure that domestic work is regulated by national legislation and that domestic migrant workers enjoy the same level of protection as national workers with respect to minimum wage, hours of work, days of rest, freedom of association, and other conditions of work; the protection of the rights of domestic migrant workers to freedom of movement and residence, and to retain possession of travel and identity documents; ensuring that migrant domestic workers have explicit, written terms of employment, in a language that they understand, outlining their specific duties, hours, remuneration, days of rest and other conditions of work in contracts that are free, fair and fully consented to; and ensuring access to justice to migrant domestic workers and strengthening labour inspection services to effectively monitor conditions of domestic work and the reception, investigation and addressing complaints of alleged violations in this regard;
 - f. In line with target 16.9 and based on Art 29 of the Convention and on its General Comment No. 3 on general principles regarding the human rights of children in the context of international migration, as well as on its General Comment No. 4 on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, undertaking efforts to ensure that all children of migrant workers are registered at birth and issued personal identity documents, raising awareness on the importance of birth registration among migrant workers and members of their families, especially those in an irregular situation, and encouraging States to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and finally;
 - g. In line with target 10.c and based on Art. 32 and 47 of the Convention, the facilitation of the transfer of remittances by migrant workers abroad, including the transfer of earnings and savings by migrant workers with preferential transfer and reception fees to make savings more accessible to migrant workers and members of their families, particularly measures to reduce to less than 3% the cost of sending and receiving funds;
12. To support the recommendations made by the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility during the 35th session of the Human Rights Council in June 2017 (A/HRC/35/25), namely:
- a. To agree in the framework of the United Nations on a long-term, 15-year agenda on migration, complementary to the 2030 Agenda for Sustainable Development and aimed primarily at implementing targets 10.7 and 8.8 of the Sustainable Development Goals – the “2035 agenda for facilitating human mobility”;
 - b. To promote the eight goals set out in this agenda as a global framework for rights-based global migration governance in line with the SDGs; and
 - c. To support strategic discussions with Member States in favour of a consultative process led by the United Nations that would allow further refining and developing the proposed goals and targets.