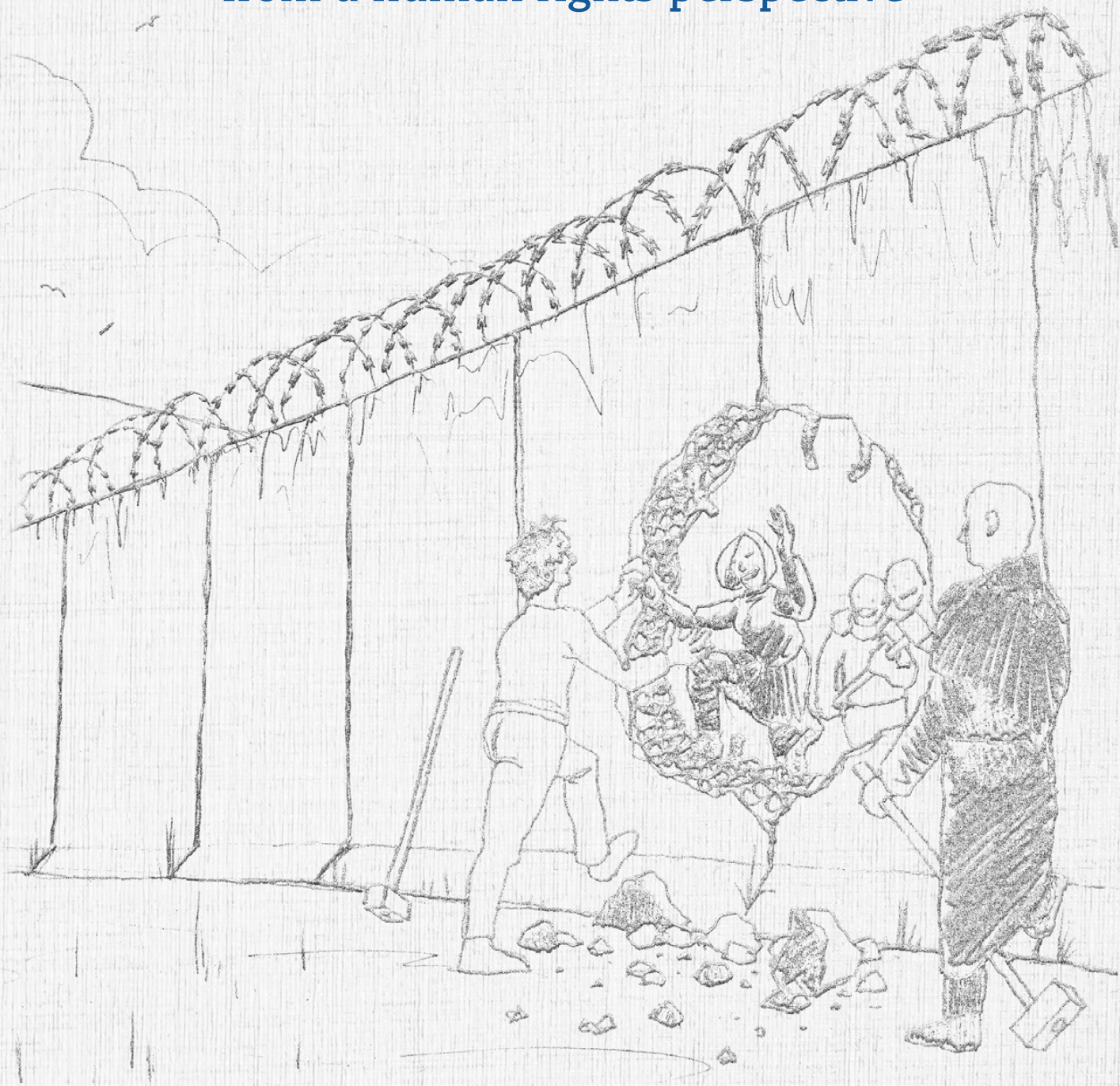


TEARING DOWN THE WALLS



Challenging myths about migration
from a human rights perspective



Franciscans International
A voice at the United Nations

Acknowledgment

The present publication has been researched and written by Marya Farah, Franciscans International (FI)'s representative at the United Nations in New York, under the supervision of Sandra Epal-Ratjen, FI's International Advocacy Director and Deputy Executive Director.

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List of acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CATHII	Comité d'action contre la traite humaine interne et internationale
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
EU	European Union
FI	Franciscans International
GCM	Global Compact for Safe, Orderly and Regular Migration
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Discrimination
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IDP	Internally Displaced Person
IOM	International Organization for Migration
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNHRC	United Nations High Commissioner for Refugees
WHO	World Health Organization

About this publication

Migration and the movement of peoples is a phenomenon that is as old as humanity itself. While persistent factors, such as conflict, continue to force people from their homes, climate change and other new drivers also fuel an increase in human mobility globally.

Today these old and new factors have created a shared context in which unprecedented numbers of people are moving across the world. Although international law is unequivocal that the enjoyment of human rights must not depend on one's legal status, migrants often continue to face obstacles and hostilities.

Numerous dynamics, such as rising economic and social inequalities in many countries and the current rise in various forms of national populism, have contributed to the development of an often xenophobic and racist discourse about migration and migrants. Repressive policies and 'security' priorities are dominating State actions, largely with complete disrespect for the human rights obligations that these same States have committed to. In this environment, the rights of migrants are threatened.

While States did come together in an attempt to address these concerns, and adopted the Global Compact for Safe, Orderly and Regular Migration in 2018, the process and the Compact itself proved insufficient. The difficult negotiations and eventual adoption of this agreement very clearly exposed the many 'myths' and misrepresentations of migrants and of migration found globally. It further highlighted that the protection of human rights in the context of migration, even if reiterated as a general abstract principle, is still not the number one priority of many States when implementing border control or other sectorial policies.

This publication aims at deconstructing predominant myths about migration and human mobility more generally, from a human rights perspective. In doing so, the paper reflects the lived experiences of Franciscans and our other partners who are focused on and support migrants, refugees, internally displaced persons (IDPs), and victims of human trafficking. It also looks at binding human rights standards and the political commitments of States via the Global Compact on Migration. This paper is by no means exhaustive, neither in the myths or issues presented, nor of the international legal obligations that States have in regard to a particular issue.

Nevertheless, we hope that this publication may help Franciscans, other faith-based groups, and local civil society organizations to address and counter, with the general public and local authorities, misconceptions, xenophobic and racist discourses, and abusive policies on human mobility. Franciscans International underscores that States have legal obligations towards migrants' rights that must be respected, protected, and fulfilled. Their rights, including their lives and safety, should not be subject to political currents.

Foreword



In his testament, Francis of Assisi expressed the desire that his followers would spend their lives as “pilgrims and strangers in the world.” These words resonate in contemporary times, when more people than ever before are on the move.

However, whereas the Franciscan journey is a conscious choice to venture out and build new human and fraternal relations, the journey of all refugees and internally displaced people and of many migrants is one of necessity. My own history is marked by this necessity: I grew up in Canada rather than where I was born (the former Czechoslovakia, now Czech Republic) because my parents felt under threat due to ethnic and political perils.

With the concept of ‘being on the move’ deeply ingrained in the Franciscan self-understanding, it is only natural that many followers of St Francis have dedicated themselves to supporting migrants at risk across the world. By sharing their lives, whether briefly or for many years, they have grown sensitive to the dynamics that drive people to leave their homes. Forced or involuntary migrants suffer at all stages: first when the circumstances at home become unbearable, secondly during their often long and perilous journeys, thirdly if they are confronted by stigma and hostility in their new land, and fourthly, if repatriated, the difficulties of settling back in where they came from. The Church has tried to accompany each stage and is always learning new ways to do so.

The understanding that we have a duty to respond to this suffering runs deep throughout the Church. Following his visit to Lampedusa (2013) and Lesbos (2016), the Holy Father set up the Migrants and Refugees Section, a small, action-oriented Vatican office which for the time being he leads himself. Underway since January 2017, its mission is to help the Church make sure that those forced to flee are not shut out or left behind but accompanied in their departure, transitions, arrival and settling down.

Inspired by St. Francis’s openness of heart, which knew no bounds and transcended differences of origin, nationality, colour or religion, the Franciscans established a presence at the United Nations thirty years ago to advance their work towards justice, peace, and care for Creation. The publication before you combines their advocacy in international fora—based on the first-hand experiences of encounter of brothers and sisters on the ground—with relevant elements of international human rights law. Thus, it will serve as a tool to defend and support those in need.

On the feast of St. Francis of Assisi, the Holy Father released the third encyclical letter of his papacy: *Fratelli Tutti* (FT), on fraternity and social friendship. In this time of pandemic and social distancing, Francis reminds us that we ought to love our brothers and sisters as much when they are far away as when we are with them. The Encyclical also demystifies migration, and it complements and supports your new publication in several ways, a few of which follow.

Early in the text, Pope Francis uses the Good Samaritan story to teach about reaching out and helping, and the radical distance that our



active affection is challenged to bridge. It goes far beyond paying attention and putting one's own agenda and welfare aside when another person needs help. In choosing a Samaritan as the exemplar in a story told to his fellow Jews, Jesus forcefully rejected five hundred years of animosity between the two communities. It is not too strong to say that Jews and Samaritans hated each other. This is how far people of good will must go to “tear down the walls of comfortable silence and complicity” that allow so much suffering in the world, amongst vulnerable people on the move and many others besides.

Next, the Holy Father recognizes a tension between globalization and the local; nevertheless, he affirms, we can live healthily within our own culture while striving for the common good of the whole of humanity: “Each particular group becomes part of the fabric of universal communion and there discovers its own beauty. All individuals, whatever their origin, know that they are part of the greater human family, without which they will not be able to understand themselves fully” (FT 149).

Accordingly, we should accept our differences and cultivate the culture of encounter so as to transcend our divisions.

This means working to create a many-faceted polyhedron whose different sides form a variegated unity, in which “the whole is greater than the part”. The image of a polyhedron can represent a society where differences coexist, complementing, enriching and reciprocally illuminating one another, even amid disagreements and reservations. Each of us can learn something from others. No one is useless and no one is expendable. This also means

finding ways to include those on the peripheries of life. For they have another way of looking at things; they see aspects of reality that are invisible to the centres of power where weighty decisions are made. (FT 215)

I invite you to recall and practice the six “ways to include those on the peripheries of life” that Pope Francis recommends in his 2020 Message for the World Day of Migrants and Refugees: to know in order to understand, to be close in order to serve, to listen in order to be reconciled, to share in order to grow, to involve in order to promote, and to collaborate in order to build.

The Holy Father's positive vision contests the myths and misconceptions about migrants heard not only from uninformed citizens but also from official authorities. It is my hope that this publication may help Franciscans, other faith-based groups, and civil society organizations to counter the misconceptions and the xenophobic and racist discourses that underpin abusive policies on human mobility. Faced with those injured by the dark traits of a closed world and still lying by the roadside, we are invited by Pope Francis to make our own the world's desire for fraternity, starting with the recognition that we are “Fratelli tutti”, brothers and sisters all.

Card. Michael Czerny S.J.

*Under-Secretary of the Migrants and Refugees Section
Dicastery for Promoting Integral Human Development
Holy See*

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“Finally, I would like to point out that the issue of migration is not simply one of numbers, but of persons, each with his or her own history, culture, feelings and aspirations...

These persons, our brothers and sisters, need ‘ongoing protection’, independently of whatever migrant status they may have. Their fundamental rights and their dignity need to be protected and defended.

Particular concern must be shown for migrant children and their families, those who are victims of human trafficking rings, and those displaced due to conflicts, natural disasters and persecution.

All of them hope that we will have the courage to tear down the wall of ‘comfortable and silent complicity’ that worsens their helplessness; they are waiting for us to show them concern, compassion and devotion.”

Pope Francis
14 June 2018



Current Situation:

Old Phenomenon, New “Crisis”?

According to the United Nations (UN), there are more migrants and displaced persons now than at any time since the Second World War. By 2016, the total number of migrants – 244 million worldwide – equated to a 41% increase since 2000.¹ In 2019, the International Organization for Migration (IOM) estimated that there were approximately 272 million international migrants globally, with an additional 41.3 million internally displaced persons.² The male to female ratio of migrants is nearly equal, with women constituting 48% of all international migrants. Further, children (those under 18 years of age) make up 12% of all migrants.³

Some awareness has been raised by this so-called ‘migrant crisis’ of individuals attempting to reach Global North countries, including in Europe. However, the extent of the plight of millions of people forced to leave their country to escape from war, violence, and poverty in the last few years continues to be largely invisible, even though all regions of the world are impacted.

For example, in the period between October 2013 and October 2019, approximately 19,000 migrants who attempted to cross the Mediterranean have been reported dead or missing.⁴ In Asia-Pacific, the region with the highest number of migrants per year in the last 15 years,⁵ a combination of violence, discrimination and oppression of minorities, poverty, the adverse effects of ‘development’ projects, and climate change force millions of people towards migration and displacement. The Philippines is an emblematic case of this combination of factors that have spurred high numbers of internally displaced persons – with

nearly 4.1 million new displacements in 2019 alone.⁶ In Tenosique, Mexico, the Franciscan house for migrants and refugees, La 72, has received more than 105,000 migrants from the Americas since its foundation in April 2011; 2019 was reported to be the most demanding in terms of migratory flows, with the house receiving 15,732 people.

International Reactions to Migration

The massive movements of people in the last decade have prompted the international community to pay renewed attention to how such movements are managed domestically, regionally, and internationally.

Many of the migrant crises have been treated as emergencies, using a mostly humanitarian approach. However, humanitarian help is often insufficient and does not address or protect human rights. As a result, migrants may be vulnerable to crime, extortion, and violence perpetrated with complete impunity and within a context of broader marginalization. Rather than implementing stronger protection mechanisms, State authorities in various parts of the world have increasingly used repression and violence against migrants. These, and other policies, violate State obligations under international human rights law, including the principle of non-discrimination in respecting, protecting, and fulfilling human rights.

Principle of Non-Discrimination



Human rights treaties recognize the principle of non-discrimination, whereby States Parties are obliged to protect the rights of all individuals within their territory “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷ In clarifying this principle, the UN Committee on Economic, Social and Cultural Rights affirmed that rights, including the rights to decent work, water, health, and education, under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) “apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”⁸

Prohibitions against discrimination are also found, amongst others, in the International Convention on the Elimination of Racial Discrimination (ICERD), as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), where the rights under the Convention also apply to undocumented migrants.⁹



Recognizing these concerns, the New York Declaration for Refugees and Migrants was adopted under the auspices of the UN in September 2016. Member States committed, among other priorities, to protect the human rights of all refugees and migrants, regardless of their status. Regrettably, the more “operational” international agreements, namely the Global Compact for Safe, Orderly and Regular Migration (hereafter Global Compact

on Migration or GCM) and the Global Compact on Refugees that were adopted in December 2018, fell short of the Declaration’s promises.¹⁰ The adoption of two separate Compacts reflects the inability to capture and address the complex nature of modern human mobility and to overcome rigid legal regimes between refugees and other persons forced to migrate, including due to new factors such as climate change.

The Global Compact on Migration: *Between consensual progress and status quo*

The negotiations of the Global Compact on Migration were challenging and politically charged, taking place against the backdrop of rising global xenophobia, racism, and attacks on multilateralism. The GCM was unable to bring forward the ground-breaking framework the world needs to fulfil the rights of millions of migrants. Instead, the “achievements,” mentioned by some, are merely repetitions of already-existing international human rights obligations. In some respects, the GCM even regresses in terms of human rights protection by adopting lower standards than those already existing in some countries. Major concerns with the final text include:

- Essentially reinforcing a differentiation between regular and irregular situations of migration, limiting the access of the latter to public services.
- Failing to address and prohibit the criminalization of migration, which will continue to enable the abuses we are witnessing now around the world.
- Removing several essential human rights protections during the negotiation. For example, references to the principle of firewalls (where “immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services at...social service institutions”¹¹) were deleted, as was the call to end the practice of exploitative employer-tied visas.

Even with these concerns, the GCM does provide objectives for States that can be used to protect rights.





Myth 1

“All migrants are the same.”

The individual stories of migrants are often unheard, and the public remains largely unaware of what drove them to leave their homes. Instead, government officials, the media, and others have at times broadly portrayed foreigners, including migrants, as

a homogenous group requiring one, often xenophobic and racist, response. In reality, migration flows may include individuals with “a range of legal statuses as well as a variety of vulnerabilities,”¹² necessitating State action that recognizes these distinctions.

Terminology



Refugee:

As defined by Article 1 of the 1951 Convention relating to the Status of Refugees, and amended by the 1967 Protocol relating to the Status of Refugees, a refugee is an individual who:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”



In 1984, the Cartagena Declaration on Refugees sought to extend the definition to include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”¹³ The Declaration is non-binding, but has been incorporated into the national laws of States across Latin America and has become an example of regional customary law.

Asylum-seeker:

- an individual who is outside of their home country and is “seeking international protection,”¹⁴ a process which may result in the attainment of refugee status.

Internally Displaced Person (IDP):

- an individual that has been forced to flee his home but remains within the borders of their country of residence.

Migrants:

In lieu of a legal definition, UN agencies and entities have included varying categories of persons, including the aforementioned, under the term ‘migrant’ in line with their mandates.

- The Office of the High Commissioner for Human Rights (OHCHR) defines international migrants as “any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence. The term includes migrants who intend to move permanently or temporarily, and those who move in a regular or documented manner as well as migrants in irregular situations.”¹⁵
- The United Nations High Commissioner for Refugees (UNHCR) distinguishes migrants from refugees by asserting that a migrant is “best understood as someone who chooses to move, not because of a direct threat to life or freedom, but in order to find work, for education, family reunion, or other personal reasons. Unlike refugees, migrants do not have a fear of persecution or serious harm in their home countries. Migrants continue to enjoy the protection of their own governments even when abroad and can return home.”¹⁶
- The World Health Organization (WHO) includes those that are forcibly displaced as internal or international migrants.¹⁷
- The UN Working Group on Arbitrary Detention, in its revised deliberation No. 5 on deprivation of liberty of migrants, defined “migrant” as “any person who is moving or has moved across an international border away from his or her habitual place of residence, regardless of: (a) the person’s legal status; (b) whether the movement is voluntary or involuntary; (c) the cause of the movement; or (d) the duration of stay. The term shall also be taken to include asylum seekers, refugees and stateless persons.”¹⁸



- The UN International Organization for Migration (IOM) also distinguishes internal migrants, which may include internally displaced persons, as well as individuals “who decide to move to a new place” within a State “such as in the case of rural-urban migration.”¹⁹

Considering these divergences, the Special Rapporteur on human rights defenders has noted “the narrow categories of ‘migrant’ and ‘refugee’, and the silos of policy and activism that they perpetuate,” and adopted the term “people on the move” in his report on human rights defenders and migration.²⁰

Indeed, the varying definitions used by UN agencies underscores the need for States to develop holistic approaches, while recognizing their obligations to protect refugees and asylum-seekers. This includes the principle of non-refoulement, under the 1951 Refugee Convention, whereby States are prohibited from expelling or returning (‘refouler’) “a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”²¹ Central to current issues surrounding migration and the closing of borders, alongside other repressive policies, is that individuals seeking asylum, who have not gone through an official refugee status determination process, remain protected by the principle of non-refoulement, with limited exceptions.²²



UN agencies have noted that all migrants and refugees may be “disproportionately vulnerable to exclusion, stigma and discrimination, particularly when undocumented.”²³ However, particular subsets of individuals, including indigenous peoples, unaccompanied minors, and women may have an increased risk to human rights abuses, including due to state policies and also the actions of non-state actors.²⁴

For example, when visiting the Philippines in 2016, the UN Special Rapporteur on the rights of internally displaced persons noted that “armed conflict and extractive and logging activities on indigenous ancestral territories have a devastating impact on indigenous peoples (Lumads), displacing them and subjecting them to gross violation of their rights and to conditions that threaten their unique communities, cultures and lifestyles.”²⁵



Reality from the ground: *The Warao people – from Venezuela to Brazil*

The indigenous Warao community in Venezuela has become increasingly vulnerable during the country's on-going human rights and humanitarian crisis. Issues faced by the community include: the reappearance of infectious diseases in the country and lack of adequate medical assistance; malnutrition; and limited access to education for children, amongst others.²⁶ These concerns, alongside the adverse impacts of climate change and extractive industries on their livelihoods, have caused the Warao to migrate to other countries, including Brazil.²⁷

The Warao, however, also find a perilous situation awaiting them in Brazil, in part due to difficulties in accessing decent and culturally appropriate housing. In a 2017 joint statement to the UN Human Rights Council, FI and partners noted:

“in the cities of Pacaraima and Boa Vista bordering Venezuela, many members of the Warao communities find themselves having to sleep on the streets. In the city of Pacaraima, it is estimated that there are 190 members of the Warao communities that are homeless. In Boa Vista, 470 members of the Warao communities are welcomed in a space offered by the authorities, but administered by civil society. The reception space is precarious and is conducive to the transmission of contagious diseases. Other members of the Warao communities sleep on the streets of Boa Vista. Despite the initiatives of the Federal Public Ministry, the Public Defender of União and civil society, there is resistance from the authorities, especially from the State and Municipalities, to improve the reception, health and protection services offered to immigrants, particularly to Warao communities.”²⁸

According to FI partners, many Venezuelan nationals in Brazil have suffered from skin diseases as a result of a lack of adequate housing.²⁹ Access to health care, while available, is insufficient to meet the demand.

Warao community members interviewed by the International Organization for Migration have affirmed that “several families have lost sons and daughters due to harsh living conditions.”³⁰ In addition to housing, the Warao people face obstacles in accessing other services, as well as in regularizing their status in the country. This is due to the fact that the Brazilian government authority Funai, which deals with indigenous issues in Brazil, does not recognize the Warao as such – it views its mandate as addressing “only Brazilian or crossborder indigenous peoples.”³¹





Myth 2

“Migrants only come to Europe and other rich countries”

As noted, the term ‘migrant’ has been used as a catch-all when describing potentially broad categories of individuals with a range of legal statuses and protection needs. Irrespective of these classifications, statistics tend to dispel the myth that individuals that are forced to flee or are driven to leave their area of residence only pursue so-called Western States. The reality of where individuals choose or are able to migrate to is much different.

For example, in 2018, countries hosting the most refugees were: Turkey (+3.7 million); Jordan (+2.9 million); Lebanon (+1.4 million); Pakistan (1.4 million); Uganda (+1.1 million); Germany (+1 million); Iran (979,400); Ethiopia (921,000); Sudan (908,700); and Bangladesh (906,600).³² More broadly, and in line with the previous statistics, the WHO found that “developing countries host 86% of forcibly displaced populations.”³³

The WHO further found that the majority of migrants globally are internal migrants—individuals who stay within the borders of the State of their habitual residence—making up approximately 763 million of the total 1 billion migrants worldwide.³⁴ Europe and North America host approximately 82 million and 59 million international migrants respectively.

Furthermore, the UN found that international migrants mainly moved “between countries located within the same region;”³⁵ in a 2016 report, the Special Rapporteur on the human rights of migrants noted that “most migrants originate from middle-income countries, with 59 per cent settling in developed regions.”³⁶



Reality from the ground: *Internal and regional displacement in Cameroon and Nigeria*

The population of Cameroon is composed of an 80% Francophone majority and a 20% Anglophone minority, with the latter living predominantly in the Northwest and Southwest regions.³⁷ The colonial language divisions are reflective of the territories that were controlled by Britain and France following the First World War. Both French and English are official languages under Cameroon’s Constitution, which further outlines that they have the same status, and that the State should “endeavour to protect and promote national languages.”³⁸ Even with this provision, and other constitutional protections, including equality of all citizens before the law, claims of bias against and marginalization of Anglophone Cameroonians arose.

In October 2016, lawyers began mobilizing to protest the State’s failure to translate legal texts into English and “the ‘francophonisation’ of Common Law jurisdictions.”³⁹ The following month, teachers and students also went on strike against perceived discrimination. Protests were violently dispersed by State authorities. The situation continued to escalate as authorities “banned civil society organizations, suspended the internet and cut phone lines for about six months in 2017.” Later in the year, demonstrations celebrating the “symbolic independence from the country’s French-speaking areas were met with unlawful and excessive and deadly force.”⁴⁰

Violence between Cameroon authorities and armed separatist groups spurred displacement. In November 2018, the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) estimated that at least 437,000 individuals were “internally displaced in the South-West, North-West and in neighbouring departments due to hostilities between armed groups and security forces.”⁴¹ During the same period, the UN reported that over 26,000 Cameroonians had fled to Nigeria.⁴² By February 2020, 679,000 individuals were internally displaced in the Northwest and Southwest regions, and approximately 60,000 individuals were seeking asylum in Nigeria.⁴³

While instability in Cameroon was a driver of displacement for its nationals, the State also received asylum-seekers. This was spurred by attacks launched by Boko Haram throughout Africa’s Lake Chad Basin, which includes parts of Cameroon, Chad, Niger, and Nigeria. Large-scale displacement has occurred throughout the region. In February 2020, the UNHCR estimated that there were 2,617,808 internally displaced persons in the Lake Chad Basin, with Nigerians accounting for the overwhelming majority of IDPs (at upwards of 2 million).⁴⁴ Amongst those displaced, Cameroon hosted the majority of Nigerian refugees, with approximately 105,923 of the total 107,840 of the Nigerian refugees in Cameroon in the Far North region.⁴⁵

Notably, the high number of refugees persists despite the signing of a tripartite agreement between Cameroon, Nigeria, and the UNHCR in 2017 to facilitate the voluntary return of Nigerian refugees in Cameroon. Even with the agreement in place, Human Rights Watch documented abuses faced by Nigerian asylum seekers and refugees, including their forcible return to Nigeria by Cameroonian authorities.⁴⁶



Freedom of Movement



State Obligations:

Article 12 of the International Covenant on Civil and Political Rights (ICCPR) affirms:

- “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.”

Article 13 of ICCPR goes on to note:

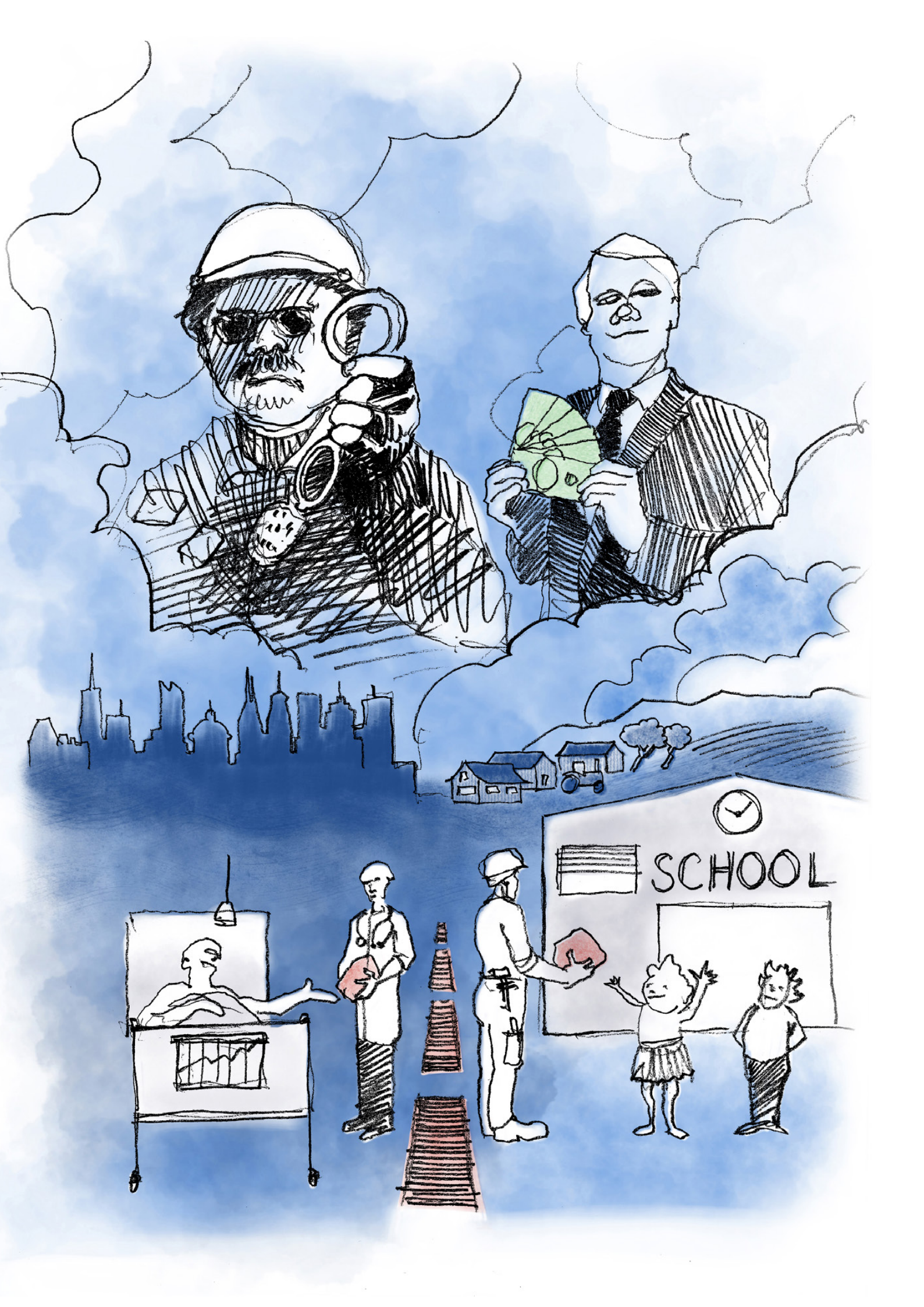
“An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

The UN Human Rights Committee has held that restrictions on freedom of movement must “conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.”⁴⁷

Global Compact on Migration:

- Objective 5: “Enhance availability and flexibility of pathways for regular migration”
- Objective 17: “Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration”





Myth 3

“Migrants are ruining national economies and should not be allowed to work”

Politicians and others have often tried to demonize so-called ‘economic’ migrants in order to rally support for xenophobic policies or create a scapegoat during economic downturns. In reality, economic migrants (or migrant workers) positively contribute to the economies of both their States of origin and destination.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) defines a migrant worker as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”⁴⁸ The Convention defines certain categories of migrant workers, including seasonal workers and itinerant workers, but also underscores certain groups to which the ICMW does not apply, including refugees and stateless persons.⁴⁹

A broad range of individuals therefore may be considered migrant workers, whose experiences differ not only as a result of their employment context, but also as a result of protections offered to them by the State in which they live. A 2018 study, for example, found that migrants significantly contributed to the health care industry in the United States in “nearly every occupation.”⁵⁰ While these and other similarly placed migrants may have their rights fulfilled, others may be vulnerable to exploitation.⁵¹

“Migrant labour is an economic resource, both of receiving jurisdictions through the expansion of the labour market and of sending jurisdictions through the receipt of valuable remittances.”

UN Special Rapporteur on human rights defenders
UN Document A/HRC/37/51

Migrants also positively contribute to the economy of the country in which they work. A 2016 study found that undocumented immigrants in the United States contributed \$11.64 billion to state and local taxes, which includes “just under \$1.1 billion in personal income taxes.”⁵² Studies on the United Kingdom and Germany have also found that intra-European Union (EU) migration contributed positively to their domestic economies.⁵³

Economic migrants not only play an important role in the country where they work, but also contribute to the development of their home country. The World Bank has noted that “[r]emittances have exceeded official aid...since the mid-1990s,” and in 2019 were expected to “overtake foreign direct investment.”⁵⁴ Such remittances were found to significantly contribute to the education and health care of members of the migrant’s family and community, and the local economy more broadly, in their country of origin.⁵⁵ In recognizing the value of remittances to development, the UN’s 2030 Agenda for Sustainable Development⁵⁶ includes the goal of reducing “to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent.”⁵⁷



Reality from the ground: Protecting migrant domestic workers

FI has reported on the case of Indonesian domestic workers in Malaysia, who are an important component of the care sector in a country with an ageing population. In its joint submission⁵⁸ for the Universal Periodic Review of Malaysia, FI and partners wrote:

“The ratio of documented and undocumented migrant workers is estimated at 50:50. Indonesian migrant workers in Malaysia have often been exploited and tortured. They have limited access to health care and other services, which lead to permanent disabilities or death. The volume of complaints received from domestic workers, as well as a series of high profile cases of abuse disclosed by the media, led Indonesia to suspend deployment of domestic workers to Malaysia in 2009 pending a revised agreement.⁵⁹ However, in 2011 Indonesia and Malaysia resumed another MoU with some additional clausal on labor protection, including the minimum wage. This MoU ended in 2016.

[...]

On the 11 February 2018, Ms. Sau, a 21-year old Indonesian maid from NTT Province, died allegedly as a result of mistreatment by her employer in Penang in Malaysia. Before dying, she was found sitting helpless on the porch of her employer’s house in the company of a Rottweiler-style black dog tied to the rope beside her. She was rushed to Bukit Mertajam Hospital, but she passed away. The neighbors around the employer’s house told police that, for over a month, Ms. Sau was forced to sleep with a Rottweiler on her employer’s porch.

Initially, she worked legally in Malaysia until her return to Indonesia in 2014. She went back to Malaysia to work a second time without going through the formal procedure. Therefore, she was allegedly a victim of human trafficking,⁶⁰ and working without a visa for two years⁶¹ which forced her to work in a deplorable condition until her death. The employer of Ms. Sau was charged of employing a foreign worker illegally and murder.”

The case of Ms. Sau is unfortunately not unique. As noted by the Special Rapporteur on the human rights of migrants, women may be particularly at risk, especially when “working in unskilled, undervalued and lower paid sectors, often as domestic workers or caregivers, [...] in spaces that are difficult to regulate, such as private homes.”⁶² Such abuses are pervasive across countries. One study conducted by the *Comité d’action contre la traite humaine interne et internationale* (CATHII), an FI partner in Canada, found that “most cases of forced labor had to do with migrant workers who had entered Canada legally.”⁶³

Given the vulnerable situations that migrant workers, especially women, find themselves in, it is critical for host States to accept and implement relevant international human rights legal obligations and standards and take other actions that prevent the abuse of migrant workers as well as reinforce their rights. The 2030 Agenda recognizes the importance of protecting labor rights and promoting “safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.”⁶⁴



The Right to Work and the Right to an Adequate Standard of Living



State Obligations:

Article 6 and Article 11 of the International Covenant on Economic, Social and Cultural Rights respectively affirm the right to work and the right to an adequate standard of living.

In regards to the right to work, the UN Committee on Economic, Social and Cultural Rights (CESCR) has affirmed:

- “The principle of non-discrimination [...] should apply in relation to employment opportunities for migrant workers and their families.”⁶⁵
- “States parties are under the obligation to respect the right to work by, inter alia, prohibiting forced or compulsory labour and refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups, including [...] migrant workers.”⁶⁶

The CESCR has also noted:

- “The right to just and favourable conditions of work is a right of everyone, without distinction of any kind. The reference to “everyone” highlights the fact that the right applies to all workers in all settings” including “workers in the informal sector; migrant workers, workers from ethnic and other minorities, domestic workers [...] agricultural workers, refugee workers and unpaid workers.”⁶⁷
- “Migrant workers: These workers, in particular if they are undocumented, are vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments. [...] Undocumented workers often fear reprisals from employers and eventual expulsion if they seek to complain about working conditions. Laws and policies should ensure that migrant workers enjoy treatment that is no less favourable than that of national workers in relation to remuneration and conditions of work. Internal migrant workers are also vulnerable to exploitation and require legislative and other measures to ensure their right to just and favourable conditions of work.”⁶⁸



The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has also addressed the right to work, where Article 25 affirms:

“1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on work and any other matters which, according to national law and practice, are considered a term of employment.

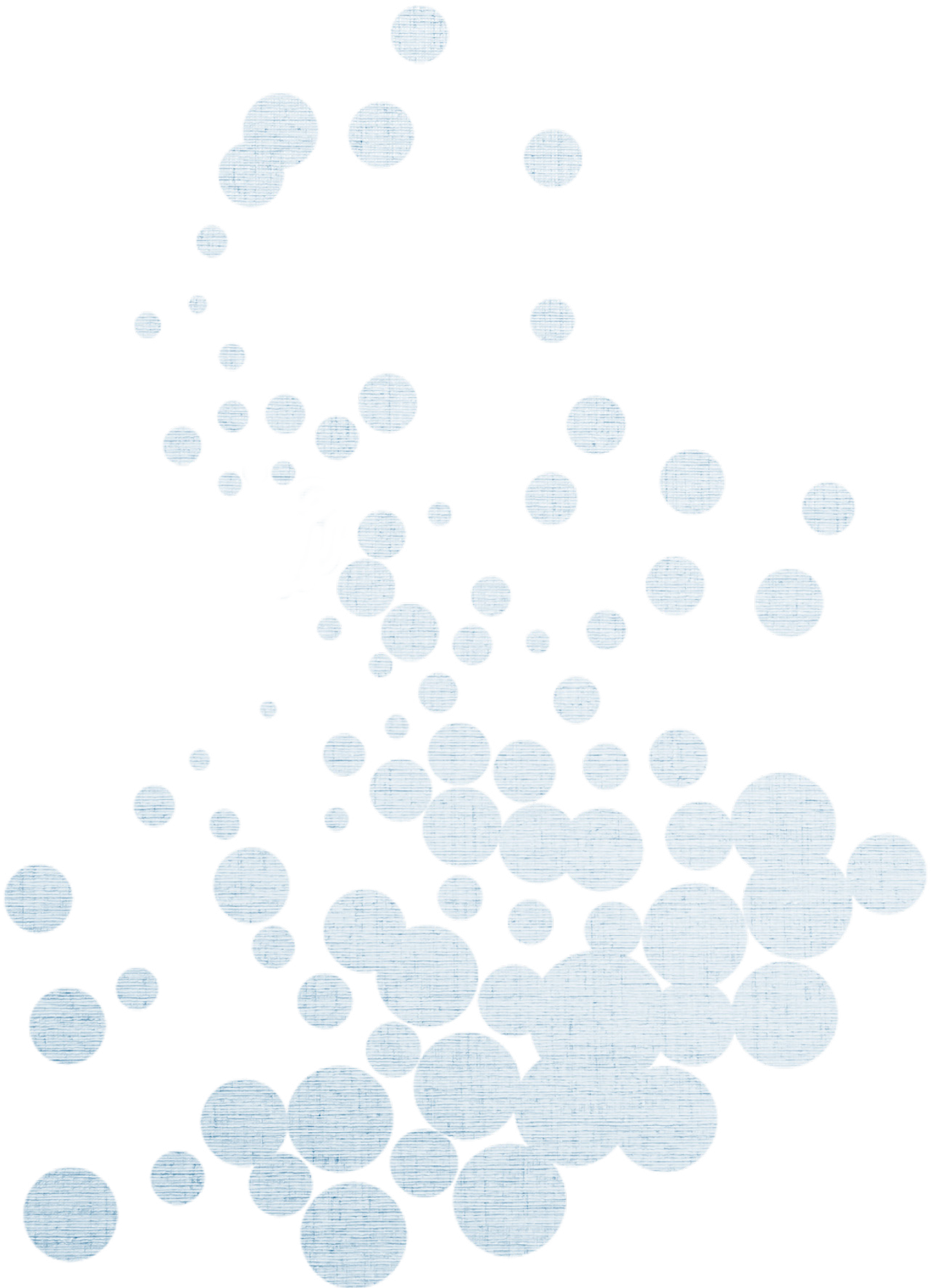
2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

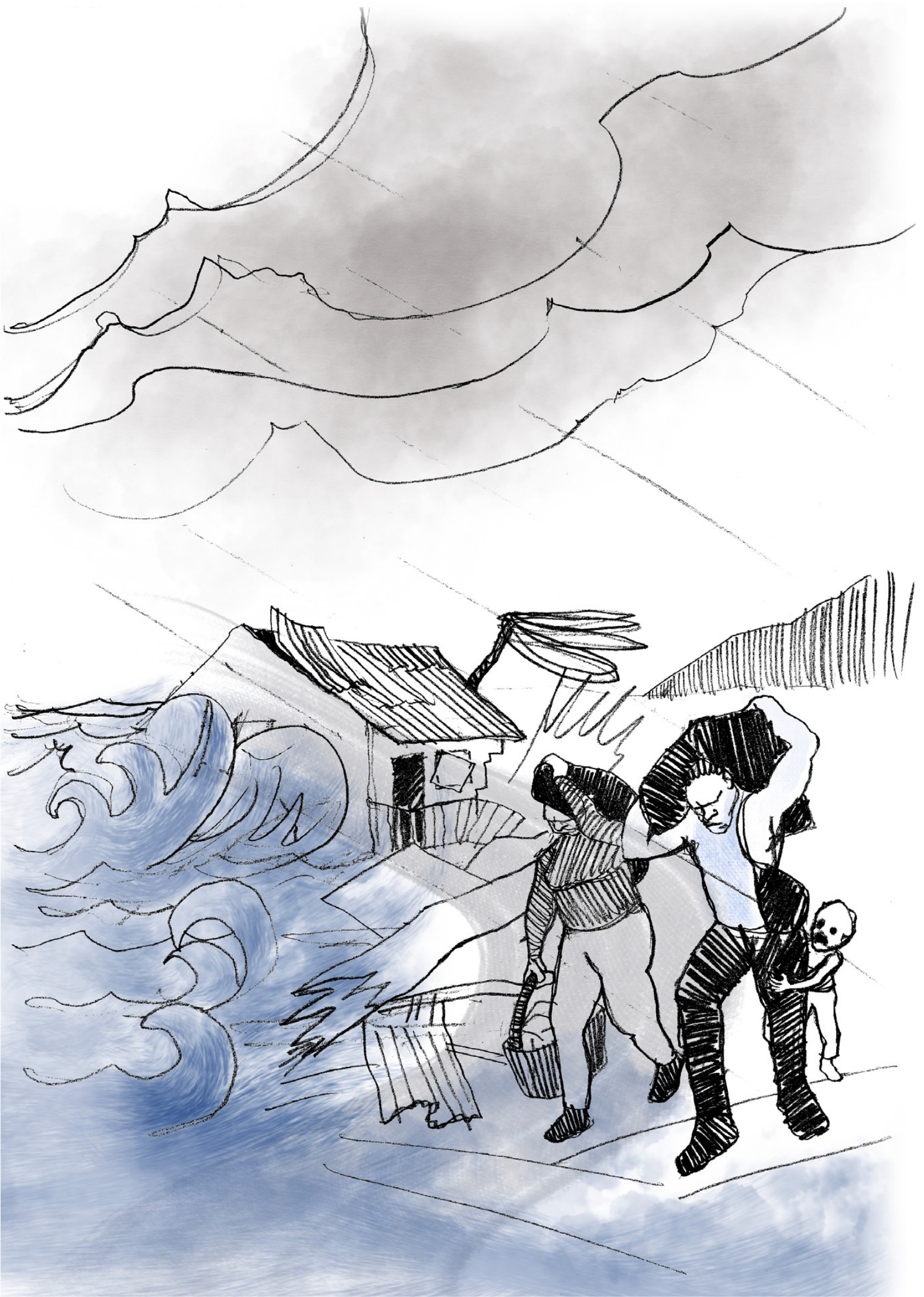
3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. [...]”

Global Compact on Migration:

- Objective 6: “Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work”
- Objective 18: “Invest in skills development and facilitate mutual recognition of skills, qualifications and competences”
- Objective 19: “Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries”
- Objective 20: “Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants”







Myth 4

“Unlike refugees, migrants can return to their homes”

“Migrants that fled the effects of climate change did so not out of choice but out of the need to escape conditions that could not provide for even the most fundamental of their rights.”

Report of the Office of the United Nations High Commissioner for Human Rights⁶⁹

There were 18.8 million new displacements in 2017 alone due to natural disasters.⁷⁰ While the intensification of weather-related natural disasters may most clearly connect climate change as a driver of migration, slow onset impacts, including “sea level rise, salinization, drought, and desertification”⁷¹ also have an adverse effect on human rights and may compel individuals to relocate, either within their country of residence or abroad.

Central to the need for international action to combat climate change, and to support and protect climate migrants, is the fact that States that contribute the least to climate change are often most impacted by its effects.⁷² For example, Africa has been and will continue to be disproportionately impacted by climate change. The continent is “expected to warm up to 1.5 times faster than the global average”,⁷³ even though it accounts for only 4% of the world’s total greenhouse gas emissions.⁷⁴ More broadly, the World Bank estimates that by 2050 more than 143 million people could become internal climate migrants in Sub-Saharan Africa, South Asia, and Latin America if no action is taken.⁷⁵



Reality from the ground: Climate change impacts on residents of Kiribati

FI has addressed the issue of climate migration in its work, including in its 2014 and 2020 joint submissions for the Universal Periodic Review of Kiribati.⁷⁶ The 2014 submission noted the impact of rising sea-levels and an increase in storm surges on the people of Kiribati, which leaves individuals “exposed to sudden inundation and drowning.”⁷⁷ More generally, the impacts of climate change detailed in the submission included land shortages, decreases in agricultural harvests, and an increase in health issues. At the time, FI and partners noted the necessity of determining “how to deal with a nation whose land is increasingly uninhabitable.”⁷⁸

Nearly six years later, the international community, while still dealing with this question, has moved towards greater recognition and protection of climate ‘refugees’ or migrants.

In January 2020, the UN Human Rights Committee reviewed a communication from a national of the Republic of Kiribati, who was challenging the rejection of his application for refugee status and subsequent deportation from New Zealand. The individual had asserted that climate change and rising sea levels forced him and his family to migrate and, by rejecting his application, New Zealand violated his right to life under the International Covenant on Civil and Political Rights.⁷⁹

While the Committee accepted that rising sea levels would “likely render the Republic of Kiribati uninhabitable,” it noted:

“the timeframe of 10 to 15 years, as suggested by the author, could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population.”⁸⁰

The Committee did recognize the effects of climate change, but in this particular situation, found that because of this timeframe and concurrent steps taken by the Government of Kiribati, the individual did not face “a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati.”⁸¹ Although the petitioner himself was not granted refugee status, the decision ultimately leaves the door open for others seeking protection from the effects of climate change.

Years prior to the decision, the President of Kiribati had already emphasized that its inhabitants did not want to become refugees and instead coined the concept of “migration with dignity” where citizens could be prepared and “make informed future choices” on the reality of the habitability of their nation.⁸²



Climate Change and the Right to Life



State Obligations:

Article 6 of the International Covenant on Civil and Political Rights affirms the right to life. The UN Human Rights Committee notes:

“Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life [...] Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”⁸³

As mentioned before, Article 11 of the International Covenant on Economic, Social and Cultural Rights affirms the right to an adequate standard of living, which includes adequate food, clothing and housing, and to the continuous improvement of living conditions. The Committee on Economic, Social and Cultural Rights has affirmed that the right should be “seen as the right to live somewhere in security, peace and dignity.”⁸⁴ Adequacy is determined in part by climatic, ecological, and other factors.

Global Compact on Migration

- Objective 2 (h): “Strengthen joint analysis and sharing of information to better map, understand, predict and address migration movements, such as those that may result from sudden-onset and slow-onset natural disasters, the adverse effects of climate change, environmental degradation, as well as other precarious situations, while ensuring effective respect for and protection and fulfilment of the human rights of all migrants”
- Objective 5(h): “Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible”





Myth 5

“Migrants are willing to take the risks and States do not need to protect them during transit or upon entering their country of destination”

Migrants often undertake treacherous journeys in order to reach their country of destination. The UN has noted a protection gap, where the “lack of a rights-based response [...] results in greater risks for migrants in transit and leads to death, injuries and other human rights violations.”⁸⁵ The IOM has estimated that over 30,000 migrants, including refugees and asylum-seekers, have lost their lives in transit since 2014.⁸⁶ As of 19 August, 1,520 migrants died during their journeys in 2020 alone, according to the IOM.⁸⁷

Migrants may face numerous other violations of their rights during transit, including: becoming victims of sexual violence⁸⁸ or trafficking; lacking access to “health care or reproductive health-care services”⁸⁹ including due to lack of information and fear of deportation; inadequate housing; and arbitrary detention. Children are particularly vulnerable during transit and are “unlikely to be able to access education and health care, including mental health care and timely vaccinations.”⁹⁰

Critically, migrants often stay silent in the face of human rights abuses due to real and perceived lack of access to justice, fear of retaliation and detention, systemic corruption in the country of transit, and other obstacles.



Reality from the ground: *Testimony from a Franciscan on the transit through Mexico*

“When arriving at our shelter, people have usually been the victims of countless violations of their rights, including: assaults, kidnappings, sexual violations, extortion, and violent actions carried out in collaboration with the national army, the navy, state police and municipal police. A few days ago, we received an unaccompanied minor. Because he could not be arrested, a migration police officer pushed him off the train when it was moving. He was seriously hurt by the fall and had injuries to his head and ear. In this same policing operation, a person who was also thrown from the train suffered a hip fracture. People report that in these migration operations the police have trained dogs and shoot in the air to try to intimidate them. Unfortunately, people do not dare to report these abuses, because the authorities threaten them that, if they do so, there will be consequences for them. Only one group of approximately 40 people dared to file a complaint with the CNDH (the National Human Rights Commission of Mexico).

[...]

Salto de Agua is a strategic place where hundreds of migrants enter Mexico through five border crossings: El Naranjo, El Ceibo, La Técnica, Benemérito, and Corozal. Unfortunately, in this place there are no NGOs that can fully care for the people, but the Mexican Commission for Aid to

Refugees is present. I can only give a daily human rights talk so that people have information about their rights as migrants, the possibility of seeking refuge in Mexico, and personal advice to those who want to know more. We also take the time to talk about the procedure for seeking asylum so that they see what pathway is most suitable for them. However, this can become frustrating. Since the objective of many people is not the ‘American dream’ but simply a safe place to live free and in peace, many people express their desire to stay to live in Salto de Agua, but unfortunately it is not an option for them given that there are no opportunities for work or for the education of their children.”

Sr. Diana Muñoz Alba FMM,

Human rights lawyer and director of the “Casa Betania Santa Martha” shelter,

3 May 2018, Panel discussion on migration in New York

Many States have also implemented harsh policies in order to deter migrants from entering their territory. In attempting to minimize the flow of migrants crossing the Mediterranean, Italy passed a law in 2019 imposing high fines on vessels and organizations involved in search and rescue operations, amongst other actions.⁹¹ The law was condemned by the UN, which noted that it deterred “lifesaving efforts in the Mediterranean.”⁹² Other policies implemented by EU member states include “boosting the capacity of the Libyan Coast Guard to intercept sea crossings”⁹³ and, most recently, forcing boats to return to Libya in violation of the principle of non-refoulement.⁹⁴ It should be noted that the law was not unique in targeting individuals that seek to help migrants; State practices have increasingly sought to intimidate and harass human rights defenders who work with and support migrants.⁹⁵

The increased use of border controls and repressive immigration policies, including widespread detention of migrants by the United States and others, has been a longstanding concern of Franciscans and other partners. During a Joint Oral Statement in 2018, a representative from the Franciscan house for migrants and refugees La 72 in Mexico stated: “Border security policies and the control of migratory flows in the region have not stopped intensifying in the last decade. Immigration detention is not an exceptional measure but a habitual practice.” He went on to note that at the border between Mexico and the United States, “[a] large number of people in need of protection are rejected at the border and/or deported, violating the principle of non-refoulement.

Others are detained, separated from their families, and sent to immigration stations to start their asylum procedure. They are deprived of their liberty, sometimes for up to months, sometimes becoming victims of ill-treatment, extortion and torture by the authorities.”⁹⁶ Such practices have also been widely criticized by the UN. In September 2019, the Committee on the Elimination of All Forms of Racial Discrimination noted with concern in regards to the situation in Mexico that “asylum seekers and migrants in an irregular situation, including accompanied and unaccompanied children, are automatically placed in so-called migrant holding centres, where living conditions are unsatisfactory.”⁹⁷

In July 2019, for example, UN High Commissioner for Human Rights Michelle Bachelet noted the poor and overcrowded conditions in which migrant children were kept in the United States, and that such detention may amount to cruel, inhuman or degrading treatment. More broadly, she affirmed that the detention of “adult migrants and refugees should be a measure of last resort.”⁹⁸

This is in line with guidance from the UN Working Group on Arbitrary Detention, which has underscored that the “deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, is prohibited,” and that “[a]ny form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose.”⁹⁹

Right to a Life with Dignity



State Obligations:

The UN Human Rights Committee has noted:

“The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence.” This may include “unaccompanied migrant children and children in situations of armed conflict [...] displaced persons, asylum seekers, refugees, and stateless persons.”¹⁰⁰

The Committee goes on to underscore, “The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”¹⁰¹

Global Compact on Migration:

- Objective 7: “Address and reduce vulnerabilities in migration”
- Objective 10: “Prevent, combat and eradicate trafficking in persons in the context of international migration”



Right to Liberty and Security of Person



State Obligations:

Article 9(1) of the ICCPR affirms, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

In regards to child detention, Article 9 of the Convention on the Rights of the Child (CRC), in part, notes that States Parties “shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”

Article 37 of the CRC goes on to affirm “States Parties shall ensure that:

- (a): No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment [...]
- (b): No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”



Global Compact on Migration:

- Objective 7: “Address and reduce vulnerabilities in migration

We commit to respond to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights, in accordance with our obligations under international law.” Para 23

- Objective 8: “Save lives and establish coordinated international efforts on missing migrants”
- Objective 12: “Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

Ensure that migrant children are promptly identified at places of first arrival in countries of transit and destination, and, if unaccompanied or separated, are swiftly referred to child protection authorities and other relevant services as well as appointed a competent and impartial legal guardian, that family unity is protected, and that anyone legitimately claiming to be a child is treated as such unless otherwise determined through a multi-disciplinary, independent and child-sensitive age assessment.” Para 28(d)

- Objective 13: “Use immigration detention only as a measure of last resort and work towards alternatives”



Some Ideas

To Learn and Become Active

As noted throughout this publication, Franciscans, and other faith-based groups and civil society organizations often work closely with migrants during and after their transit. This can include providing basic assistance, like food and shelter, but may also focus on advocating for the rights of migrants. In all cases, both local and international action is imperative for change.

We encourage our readers to:



Inform yourself about civil society initiatives to support migrants in their communities;



Make people around you aware of the myths surrounding migration and the obligations and commitments of States as described in the publication;



Consider volunteering or doing an internship at a house for migrants or refugees;



Support and learn about the Franciscan Network on Migration, by visiting <https://redfranciscana.org/>



Learn more about the issue of migration by visiting the websites of relevant agencies and experts, including:

- **The UN High Commission for Refugees**
<https://www.unhcr.org/en-us/>
- **The International Organization for Migration**
<https://www.iom.int/>
- **The United Nations Network on Migration**
<https://migrationnetwork.un.org/>
- **The UN Special Rapporteur on the human rights of migrants**
<https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx>



Check to see what core international human rights instruments States have ratified, and their corresponding obligations at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>



Read the Global Compact for Safe, Orderly and Regular Migration (GCM): <https://refugeesmigrants.un.org/migration-compact>



Annex I

Relevant binding international agreements



Give us feedback on this publication at <https://bit.ly/FeedbackMigrationFI>

- **International Covenant on Civil and Political Rights (ICCPR)**
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>
- **International Covenant on Economic, Social and Cultural Rights (ICESCR)**
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- **International Convention on the Elimination of All Forms of Discrimination (ICERD)**
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>
- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>
- **Convention on the Rights of the Child (CRC)**
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
- **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)**
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>
- **Convention Relating to the Status of Refugees**

Nonbinding documents that have been supported by States



<https://www.unhcr.org/en-us/5d9ed32b4>

- **Global Compact for Safe, Orderly and Regular Migration**
https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195
- **Global Compact on Refugees**
<https://www.unhcr.org/5c658aed4>
- **Transforming our World: the 2030 Agenda for Sustainable Development**
https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E



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