

Ombudsman/National Human Rights Institutions

Declaration on the Protection and Promotion of the Rights of Refugees and Migrants

WE, Ombudsmen/National Human Rights Institutions' representatives, attending a Conference entitled "Ombudsman/National Human Rights Institutions: Human Rights Challenges in Refugee/Migrant Crisis" on 23-24 November 2015 in Belgrade, the Republic of Serbia¹;

RECALLING appropriate international and regional instruments to which our countries have acceded, in order to safeguard the human rights and fundamental freedoms of migrants² and refugees³, without discrimination, including based on nationality;

RECOGNISING, as set out in the Universal Declaration of Human Rights, the inherent dignity and the equal and inalienable rights of all individuals as the foundation of freedom, justice, peace and security, and in building solidarity on the national, European and international level;

CONFIRMING our shared responsibility to realise the promotion and protection of the rights of migrants and refugees, as well as the responsibility of states to ensure adequate resources for Ombudsman / National Human Rights Institutions to fulfil their mandates in this regard, while ensuring that their independence is fully respected;

RECOGNISING the sovereignty of states in determining their own migration/refugee policy, including exercising control of their borders, but also recognising that all states are subject to compliance with international and European human rights obligations, in particular in providing appropriate procedures for determining the right to seek and enjoy asylum, for determining the conditions under which migrants and refugees may remain, and the obligation to ensure that the principle of "*non-refoulement*" is respected;

REALISING that basic features of the present situation of urgency include the constant large numbers of arrivals, the overload of asylum and reception infrastructures in many of the receiving and transit countries, the lack of comprehensive policies at European level, and insufficient implementation of those that exist;

ACKNOWLEDGING also the need to address effectively violations of the human rights of migrants and refugees wherever such cases occur;

ACKNOWLEDGING the concerns of the receiving and transit states over acceptance of high numbers of migrants and refugees;

¹ As listed at Annex 1.

² Throughout this Declaration, 'migrants' shall include all migrants, regardless of migration status.

³ Throughout this Declaration 'refugees' shall include all individuals in need of international protection.

WELCOMING the 2030 Agenda for Sustainable Development (UNGA 70/1) which recognises the positive contribution of migrants for inclusive growth and sustainable development; as well as the need for international cooperation to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants, of refugees and of displaced persons;

RECOGNISING that terrorism and other security concerns cannot reduce the fulfilment of all human rights, including those of migrants and refugees, and that terrorism must not be attributed to any specific religion, nation or ethnic group;

REITERATING that Ombudsmen/National Human Rights Institutions are dedicated to enhancing the promotion and protection of human rights of migrants and refugees, especially those that are vulnerable, as well as to enhance the quality of their reception, in accordance with international and regional human rights standards and including a gender perspective;

HEREBY DECLARE AS FOLLOWS:

GENERAL PRINCIPLES

1. Respecting Human Rights of Refugees and Migrants

We remind all states affected by the large number of arrivals of migrants and refugees of their obligation to ensure full observance of international and regional human rights instruments, including the UN 1951 Geneva Convention relating to the status of refugees; the European Convention on Human Rights; and the relevant OSCE Human Dimension Commitments. Refugees and migrants are entitled to protection against any discrimination and against any incitement to discrimination. We emphasise that each state has a duty to carry out its respective national commitments in line with international law;

2. Ensuring Full Access to the Asylum Procedure

All states along the migratory routes dealing with migrants and refugees must respect the principle of *non-refoulement*; and ensure, without discrimination on any ground, the unhindered access to fair, prompt, effective, and gender-sensitive asylum procedures, safeguarding the best interests of the child; the right to information; and the right to an effective remedy;

3. Protection of Rights through Cross Border Cooperation

All states receiving large numbers of migrants and refugees should closely cooperate and establish channels to exchange reliable information in order to provide a humanitarian response and to secure human rights compliant reception of migrants and refugees who are staying or transiting through their territories;

4. Prevention of Inhuman and Degrading Treatment

All states dealing with migrants and refugees must adhere to their commitments deriving from the ratified international and regional treaties regulating deprivation of

liberty as a last resort and forced return, so as to prevent inhuman or degrading treatment of migrants and refugees. Competent Council of Europe and United Nations human rights bodies have urged states to avoid detention of migrants, and refugees Detention of migrant children should be fully eradicated. All cases of physical or other abuse of migrants and refugees must be promptly and fully investigated and the perpetrators brought to justice.

5. *Strengthening integration measures and family unity*

All state authorities should support family unity and develop and implement long-term integration measures, such as educational strategies, labour market policies and social integration measures, with non-discriminatory participation in public and political life.

6. *Promoting and Protecting Economic and Social Rights*

States should ensure migrants' and refugees' effective access to economic and social rights, including adequate shelter, health care, food, water, sanitation, child and family protection, as well as the swiftest possible integration into mainstream education, where relevant.

Ensuring Safeguards for Vulnerable Groups

7. All states dealing with migrants and refugees should identify and provide for the particular needs of vulnerable groups in order to safeguard their rights, such as: children (accompanied, separated and unaccompanied); victims of torture, sexual violence or human trafficking; persons at risk of statelessness; LGBTI; traumatized persons; persons with intellectual and/or physical disabilities; and older persons; with due attention to gender-specific aspects of human rights issues arising.

COMMITMENTS BY OMBUDSMAN / NATIONAL HUMAN RIGHTS INSTITUTIONS ⁴

Having in mind the scope of this situation of urgency, we recognize a need to focus our efforts towards protection and promotion of the rights of migrants and refugees in accordance with international and regional human rights standards. For that purpose the Ombudsman/National Human Rights Institutions commit to:

1. Promote the possibility to lodge complaints with the Ombudsman / National Human Rights Institutions, and encourage refugees and migrants to use this opportunity in cases where they believe their rights are violated, and lodge ex officio investigations whenever doubt arises that human rights might not be fully respected.
2. Utilise as much as possible visits and presence on the spot, and other monitoring methods, as one of the important powers available to the Ombudsman / National Human Rights Institutions for the purpose of collecting relevant information and evidence so as to advise on draft legislation and influence change of the existing

⁴ These commitments should be understood and implemented only in accordance with whichever mandate(s) Ombudsman/National Human Rights Institutions have in their respective countries

practices of national authorities as well as for resolving complaints filed by refugees and migrants.

3. Engage in awareness raising and in dissemination of accurate information on the human rights of refugees and migrants, especially in the current context and growing xenophobia.
4. Strongly oppose any public statements of state officials and politicians which constitute or encourage hate speech and discrimination practices, and urge the authorities to take all necessary measures in order to prevent it.
5. Condemn and oppose publicly the violation of migrants' or refugees' rights and encourage the spirit of tolerance and compassion for refugees and migrants, including ensuring their protection in reception centres and other accommodation facilities.
6. Partner with and encourage civil society organisations to cooperate nationally and regionally in order to protect human rights; provide humanitarian assistance; promote understanding of refugees and migrants, including through media; and to engage in intercultural dialogue and joint advocacy activities.
7. Stimulate regional, transnational and global cooperation and action on comprehensive migration policies, insisting that the human rights dimension of this phenomenon must not be overridden by security measures and the protection of borders.
8. Collaborate with relevant international and regional human rights mechanisms, and make appropriate use of support and assistance available.
9. Cooperate regionally, including through relevant regional networks to reinforce our work at both the national and regional level, and also to cooperate cross-regionally, to promote and protect the human rights of migrants and refugees.