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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****How to expand and diversify regularization mechanisms and
programmes to enhance the protection of the human rights of
migrants****Report of the Special Rapporteur on the human rights of migrants,
Felipe González Morales***Summary*

The present report outlines the main activities undertaken by the Special Rapporteur on the human rights of migrants, Felipe González Morales, during the reporting period. In the report, the Special Rapporteur highlights the human rights challenges faced by migrants in an irregular situation by providing an analysis on how irregularity increases vulnerability to human rights violations. He discusses how to address situations of vulnerability of migrants due to a lack of regular migration status by creating and strengthening regularization mechanisms.

On the basis of the information and analysis provided by States, international organizations, civil society and other stakeholders, the Special Rapporteur identifies promising practices, ongoing efforts and existing challenges and provides a set of recommendations aimed at expanding and diversifying regularization mechanisms and programmes to enhance the protection of the human rights of migrants.



I. Introduction

1. The present report is submitted to the Human Rights Council at its fifty-third session by the Special Rapporteur on the human rights of migrants, Felipe González Morales, pursuant to Human Rights Council resolution 43/6.

II. Activities of the Special Rapporteur

Country visits

2. The Special Rapporteur conducted an official visit to Poland and Belarus from 12 to 25 July 2022.¹ He also undertook a visit to Bangladesh from 20 to 31 January 2023.²

Other activities

3. In September 2022, the Special Rapporteur participated in the thirty-fifth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and in an event organized by that Committee and the Committee on the Rights of the Child on their joint general comment on migrant children.

4. On 18 October, the Special Rapporteur presented his report on climate change and the human rights of migrants to the General Assembly. On 18 and 19 October, he participated in the annual meeting of the United Nations Network on Migration.

5. Also in October, the Special Rapporteur participated in a live meeting on Facebook about climate change and human mobility, organized by Sin Fronteras, the International Organization for Migration and other institutions; a side event to the General Assembly on a human rights-based approach to climate change, together with six other special rapporteurs; a dialogue with representatives of civil society on the fundamental rights of migrants and refugees in Europe, organized by the Spanish Commission for Aid to Refugees, Acoge and other institutions, in Toledo, Spain; an event on protection and law enforcement in sea operations and the question of non-penalization, organized jointly by the Special Rapporteur, the United Nations Office on Drugs and Crime (UNODC), the Office of the United Nations High Commissioner for Refugees (UNHCR) and other institutions; and a workshop, organized by Aula Abierta, where the Special Rapporteur spoke about Venezuelan human mobility.

6. On 3 November, the Special Rapporteur spoke at the Vienna Discussion Forum, organized by UNODC, the United Nations Industrial Development Organization and other institutions, which was focused on women on the move. On 4 November, the Special Rapporteur was the keynote speaker at the twenty-fifth anniversary commemoration of the Centre for Human Rights of the University of Deusto, presenting a lecture on new challenges for the protection of the human rights of migrants. On 21 November, he participated in a round-table discussion organized by the International Labour Organization (ILO) on protecting the rights of migrant workers in irregular situations. On 28 November, he spoke at an event organized by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) on women human rights defenders at risk in migration contexts.

7. Also in November, the Special Rapporteur participated in an event organized by the Office of the Ombudsman of Argentina on communicating about migration with a human rights-based approach; spoke at the twenty-fifth anniversary commemoration of the Chiapas-based Centre for Human Rights Fray Matías de Córdova; participated in an event organized by the Centre for Human Rights of the University of Buenos Aires, at which students presented papers about cases on migration in the Americas; addressed the Regional South American Meeting of Ombudsman's Offices on the subject of legal defence and international

¹ See [A/HRC/53/26/Add.1](#) and [A/HRC/53/26/Add.2](#).

² See [A/HRC/53/26/Add.3](#).

protection; and spoke at the annual congress of the Ibero-American Federation of Ombudsmen on access to justice for migrants.

8. On 24 January 2023, the Special Rapporteur spoke at a United Nations University round-table discussion on decent work for migrants in the global South.

9. On 1 March, the Special Rapporteur gave a lecture at the International Institute for the Sociology of Law on the main challenges for the protection of the human rights of migrants. On 7 March, he was a speaker at the launch of the Migrant Rights database, organized by the Global Migration Centre of the Geneva Graduate Institute and the Migrant Rights Initiative of Cornell University. On 30 March, he participated in a panel on decolonizing human rights practice to promote racial justice at the annual meeting of the American Society of International Law.

10. Also in March, the Special Rapporteur participated in a panel on the coronavirus disease (COVID-19) pandemic, borders and migratory regularization at the World Forum on Human Rights, held in Buenos Aires; a panel at the Forum on Migration Trends, convened by the Conference of Bishops of Guatemala and other organizations, where he was the keynote speaker, addressing the situation of shelters for migrants in Guatemala and Mexico; and a side event to the fifty-second session of the Human Rights Council on disappearances of migrants, which he co-organized together with the Permanent Mission of Mexico, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other institutions.

III. Study on how to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants

A. Introduction

11. Migration can bring positive and empowering experiences to migrants, their families and their communities in their countries of origin and destination. Yet many undocumented migrants continue to struggle due to the lack of regular migration status. Migrants in irregular situations live and work in critical circumstances and may be disproportionately subjected to discrimination, abuse, exploitation and marginalization. Undocumented migrant women may be more exposed to abuse and exploitative conduct, gender-based violence and harassment and intersecting forms of discrimination. Irregular migration status associated with restrictive legislative and policy responses may drive migrants into situations of vulnerability, which also reduce the development benefits of migration for migrants, their families and the communities involved.

12. The factors that lead migrants to find themselves in irregular situations are multilayered. Regardless of the circumstances that led them into irregularity, the enjoyment of their right to health, housing, decent work, access to justice, education and other rights is usually negatively affected. The denial of migrants' rights is often closely linked to discriminatory laws and to the expression of prejudice in practice, including intolerance or xenophobia.

13. Undocumented migrants, including those with international protection needs, have human rights and need the protection of those rights, as many of them cannot return to their countries of origin for a wide range of legal and practical reasons. Considering that most migrants in irregular situations do not have access to social benefits, it is likely that a high proportion of them work in order to survive and thus may be having a significant impact on the economy through their contribution to the labour market. Irregular migration is often a consequence of limited regular pathways through which to migrate for work, safety or family reunification or because of inadequate information about other options. Policies that focus solely on returning migrants to their country of origin may also risk generating cycles of repeated migration in more critical conditions.

14. The regularization of migrants in an irregular situation, namely granting them a regular migration status to legalize their stay in the country, can be an effective measure to ensure the protection of the human rights of migrants in vulnerable situations, especially those who have experienced or encountered human rights violations and abuses in their home countries, or during the migration journey, in countries of transit and destination. The implementation of regularization mechanisms may contribute to both human development and national development.

15. In preparing the present report, the Special Rapporteur issued a questionnaire on how to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants. He expresses his gratitude to all the States, United Nations entities, civil society organizations and academics that contributed. The report is based primarily on the 83 submissions received,³ complemented by additional research, data and legal documentation issued by the United Nations, international organizations, States, civil society organizations and academics and by other open resources that were publicly available as of February 2023.

B. Informative aspects of regularization programmes and mechanisms

1. Key definitions

16. Although there is no universally accepted definition of irregular migration, the term is generally used to identify persons moving outside regular migration channels. The fact that they migrate irregularly does not relieve States from the obligation to protect their rights. Moreover, categories of people who may not have any other choice but to use irregular migration channels can also include migrants, refugees, asylum-seekers, victims of trafficking or unaccompanied migrant children in addition to migrants who are compelled to leave their country of origin for a variety of reasons. The Special Rapporteur would like to emphasize that, under international law, States are also obliged to protect the human rights of persons resorting to irregular migration pathways, including through access to asylum and international protection for asylum-seekers fleeing persecution, conflicts or generalized violence.⁴

17. The terms “undocumented migrants”, “irregular migrants” and “migrants in irregular situations” denote persons who live in a country in which their residency is not officially recognized by that country. Some may not yet have been able to obtain a residence or stay permit or citizenship due to restrictive migration categories, including labour migration, and residence policies. Other people may have had residence permits linked to education, employment or family reunification, but those permits were either temporary or had precarious stay conditions and their validity expired. Children who are born to undocumented parents inherit their irregular status. “Tolerated status” refers to a situation in which Governments do not grant regular residence status, but rather de facto enact a stay that leaves an individual in an irregular situation, severely impairing the exercise of many of their fundamental rights (e.g. the right to freedom of movement, to work, to family reunification and to access social welfare benefits).

18. With regard to the distinction between “regular” and “irregular” migrants, regular and irregular situations are rarely clear. The vast majority of the world’s migrants arrive in their destination country through a regular channel and, owing to different circumstances, become “irregular” at a later stage. This may be through no fault of the migrants themselves, but instead owing to unclear or overly bureaucratic migration procedures, discrimination or such practical impediments as high visa renewal costs, language barriers and a lack of access to legal assistance. Such overstay has a negative impact on migrants from all countries and at all socioeconomic and educational levels.⁵

³ See <https://www.ohchr.org/en/calls-for-input/2023/report-how-expand-and-diversify-regularization-mechanisms-and-programs-enhance>.

⁴ See <https://www.iom.int/key-migration-terms>.

⁵ See <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/RegularAndIrregular.pdf>.

19. “Regularization” is considered to be any process or procedure through which someone can be granted a residence permit from a government authority regularizing their stay in the country in which they live. The person applies under such procedures when they are already in the territory, including when arriving and/or residing irregularly. The process for applying for regularization differs from that used to obtain residence and work permits, which must be applied for from another country prior to or upon regular arrival. Regularization can also occur through policy amendments that exempt a specific nationality from the requirement to hold a residence permit in the country. Regularization is subdivided into three categories: regularization programmes, consisting of national measures that are not part of the regular policy framework, have a limited time period in which to apply and typically target particular categories of non-nationals in irregular situations; regularization mechanisms, which are part of the regular migration law and policy framework, with applications accepted on a rolling basis, and thus are permanent measures; and regularization initiatives, which are based on existing mechanisms in the policy framework and are aimed at putting a mechanism into practice. All three types of regularization may be time-bound and are often undertaken by local or regional authorities in a specific city or region. Regularization initiatives can be followed by awareness-raising campaigns, legal assistance and other support targeting migrants in irregular situations.⁶ People can find themselves in a so-called “limbo” situation, in which they experience the rejection of their request for asylum or bureaucratic and lengthy asylum and/or migration procedures, leading to a protracted, indefinite and undefined legal and social situation.

2. International framework on regularization

20. The international normative and policy framework on regularization comprise references to both government commitments and aspects that regularization initiatives should meet. The United Nations human rights treaties establish important provisions relating to the human rights of all migrants, including those in an irregular situation. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families requires States parties to take appropriate measures to address the situation of migrants in an irregular situation and to consider the possibility of regularizing their situation. Specifically, article 69 of the Convention provides that States parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist, and that whenever the States parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

21. It is important to mention that States parties should also respect and realize the rights of all children as enshrined in the Convention on the Rights of the Child, including its guiding principles: the principle of non-discrimination and of the best interests of the child, the right to be heard and the right to life, survival and development. In a joint general comment, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families issued guidance specifically recommending that States parties ensure that regularization procedures are clear and accessible for children and their families. With regard to the States parties’ obligations, in particular with respect to countries of transit and destination, the Committees recognized the negative impacts on children’s well-being of having an insecure and precarious migration status. The Committees therefore recommended that States ensure that there were clear and accessible status determination procedures for children to regularize their status on various grounds, such as length of residence.⁷

⁶ Platform for International Cooperation on Undocumented Migrants, “Regularization mechanisms and programmes: why they matter and how to design them” (2022).

⁷ Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para. 18.

22. The Special Rapporteur would also like to refer to joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017) on the general principles regarding the human rights of children in the context of international migration, in which the Committees stressed that States parties should develop and put into practice, with regard to unaccompanied children and children with families, a best-interests determination procedure aimed at identifying and applying comprehensive, secure and sustainable solutions, including further integration and settlement in the country of current residence, repatriation to the country of origin or resettlement in a third country. The Committees noted that solutions might include medium-term options and ensuring that there were possibilities for children and families to gain access to secure residence status in the best interests of the child. They also noted that best-interests determination procedures should be guided by child protection authorities within child protection systems and that possible solutions and plans should be discussed and developed together with the child, in a child-friendly and sensitive manner, in accordance with general comment No. 12 (2009) of the Committee on the Rights of the Child on the right of the child to be heard.

23. In 2018, the Global Compact for Safe, Orderly and Regular Migration was adopted by over 150 Member States, setting out the commitment to build on existing practices to facilitate access for migrants with an irregular status to an individual assessment that may lead to regular status, on case-by-case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved, as an option to reduce vulnerabilities, as well as for States to ascertain better knowledge of the resident population.⁸ In its objective 15, the Global Compact sets out the need for the provision of access to basic services for migrants and the commitment to ensure that cooperation between service providers and immigration authorities does not exacerbate the vulnerabilities of migrants in an irregular situation by compromising their safe access to basic services or by unlawfully infringing upon the human rights to privacy, liberty and security of person at places of basic service delivery.⁹

24. Under the Global Compact, Governments also agreed to prevent people from becoming undocumented by reviewing and revising existing pathways for regular migration in consultation with the private sector and other relevant stakeholders; to develop flexible, rights-based and gender-responsive labour mobility schemes by providing flexible, convertible and non-discriminatory visa and permit options; and to develop or build upon existing national and regional practices for admission and stay on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin, due to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible.¹⁰

25. On the occasion of the Progress Declaration of the International Migration Review Forum in 2022,¹¹ Governments agreed to include more commitments and standards relevant to regularization. In this regard, Governments and other stakeholders recognized that the availability and flexibility of pathways for regular migration remained limited in many cases¹² and they committed to strengthening their efforts to enhance and diversify the availability of pathways for safe, orderly and regular migration, including in response to demographic and labour market realities, and for migrants in vulnerable situations, as well as those affected by disasters, climate change and environmental degradation.¹³ Other commitments refer to labour mobility agreements, optimizing educational opportunities, facilitating access to procedures for family reunification that promote the best interests of the

⁸ Global Compact for Safe, Orderly and Regular Migration, para. 23 (i).

⁹ *Ibid.*, para. 31 (b).

¹⁰ *Ibid.*, para. 21 (c), (d) and (g).

¹¹ The goal of the Progress Declaration of the International Migration Review Forum is to review the progress made at the local, national, regional and global levels in implementing the Global Compact for Safe, Orderly and Regular Migration.

¹² Progress Declaration of the International Migration Review Forum, para. 24.

¹³ *Ibid.*, para. 59.

child and to providing migrants with access to information pertaining to their rights and obligations during all stages of migration.

C. Irregularity and human rights

1. Drivers leading migrants to irregularity

26. Pathways towards irregular migration are varied. Migrants may fall into situations of irregularity when entering a country irregularly seeking protection or in search of safety and dignity or when losing their regular status because of a change in employers and/or restrictive migration labour policies. In some cases, migrant victims of crime or abusive conduct may find themselves in an irregular situation when fighting for justice. It is important to acknowledge that most migrants have little control over the complex factors that define their migration status. In most cases, they find themselves in an irregular situation through no fault of their own.

27. Residence and work permits are often linked to a job contract, which must be regularly renewed. The implication of such a practice is that migrants can easily lose residence status following the loss of a job. Not fulfilling administrative requirements to renew residence status (e.g. due to high financial fees, unclear requirements or ambiguously communicated deadlines) may also result in migrants falling into irregularity. Other migrants may have their regular residence status associated with their spouse in cases of marriage or family reunification, which in some circumstances, such as separation from a violent partner, may result in the loss of regular residence status. Asylum-seekers who are found not to be in need of international protection may receive a return decision that may not be enforced immediately nor long into the future. There may be a variety of reasons for such a situation, for example a lack of administrative documents needed to enter the country of origin, health issues, or the best interests of the child. In such a case, authorities may tend to formally or informally tolerate the asylum-seeker's stay, although they do not grant residence status. This leaves asylum-seekers in a protracted legal and social limbo without any long-term prospects.¹⁴

28. When options for safe and regular pathways for migration are insufficient, some people may still be compelled to leave their country of origin for reasons of health or survival. The adverse effects of climate change and environmental degradation; unequal access to economic and social rights, including health care, decent work, food, land or water; unequal opportunities, including gender inequality; and gender-based violence can all be compelling reasons for migrants to move through irregular migration channels. Other drivers or structural factors include gender-based migration bans, recruitment costs, dishonest labour recruiters, misleading or false information and a lack of understanding of complex migration rules.¹⁵

29. Detention, deportation, social exclusion and the denial of migrants' access to their rights in the country of destination are also among the reasons that migrants in irregular situations live in fear for their lives. Undocumented migrants may be detained for several reasons. Refugees, asylum-seekers and migrants in situations of vulnerability fleeing violence and war often do not possess the proper documentation. As a consequence, many migrants and asylum-seekers are questioned and detained for not having valid and regular forms of identification, despite having pending asylum claims. On the other hand, impoverished migrants prefer irregular channels for migration, which exacerbates their vulnerability and exposure to exploitation.¹⁶

30. It should be noted that the intersection between migration and other forms of discrimination (based on gender, race, ethnicity, religion and sexual orientation) and the false connection of irregularity to criminalization exacerbate the vulnerability of irregular migrants. Such exacerbated forms of discrimination, together with the oppression resulting from the marginalization and criminalization of such migrants, tend to result in the systemic

¹⁴ Caritas Europa, "Demystifying the regularisation of undocumented migrants" (2021).

¹⁵ ILO, *Protecting the Rights of Migrant Workers in Irregular Situations and Addressing Irregular Labour Migration: A Compendium* (2021).

¹⁶ See submission from the Migrant Forum in Asia.

violation of their human rights.¹⁷ Furthermore, the Special Rapporteur notes that when migration policy is restrictive and, concurrently, paired with anti-migration rhetoric, a false image of migrants in society may emerge, with accusations that they pose a serious threat to the internal security of the country of destination.

31. The Special Rapporteur observes that, when migrants are criminalized and dehumanized by policies and rhetoric, the message given is that they are not entitled to rights and have no place in society. The impacts of such biased narratives are wide-reaching within society, reducing people's trust in and connections with each other and enabling a range of harmful policy measures, such as widespread and unregulated surveillance practices, harassment of non-governmental organizations and the shrinking of space for defenders of migrant rights. The Special Rapporteur notes with concern that such negative rhetoric surrounding the issue can lead to the wrongful association of migrants with criminals in the public debate.¹⁸

32. Under international human rights law, the criminalization of irregular migrants goes against the legitimate interests of States in protecting their territories and regulating migration. In the New York Declaration for Refugees and Migrants, Member States agreed to consider reviewing policies that criminalize cross-border movement and affirmed that children should not be criminalized on the basis of their migration status.¹⁹ Undocumented migrants should not be treated as criminals or as national or public security threats. Criminalizing people on the basis of their migration status can lead to several other human rights violations, including discriminatory profiling, arbitrary arrest and detention, family separation and the inability to access health care, adequate housing, education, employment or other rights. The Special Rapporteur wishes to highlight that such criminalization of migrants further pushes them to live and work in the shadows of society and may increase their exposure to exploitation and abuse by different actors.

2. Human rights challenges faced by migrants in irregular situations

33. While in transit or in destination countries, many migrants find themselves in irregular and precarious conditions, unable to access basic services or justice and at risk of human rights violations and abuses, including trafficking in persons, sexual and gender-based violence and treatment that may result to torture and other cruel, inhuman or degrading treatment or punishment. Migrants in irregular situations also face challenges in the exercise of their human rights, including access to health care, education, essential services and adequate housing and to labour rights and social protection. Hence, irregularity increases exclusion, disempowers migrants and exposes them to greater risk of discrimination, abuse and exploitation.²⁰ When migrants experience exploitation or abuse, their lack of a regular status prevents them from reporting cases to the police out of fear of deportation.

34. Labour inspections at the workplace are often conducted in conjunction with migration enforcement authorities, and exploited undocumented migrant workers can be apprehended. With reference to health care, financial barriers and fear that their personal data will be communicated to immigration authorities may result in migrants not going to the doctor or the hospital.²¹ Irregular migration status also increases migrants' vulnerability to modern slavery, including because of their reliance on smugglers, the corruption of officials and a lack of access to protection mechanisms and safety nets. When combined with other circumstances, such as a lack of local language skills, physical or emotional isolation, a lack

¹⁷ Ibid.

¹⁸ OHCHR, "Seven key elements on building human rights-based narratives on migrants and migration" (2020).

¹⁹ General Assembly resolution 71/1, paras. 33 and 56.

²⁰ United Nations Network on Migration, "Guidance note: regular pathways for admission and stay for migrants in situations of vulnerability" (2021).

²¹ Caritas Europa, "Demystifying the regularisation of undocumented migrants".

of integration and the absence of firewalls,²² vulnerability to modern slavery for migrants without regular migration status becomes even greater.²³

35. Migrant workers also face challenges and abuses due to restrictive migration labour policies in countries of destination. For instance, some key obstacles to the empowerment of migrant workers to fight for their rights are that third-country national workers' visas, and the resulting ability to acquire or keep regular residence status, are often tied to one specific employer and an employment contract. In addition, certain regularization schemes require migrant workers to allocate a long period of time to a specific employment arrangement. Such instances can lead to situations in which migrant workers accept exploitative work conditions in order to acquire or renew regular residence status or to regularize their status.²⁴

36. It is important to note that the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families have recognized several negative impacts on children's well-being of having an insecure and precarious migration status, including but not limited to the risk of physical harm, psychological trauma, marginalization, discrimination, xenophobia and sexual and economic exploitation; different forms of violence on irregular migration journeys or in irregular situations in countries of destination; the risk of being denied access to education, housing, health care, recreational activities, participation, protection, social security and justice; the risk of child marriage, violence, trafficking, forced recruitment, exploitation and child labour, which is exacerbated when accompanied by a lack of birth registration and childhood statelessness; and risks to children's physical and mental health, recognizing that children experience stress differently than adults.²⁵

37. Undocumented migrant women and girls face specific vulnerabilities deriving from exploitative and illegal recruitment practices, especially those related to the payment of recruitment fees and poor working conditions. Migrant women are overrepresented in the informal economy, lacking access to decent work, social protection, labour rights or services. Women migrants are at increased risk of workplace violence and harassment and sexual and gender-based violence and are often reluctant to report crimes and transgressions due to their irregular or precarious migration status and are therefore unable to exercise their right to seek appropriate and effective remedies.²⁶ Migrant women without a regular migration status are often denied access to health care, housing and other vital public services. Gender-based discrimination against them is compounded by further discrimination based not only on their migration status but on ethnicity, race, class or caste identity.²⁷

38. The Special Rapporteur observes that, around the globe, the COVID-19 pandemic resulted in an increase in the type and complexity of vulnerabilities for migrants and a diversification of protection needs. Requests by migrants for low-threshold care have increased, including for the provision of services dedicated to health protection, legal protection, access to training and job placement services and the maintenance of housing autonomy. Victims of severe labour exploitation, in particular, have been clamouring for agile, customized and quick access to the labour market. During the first and second waves of the pandemic, because of the need to observe precautionary measures against the spread of the virus, direct access to such public services as social services, employment offices and

²² Firewalls are measures to separate immigration enforcement activities from public service provision, labour law enforcement and criminal justice processes to protect migrants, including migrant victims of crime, that States and non-State actors implement to ensure that persons with irregular status are not denied their human rights.

²³ See submission from Anti-Slavery International and Focus on Labour Exploitation.

²⁴ See submission from the European Union Agency for Fundamental Rights.

²⁵ Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017) on the general principles regarding the human rights of children in the context of international migration, para. 40; and submission from United Nations Children's Fund (UNICEF).

²⁶ United Nations Network on Migration, "Guidance note".

²⁷ See *Ibid.*, paras. 9 and 12.

the revenue agencies was severely restricted, and associations that assist migrants were required to complete various types of paperwork.²⁸

39. The Special Rapporteur takes the opportunity to emphasize that undocumented migrants have rights, regardless of their migration status, under international human rights law and related standards and it is important to ensure that those rights are upheld. The human rights and protection needs of all persons moving across borders, including women and girls, children, trafficked persons, migrant workers, refugees, asylum-seekers, stateless persons and persons with disabilities, have also been recognized in specific international instruments. International and regional conventions and instruments on human rights and legal national frameworks ensure a wide range of rights and obligations. Such rights include the right to life, to human dignity, to asylum and non-refoulement, to a nationality, to protection from torture and inhumane treatment, to family life, to basic health services, to decent work and to access to justice, among others.

40. Some of the rights and obligations established by international human rights law may restrict the return of migrants and therefore constitute a non-discretionary ground for regularization. These include the absolute prohibition of non-refoulement under international human rights law, including when related to the risk of socioeconomic irreparable harm, for instance on medical grounds; the right to family life; the right to private life; and the right to rehabilitation of victims of torture. Regardless of the parents' migration status, the best interests of the child must also be protected and children have the right to access basic education and should not be detained.

D. Regularization of undocumented migrants

1. Objectives and human rights impact of regularization

41. Regularization processes and procedures can facilitate the enjoyment of human rights by migrants holistically through civil and political rights and economic, social and cultural rights, improving migrants' access to social protection, including health care, decent work, education, adequate living conditions and family reunification. Providing undocumented migrants with regular migration status empowers them to live in less precarious conditions and to enjoy more certain and dignified lives, leading to the improvement of their socioeconomic situations and, hence, enhancing their physical and mental well-being.²⁹ Regular migration status protects migrants from detention and deportation and enables them to access social protection systems and participate fully in society, positively contributing to economic growth and development. As a result of their regularization, children and youth could also benefit from access to education, physical and mental health care, safe housing and other social services, improving their overall well-being. Regular status can also help children and youth to resist exploitation, abuse and discrimination and to access justice.

42. When regularization and integration processes are considered in migration policy, migrants, including women and girls, are better able to exercise and enjoy their rights. Regular migration status supports migrant women's access to housing, banking services, education, the justice system and health care, including sexual and reproductive health services, and the ability to work in the formal economy. Regularization enables migrants to "come out of the shadows" and employ agency by joining unions, exercising freedom of expression and the right to assembly and association, advocating for services and defending their rights, including resisting all forms of discrimination and abuse.³⁰ Regularization also enables migrants to realize their right to decent work in just and favourable conditions and protects them from all forms of violence, including torture and exploitation, whether committed by State or private actors.

43. It must be acknowledged that the purpose of integrating migrant workers into the local labour market is principally to ensure their successful integration into the destination country, as such integration can diminish tensions between migrant communities and the national

²⁸ See submission from Comitato per i Diritti Civili delle Prostitute APS.

²⁹ See submission from Better Engagement Between East and Southeast Asia.

³⁰ See submission from the Women in Migration Network.

population and thus promote social cohesion and inclusive societies. The link between regularization and integration can be noted by the number of spaces in social and political life that persons with irregular status often cannot access: employment; labour guarantees; education; the health-care system; legal representation; the protection of rights; elections; membership in political parties and community organizations; and the right to association, among others. While residence and work permits should not depend upon a specific employer or contract, existing work relationships can continue and have continued after the employee was regularized. Depending upon the conditions of the permit granted, regularized migrant workers have greater labour market mobility. They are also able to negotiate fair conditions at work, develop in their careers and, in some cases, find employment that better matches their skills and expertise.³¹

44. The Special Rapporteur particularly notes that, while integration is a complex process that is not ensured simply by acquiring regular status, regularization serves as a first step towards concrete economic and social integration for migrants in their destination countries and communities. In economic terms, regularization allows migrants to obtain formal employment, undertake entrepreneurial ventures, establish small businesses, pursue self-employment and exercise their capacity for innovation. Regarding social rights, obtaining regular status also allows migrants to access social security protection systems as, in some countries, universal health care is limited to emergency treatment and the schooling available to migrant children with irregular status is limited to primary education; migrants in regular situations enjoy greater access to health-care systems and education.

45. Regularization also benefits family life. Family members that have been living in different countries from one another can be reunited and regularization can also lead to family reunification through official channels. Mixed-status families benefit, particularly when an undocumented parent, partner or child of a regularly residing migrant receives a permit. Regularization offers an opportunity for migrants and society to connect and build more durable relationships with one another. Specifically, regular migrants start engaging more with formal social networks and entities, such as employment centres, real estate agents and social and professional guidance services, because it is safe to do so. School boards, consumer protection bodies, women's, youth, environmental and a host of other civil society organizations also benefit from regularization as they become more representative of the population.³²

46. Additionally, the Special Rapporteur is aware that several countries are known to grant a "tolerated status" to migrants who cannot return to their countries of origin owing to international human rights obligations that bar their return (i.e. risk of refoulement; severe illness; family or private life ties in the country of destination; best interests of the child) or practical situations beyond their control, such as a lack of identity papers. Thus, their removal order is suspended for a certain period of time and their continued presence in the country of destination is tolerated. However, migrants are typically granted only very limited basic rights. It must be emphasized that such a procedure may keep those migrants in a limbo situation, with neither an irregular status nor a secure residence permit with full rights. This type of status should not be confused with regularization.³³

47. Regularization effectively leads to the stabilization of a migrant's status within the country of destination, decreases the likelihood of migrant exploitation, increases tax and social security revenues for the State, improves the availability of more accurate data on the labour market and irregular migration and weakens the underground economy. Furthermore, regularization provides migrants with access to justice and to tools for effectively safeguarding their rights. However, it is important to highlight that regularization alone is not enough to ensure the full enjoyment of human rights. Such measures as policies to oppose discrimination and xenophobia and access to justice and effective labour rights protection must also be put in place.

³¹ Platform for International Cooperation on Undocumented Migrants, "Regularisation mechanisms and programmes: why they matter and how to design them" (2022).

³² See submission from the Platform for International Cooperation on Undocumented Migrants.

³³ Platform for International Cooperation on Undocumented Migrants, "Regularisation mechanisms and programmes".

2. Regularization mechanisms and programmes as promising practices

48. The Special Rapporteur would like to highlight some of the measures that have been implemented by States to facilitate the regularization of undocumented migrants. For instance, Operation Papyrus, implemented in the Swiss Canton of Geneva in 2017 and 2018, enabled people to apply for a residence permit without the support of their employer by simply “self-declaring” their current working relationship. Several civil society organizations took part in both the technical and political steering committees set up for the implementation phase. Candidates had to meet five criteria to be eligible: continuous residence in Geneva for 5 years for families with school-aged children, or 10 years for others; being employed; being financially independent; obtaining a certified A2 level in French; and being able to produce a clean criminal record. Although each case was reviewed individually, the procedure was standardized and based solely upon objective criteria, which made it easier to process many cases in a short amount of time. Operation Papyrus lasted almost two years, and people who started meeting the requirements halfway through the initiative could still apply.³⁴

49. By the end of 2020, 56 per cent of Venezuelans in Colombia were undocumented. The country’s ongoing regularization programme for Venezuelan nationals was launched in 2021, with 2.5 million Venezuelans registered and more than 1 million Venezuelans documented through the regularization programme as at March 2023, making it the largest regularization programme to date. This programme provides a temporary residence permit valid for 10 years, during which time people can apply for an indefinite residence permit, which requires five years of residence. Thus, the temporary protection provides ample time for people to decide, prepare, apply for and acquire the indefinite permit.³⁵

50. The Law on Migration in Mexico incorporates several options for regularization, including visitor with permission to undertake economic activities; regional visitor; visiting worker from the border countries of Mexico; visitor for humanitarian reasons; visitor for reasons of adoption; temporary resident; temporary student resident; and permanent resident. It should be highlighted that the visa for visitors for humanitarian reasons is granted in the territory rather than before travel. The reasons for the granting of this visa include being a victim of a crime or human rights violation in Mexican territory; being an unaccompanied child or an asylum-seeker; or for any reason that the National Immigration Institute deems sufficient when there is a humanitarian or public interest reason for allowing persons either to enter the country or to access regularization once they are in the country.

51. During the COVID-19 pandemic, Portugal enacted a temporary residence permit for people with a pending application for asylum, residence or a work permit to ensure their inclusion in the public-health response. The measure, which was adopted in May 2020 and extended until 31 March 2021, temporarily regularized 246,000 people.³⁶ In 2020, the Government of Canada implemented a pathway to permanent residency for asylum claimants across the country who served as front-line workers during the pandemic providing direct care to patients in health-care institutions. This approach recognized those with precarious migration status who were filling an urgent need and putting their own lives at risk to care for others in Canada.³⁷

52. The Deferred Action for Childhood Arrivals programme of the United States of America, which went into effect in 2012, has provided over 800,000 undocumented migrant youth who met eligibility requirements for age at arrival, education and criminal record with the ability to reside legally in the country without risk of deportation and to receive a social security number, pursue education, work and obtain a driver’s licence.³⁸

³⁴ See submissions from Switzerland and the Platform for International Cooperation on Undocumented Migrants.

³⁵ See submissions from the Platform for International Cooperation on Undocumented Migrants and Sures.

³⁶ Caritas Europa, “Demystifying the regularisation of undocumented migrants”, p. 7.

³⁷ Organization for Security and Cooperation in Europe (OSCE), “Regularization of migrants in an irregular situation in the OSCE region: recent developments, points for discussion and recommendations” (August 2021).

³⁸ See submission from UNICEF.

53. Spain has a three-fold regularization mechanism, the “settling” (*arraigo*) system, comprising “work settling”, “social settling” and “family settling”, which allows the regularization of migrants who have developed enduring roots through employment, social integration or family ties. A temporary residence and work permit can be authorized for those who meet certain criteria. “Work settling” requires a minimum of two years of residence, a clean criminal record and the existence of a previous relationship with an employer of not less than six months. “Social settling” requires a minimum of three years of residence, a clean criminal record, labour contract proposals for at least one year and family ties with other resident foreigners or a certificate attesting to integration, issued by the local municipality. “Family settling” is designed for the parents of a child with Spanish nationality who are responsible for and cohabit with the child and are aware of their parental obligations. The system generally results in the regularization of the residence status of more than 30,000 people every year.³⁹

54. Thailand has regularly implemented amnesty programmes that allow migrants in an irregular situation to regularize their status and obtain work permits, most recently during the COVID-19 pandemic.⁴⁰ During the height of the pandemic, approximately 1.6 million migrant workers benefited from these measures. The Government continues to provide regularization windows, for instance, on 5 July 2022, approving a new registration window for irregular migrant workers and for previously registered migrant workers to continue working in Thailand until February 2025, subject to their travel document and visa validity.

55. The Philippines assists undocumented migrants in destination countries by providing them with valid passports, negotiating with the Governments of those countries to settle migration fines and repatriating those who have urgent needs, such as those who are ill, as well as those who have died. The Philippines’ Aid to Nationals programme coordinates consular efforts in responding to urgent requests for assistance made by Filipino individuals or groups, primarily involving police, migration and judicial agencies.⁴¹

56. The Special Rapporteur would like to highlight that it is efficient for regularization programmes for migrants in an irregular situation already in the territory to provide them with or to extend work and residence permits. Ad hoc and time-bound regularization programmes can be implemented for numerous reasons, including to respond to emergency situations, provide access to health care, tackle undeclared work and labour exploitation, address and reduce situations of vulnerability faced by irregular migrants in destination countries, provide residence status on the basis of time spent in or integration into the country or in order to maintain family unity. It must be noted that although ad hoc and time-bound regularization programmes can be effective in the short term, they should be accompanied by standard and permanent mechanisms of access to regular stay status, which respond effectively to the needs of migrants in vulnerable situations.

E. Reframing the narrative on migration and the need to move forward on regularization

1. Contribution of migrants to economies and societies

57. The Special Rapporteur recognizes that migrants are vital to the development of economies and community growth. Such contributions can be seen through the payment of taxes, consumption, investment, subsidies and innovation. Migrants are more likely than nationals to start their own businesses, creating jobs for the host community; they can fill labour shortages in specific industries, including agriculture and health care; and they bring diverse skills, languages and cultural perspectives to the host country.⁴² Migrants constitute a potential supply of workers that can influence productive capital. For instance, Brazil has registered positive indicators of economic activity in periods of intensified migratory movements, including, for example, an improvement in the socioeconomic situation of

³⁹ OSCE, “Regularization of migrants in an irregular situation”.

⁴⁰ See submission from Thailand.

⁴¹ See submission from the Migrant Forum in Asia.

⁴² See submission from the Migration Youth and Children Platform.

Roraima State after an increased inflow of Venezuelans. There was also growth in retail trade and exports, with a 25 per cent increase in the amount of state tax collected on the circulation of goods and services between the end of 2018 and the first semester of 2019.⁴³

58. Migrant workers also generate revenue for their countries of origin, which is undeniably beneficial. In India, migrant workers sent home between \$90 and \$100 billion in remittances in 2022 alone. In the Philippines, in 2021, remittances from migrant workers increased by 3.6 per cent to an all-time high of \$36.14 billion. With reference to cultural contributions, the presence of migrant communities in their countries of destination may also help to bridge cultural gaps by promoting diversity and introducing new cultures and perspectives through various activities, including sports, community outreach and the observance of holidays. The cultural diversity owed to migratory movements allows for the sharing of new perspectives and life experiences through cross-cultural interactions, the emergence of innovative and hybrid cultural practices and a general societal openness to difference and change.⁴⁴

59. In countries of destination, labour migration may also generate additional employment opportunities, rejuvenate the workforce, contribute to social protection schemes and provide such beneficial feedback effects as knowledge, skills and technology transfer. Well-governed labour migration also raises living standards and may be an important source of empowerment for migrant workers. Furthermore, women's participation in the labour force is a driver of growth and poverty reduction, and leveraging women's skills is essential for societies to prosper. For many women, labour migration is a positive experience, providing opportunities to strengthen livelihoods and autonomy. Evidence is mounting that gender equality in labour migration is smart economics.

60. While the Special Rapporteur takes note of the important above-mentioned information and data with respect to the contribution of migrants to the economy of destination countries and communities, he would like to emphasize the need to rethink and change the way migration is spoken about, especially when harmful narratives on migration are inserted into the public discourse. In this regard, the Special Rapporteur takes the opportunity to observe that well-meaning narratives promote the positive economic contributions migrants make to their countries of origin and destination, emphasizing the economic benefits of migration. However, it should be noted that such messaging does not tend to resonate with audiences. It also risks reinforcing the perception of migrants as a commodity or instrumentalizing them as exploitable units of labour to fulfil labour market needs. Such messaging may also invoke a negative framing, in which migrants are seen as a threat to jobs, employment standards and union power or to the welfare system. It may also jeopardize the recognition of migrants as rights holders who are entitled to decent work, social protection and benefits, regardless of their contributions. The Special Rapporteur would like to highlight the need to focus on a positive narrative in which social and cultural abundance is valued and respect for people's rights is seen as improving everyone's situation – when “we work together, we can achieve shared goals and improve our communities”. Centralizing non-economic values is key for societies to prosper, including such values as kindness, caring for each other and solidarity.⁴⁵

2. Moving forward on regularization under international human rights law

61. While the Special Rapporteur takes note of some progress on the implementation of regularization, it is nonetheless important to refer to the challenges faced in designing and implementing regularization processes. In some countries, many people seeking asylum are considered in the same way as undocumented migrants or are granted a very precarious temporary status that does not provide adequate protection because of the lack of a legal framework and/or the implementation of a framework to protect refugees and others in need of international protection. Such lack of protection of refugees and asylum-seekers increases their risk of statelessness. Children born to undocumented refugees and asylum-seekers and

⁴³ See submission from Conectas Brazil.

⁴⁴ See submission from the Migrant Forum in Asia.

⁴⁵ See OHCHR, “Step 7: do no harm – be aware of unconscious bias in messaging, and avoid discrimination” (2020).

undocumented migrants frequently lack documentation and are at risk of statelessness and insufficient or no access to education, health care and other social protection. Migrant workers in some sectors, including domestic work, fisheries and agriculture, are not covered by national labour laws in many countries and are therefore granted no or very limited status. They are often victims of trafficking in persons and at high risk for experiencing occupational safety issues. Women migrant workers consistently experience unfair treatment when they are pregnant or are forbidden from becoming pregnant by employers or by Governments. The Special Rapporteur notes with concern that due to a lack of a gender-based approach to protect and promote the human rights of migrants, gender-based violence and sexual harassment in the workplace against women and migrant workers with marginalized gender identities are rampant.⁴⁶

62. Considering that undocumented migrants usually find themselves in or at risk of poverty, the high cost of residence procedures poses a significant challenge to them. Administrative fees are a common policy in migration management and may include fees for applying for a visa or a permit; renewing a permit; translating documents; obtaining photographs; issuing a permit; and having biometric data taken. Another frequent cost is paying for a lawyer if there are no pro bono lawyers or if an undocumented migrant cannot access pro bono lawyers or expert civil society organizations. Serious financial consequences can result from taking time off work to submit applications in person, meet for interviews or have fingerprints taken. It has also been brought to the attention of the Special Rapporteur that criticisms of regularization mechanisms often include their lack of transparency and the large discretionary power given to the authorities, as criteria are not always clear and are often interpreted in a narrow and restricted way.

63. It must be acknowledged that residence procedures are becoming more digitized. Several countries have now developed online portals where migrants can submit, renew or follow up on their permit application. Undocumented migrants sufficiently familiar with the online environment may find it less complicated to apply using such systems, as will those who have a computer or know someone or a civil society organization with a computer that they can use. The Special Rapporteur notes that while digital procedures may remove some barriers, such as the need to travel to apply, they can create new ones, including the need for a computer or a smartphone to scan and submit required documentation. Migrants who are digitally excluded usually do not have affordable access to the Internet and/or digital devices to connect. They may not have the basic digital skills required to digitize documents or to use the Internet, including navigating online portals, a challenge that is exacerbated when portals are not user-friendly.⁴⁷

64. In order for States to move forward on regularization processes, procedures to assess stay claims submitted by migrants in situations of vulnerability should be people-centred; child-sensitive, including applying the principle of the best interests of the child; gender-responsive; and trauma-informed and should uphold international human rights and labour standards, including the prohibition of discrimination. States can enhance the flexibility and accessibility of regularization processes by ensuring that the criteria used are clear, transparent and rights-based and respond to the specific needs of migrants, the situations of vulnerability they face and their sociodemographic and economic reality. Accessible information and advice should be available in a language that migrants can understand. Regularization processes should also be affordable or free of charge, including for obtaining the required documentation. Regularization should be also free of charge for child-related costs and should be paid once for each family group and States should avoid charging fines on account of irregular migration status.⁴⁸

65. When a request for residence renewal is lodged, States should issue formal, individualized decisions in writing and give reasons for rejection. Procedures should be in conformity with essential procedural safeguards, notably the guarantee of a prompt and transparent process, the administrative and judicial review of a negative decision and the

⁴⁶ See submission from Better Engagement Between East and Southeast Asia.

⁴⁷ See Platform for International Cooperation on Undocumented Migrants, “Regularisation mechanisms and programmes” (2022).

⁴⁸ See United Nations Network on Migration, “Guidance note”.

suspensive effect of appeal. States should ensure that migrants, including irregular migrants, can apply for procedures themselves and have access to all related information and documentation, so that they do not have to rely upon family members, abusive partners, sponsors, employers, corrupt agents, law enforcement actors or others to submit and follow up on their applications. In addition, a document should provide proof of their legal provisional regularity until a final decision is made. Police and other enforcement bodies should be made aware of the nature of such provisional status. Migrants should be able to work or have access to adequate means of subsistence while their case is being reviewed.⁴⁹

66. Regardless of the grounds for and length of residence that is granted, migrants should be provided with full and equal access to human and labour rights and essential services, including health care, education, an adequate standard of living, justice, social protection and decent work. Where it is not lawful, legitimate, necessary and proportionate, differential treatment in relation to access to rights and services based on migration status and the grounds under which residency is granted amounts to discrimination. Moreover, limited access to rights and services can itself be a further cause of vulnerability for the individual. When temporary residence is granted to migrants, States should provide for avenues to transition to another status, including those that provide long-term residency. Extensions, renewals and transition to another regular migration status should be facilitated by States through clear, streamlined, accessible and affordable procedures.⁵⁰

67. The Special Rapporteur regrettably notes that Governments and civil society work separately from each other when it comes to undocumented migrants, effective administration and the wider society. However, it must be acknowledged that involving all stakeholders benefits everyone involved: Governments can be confident of designing and implementing effective processes that will reach migrants and of receiving high-quality applications from migrants, refugees and asylum-seekers eligible for the scheme, while migrants access procedures that are designed with them in mind and can trust in a fair and positive result. In such a scenario, both the design and the implementation of the procedures benefit from everyone's expertise.

IV. Conclusion and recommendations

68. **The Special Rapporteur concludes that through human rights-based, gender-responsive pathways for regular migration and for the regularization of undocumented migrants, States must provide options for permanent residence, citizenship and meaningful participation in civic life to facilitate social and family integration. The global narrative on regular pathways must not be narrowed to emphasize temporary migration. Regularization programmes should focus on promoting and allowing access to permanent residence and pathways to citizenship, including family reunification initiatives. The Special Rapporteur particularly notes that existing regularization programmes, including temporary residence permits benefitting asylum-seekers, victims of trafficking and other crime victims, offer solely short-term stays, with restricted or no access to the labour market. As such, they fall short of needed rights-based regularization. In addition, regularization policies should not be tied to sponsorship schemes that lead to exploitation and rights abuses. While such schemes, in theory, may grant a person regular status, in practice they are precarious, exposing migrants to many of the same risks and challenges as being undocumented.**⁵¹

69. **The Special Rapporteur notes with concern that in some countries, accompanied children may be denied their right to be heard and are treated as a "footnote" to their parents' files, which means that child-specific or individual reasons for the granting of asylum or other regular status may be overlooked. Unaccompanied children in care systems may fall into irregularity when they "age out" at the age of 18 years, starting adulthood undocumented and leading to their potential exclusion, exploitation and even deportation. Residence or work permits tied to the employer may easily lead migrant**

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ See submission from the Women in Migration Network.

children and parents to become undocumented, making them vulnerable to abuse and exploitation and limiting their enjoyment of human rights.⁵²

70. The Special Rapporteur urges Governments to focus on addressing the root causes that drive people to migrate irregularly, while policies and regularization procedures should provide irregular migrants with the tools for success. For instance, free-of-charge workshops that teach migrants to be entrepreneurs can provide them with the tools to bring development into their communities and financial security for their families. Furthermore, regularization programmes should be designed and implemented in consultation with civil society organizations, particularly migrants' associations and, where relevant, youth-led organizations.⁵³ The Special Rapporteur highlights the importance of creating structural conditions for migrants to thrive and contribute to society.

71. The Special Rapporteur wishes to emphasize the triple function of regularization as a central mechanism for the protection of the rights of migrants and their families, especially those who are in a particularly vulnerable situation; as a key tool for the effective implementation of a comprehensive migration policy; and as a factor that contributes to the fulfilment of the goals of numerous public policies in countries of destination. Regularization is, therefore, a protection and inclusion tool that benefits migrants, their families, destination countries and communities. In short, expanding pathways for regular migration and guaranteeing temporary regularization leading to permanent mechanisms in destination countries represent two essential aspects for compliance with the Global Compact for Safe, Orderly and Regular Migration and other international standards.

72. The Special Rapporteur recommends that States:

(a) Strengthen the legal framework for the protection of all migrants in line with international human rights standards. States should take appropriate measures towards regularizing the situation of such people, considering such factors as the duration of their stay and their family situation. Progress in this area may also require legislative review and reform at the national level to establish and refine regularization mechanisms and to ensure access to legal assistance for such procedures. This may include the ratification of relevant international standards, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;⁵⁴

(b) Review and design regularization mechanisms and any ongoing programmes, with particular attention to the implementation of permanent regularization mechanisms on a range of grounds;

(c) Ensure that international human rights law limitations to returns are included in national law and policy frameworks as permanent grounds for regularization by reviewing and reforming national legislation to comply with international human rights law obligations (e.g. the principle of non-refoulement, the right to family life, the right to private life, the best interests of the child and the right to rehabilitation of victims of torture), which may give rise to an entitlement to regularization;

(d) Provide clear, efficient, affordable and accessible administrative procedures by which migrants, including undocumented ones, can apply for and renew their residence status to prevent people from falling into irregularity due to inefficient administrative migration policies;

(e) Ensure that fee waivers are available for children, young people and people in poverty and that any fees levied are proportionate and do not exceed the costs of the services provided to process applications and issue permits;

⁵² See submission from UNICEF.

⁵³ See submission from the Migration Youth and Children Platform.

⁵⁴ OSCE, "Regularization of migrants in an irregular situation". <https://www.osce.org/odihr/494251>.

(f) **Replace forms of tolerated status with a national protection status, which would allow individuals to exercise their rights and be ensured the same treatment as other migrants. States should ensure that those with tolerated status are able to access a pathway out of that status through a regularization mechanism and that interim measures are taken to protect their fundamental rights;**

(g) **Implement integration policies and programmes that promote and support the inclusion of migrants, including undocumented ones, and provide resources for the integration and access to rights of those whose status has been regularized;**

(h) **Facilitate access to migratory regularization for migrant workers by removing obstacles and contributing to the exercise of their labour rights, including access to justice in the face of abuses by their employers;**

(i) **Provide more flexibility to ensure that the rights and residence status of migrants are not tied to one employer or one sector by taking into account the reality of the labour market when renewing residence status, allowing bridges between different types of work and work permit statuses (e.g. employed, self-employed, entrepreneur) to prevent migrant workers from falling into irregularity when a job situation changes or in cases of exploitation;⁵⁵**

(j) **Adopt measures to guarantee the rights of migrant women, including domestic workers, through migration regularization that is not dependent upon a specific employer, spouse or other family member and is accessible at reasonable rates;**

(k) **In the context of mixed movements, give migrants and asylum-seekers, including potential victims of trafficking, an adequate “interim” status, including the right to work, pending the outcome of the relevant procedures, such as regularization, asylum and the official determination of a person as a victim of trafficking;**

(l) **Put an end to the criminalization of irregular migrants and promote solidarity towards migrants to change the narrative on migration and combat xenophobia, racism and discrimination.**

⁵⁵ Caritas Europa, “Demystifying the regularisation of undocumented migrants”.