

**Human Rights Council****Forty-fourth session**

15 June–3 July 2020

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Right to freedom of association of migrants and their  
defenders****Report of the Special Rapporteur on the human rights of migrants\****Summary*

The present report, submitted in accordance with Human Rights Council resolution 34/21, provides an account of the activities undertaken during the reporting period by the Special Rapporteur on the human rights of migrants. It also provides a thematic study on the right to freedom of association of migrants, in which the Special Rapporteur examines recent trends in restrictions in law and in practice on freedom of association for migrants and civil society organizations that work to protect migrants' rights.

The right to freedom of association is essential for migrants to express their needs, protect their right to life and defend their economic, social, cultural and other human rights. Assistance and support from civil society organizations is crucial for migrants, particularly for those in an irregular situation or with vulnerabilities. Given the interconnected nature of human rights, restrictions on migrants' and their defenders' freedom of association further hinder migrants' enjoyment of other rights. Encouraging migrants to organize empowers them to engage with the host communities directly and enables them to have a positive impact in the communities and countries in which they reside.

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



## **I. Introduction**

1. The present report is submitted pursuant to Human Rights Council resolution 34/21. It contains information on the activities of the Special Rapporteur on the human rights of migrants since the submission of the report to the seventy-fourth session of the General Assembly (A/74/191). The thematic section is dedicated to the right to freedom of association of migrants.

## **II. Activities of the Special Rapporteur**

### **A. Country visits**

2. The Special Rapporteur, Felipe González Morales, undertook a visit to Hungary from 10 to 17 July 2019 (A/HRC/44/42/Add.1). He also conducted a visit to Bosnia and Herzegovina from 24 September to 1 October 2019 (A/HRC/44/42/Add.2).

3. The visit to El Salvador, initially scheduled for 2020, was postponed to 2021 at the request of the Government. The Special Rapporteur thanks the Government of Kuwait, which has extended an invitation to conduct a visit in 2020. The Special Rapporteur looks forward to receiving invitations from other Member States for official visits in 2020 and the near future.

### **B. Other activities**

4. On 2 August 2019, the Special Rapporteur conducted a workshop on access to justice for migrants in Montevideo, with judges, public defenders and other practitioners in the judicial system.

5. On 21 August, the Special Rapporteur held a webinar with English-speaking civil society organizations from Africa on the situation of migrants' rights.

6. On 4 September, he delivered a speech at the commemoration of the sixtieth anniversary of the Inter-American Commission on Human Rights at the University of Chile in Santiago.

7. On 5 September, the Special Rapporteur held a webinar with French-speaking civil society organizations from Africa.

8. On 9 September, during the regular session of the Committee on Migrant Workers, he delivered a presentation and exchanged views with members of the Committee through a video link.

9. On 8 October, he held an online consultation with a number of civil society organizations based in the Americas.

10. During his trip to New York to participate in the General Assembly, the Special Rapporteur had a series of meetings with representatives of States from 16 to 18 October. He also held a meeting on 16 October at Columbia Law School with members of civil society organizations from the United States of America. On 18 October, he gave a presentation at an event on migrants' rights to association, assembly and freedom of expression organized by CIVICUS: World Alliance for Citizen Participation and Solidarity Center.

11. On November 6, the Special Rapporteur gave a lecture at the University Carlos III of Madrid on the special procedures of the Human Rights Council and the work of his mandate.

12. On 12 and 13 November, a commemoration marking the twentieth anniversary of the mandate was held at the Universidad Iberoamericana in Mexico City. The Special Rapporteur invited representatives of Member States, United Nations agencies, civil society and national human rights institutions to take stock of the 20 years of the mandate and discuss the way forward. Some 25 panellists from all regions of the world participated in six different panels.

13. On 10 December, the Special Rapporteur participated as a member in the inaugural meeting of the steering committee of the United Nations multi-partner trust fund to support the global compact for safe, orderly and regular migration. The operations manual was adopted during the meeting.

14. On 11 December, the Special Rapporteur attended the first annual meeting of the United Nations Network on Migration, which brought together the entire United Nations system, civil society organizations and other stakeholders. During the meeting, he emphasized the importance of inclusiveness and the whole-of-society approach of the Global Compact for Safe, Orderly and Regular Migration and the potential contributions from the special procedures.

15. On 16 December, he participated in the first meeting of the working group on migration and torture established by the World Organization against Torture and the Collectif des Associations Contre l'Impunité au Togo.

16. On 18 December, the Special Rapporteur participated in an event commemorating International Migrants Day organized by Ecuador and the United Nations Economic Commission for Latin America and the Caribbean in Santiago.

17. On 15 January 2020, he held a web consultation on the right to freedom of association of migrants in order to gather information for his thematic report to the Human Rights Council.

18. At the invitation of Ecuador, Chair of the twelfth summit meeting of the Global Forum on Migration and Development, the Special Rapporteur attended the meeting, held in Quito from 20 to 24 January 2020. He spoke at three side events entitled "Meeting in the middle: shaping public narratives on migration", "Preventing and responding to gender-based violence against migrants" and "Moving from detention to adequate reception and care through peer learning and exchange". On the last day of the Global Forum, under the framework of dialogue on the Global Compact for Migration, the Special Rapporteur moderated a panel discussion to review progress one year on from the adoption of the Global Compact.

19. On 26 February, at the invitation of the Global Migration Centre of the Graduate Institute Geneva, he gave a lecture entitled "The Global Compact for Migration, multilateralism and migration policies".

20. On 27 February, the Special Rapporteur held an open consultation with civil society organizations based in Geneva. Over 20 representatives participated in the meeting.

21. On 9 March, he gave the inaugural lecture of the annual human rights course organized by the Institut de Drets Humans de Catalunya, on non-discrimination and intersectionality.

22. On 16 April, he held a webinar with civil society organizations based in Europe on ending immigration detention of children and providing adequate reception and care for them, in preparation for his thematic report on that topic to be presented to the General Assembly.

23. On 23 April, the Special Rapporteur participated in an online discussion organized by the Organization for Security and Cooperation in Europe on the protection and promotion of the human rights of undocumented migrants and asylum seekers during the coronavirus disease 2019 crisis.

### **III. Study on the right to freedom of association of migrants**

#### **A. Introduction**

24. In the recent past, the Special Rapporteur has received information demonstrating increasing hostility towards migrants and civil society organizations that work to protect migrants' rights. In many countries, this hostility has resulted in the imposition of new restrictions in law and in practice on freedom of association for migrants and their defenders. Given the interconnected nature of human rights, restrictions on freedom of association of migrants and their defenders further hinder migrants' enjoyment of other

rights. These include their rights to life, to seek basic services such as legal assistance, health care, housing and education, to protection from human traffickers, smugglers and gender-based violence, to information, to seek asylum, to fair working conditions and to the freedoms of expression and of assembly and freedom from discrimination.

25. Protecting migrants' civic freedoms is of particular importance, as many migrants cannot effectively exercise their political rights in their country of destination. Thus denuded of their electoral rights, migrants find themselves excluded from a significant means of influencing the policies that shape their lives and have few ways to remedy improper limitations on their freedoms.

26. The need to protect migrants' freedom of association will only increase as migration flows grow and become more diverse. According to the Department of Economic and Social Affairs of the United Nations, the upward trend of international migration continued with 272 million people migrating in 2019, an increase of 51 million from 2010.<sup>1</sup> Migrants comprise 3.5 per cent of the global population. Women and girls comprised 48 per cent of migrants in 2019. Some 74 per cent of international migrants are of working age, between 20 and 64 years old. In 2018, migrant remittances reached an estimated US\$ 688 billion globally. During the first half of 2018, an estimated 879,600 claims for asylum were lodged globally.<sup>2</sup>

27. In general, migrants are more vulnerable than local workers to exploitation and abuse in the workplace and have fewer options for vindicating their rights or protecting themselves from violations of their rights (A/HRC/26/35, paras. 18–19). In particular, the inability of migrants to exercise their right to freedom of association has a serious effect on their leverage to change the conditions of employment or other social conditions that entrench poverty, fuel inequality and limit democracy.

28. Recent trends have stripped the crucial right to freedom of association, key to countering the power of Governments, employers and the private sector, from both migrants and the civil society organizations that support them. Not only are migrants often unable to form or join associations to advocate for themselves; they are also denied basic humanitarian or human rights assistance from civil society organizations that themselves may be threatened, harassed, intimidated, stigmatized and even criminalized by the authorities for providing migrants with the means to survive.

## **B. International human rights framework on the right to freedom of association of migrants**

29. The right to freedom of association is a fundamental human right enshrined in article 20 of the Universal Declaration of Human Rights, article 22 of the International Covenant on Civil and Political Rights and in various other international human rights instruments.

30. The protection for free association guaranteed under article 22 of the International Covenant on Civil and Political Rights is expansive. Article 22 (1) provides that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests.

31. In accordance with article 22 (2) of the Covenant, no restrictions may be placed on the exercise of the right to free association other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Any limitation on the freedom of association must be in accordance with the principle of legality, serve a legitimate public purpose, and be a necessary and proportionate means of achieving that purpose within a democratic society (see Human Rights Council resolution 15/21 and A/HRC/20/27, para. 15). The principle of

<sup>1</sup> See [www.un.org/en/development/desa/population/migration/publications/wallchart/docs/MigrationStock2019\\_Wallchart.pdf](http://www.un.org/en/development/desa/population/migration/publications/wallchart/docs/MigrationStock2019_Wallchart.pdf).

<sup>2</sup> Organization for Economic Cooperation and Development, International Labour Organization (ILO), International Organization for Migration and Office of the United Nations High Commissioner for Refugees (UNHCR), "2019 international migration and displacement trends and policies report to the G20", p. 3.

legality requires that the limitation be drafted in clear language of sufficient precision to enable persons and organizations to foresee whether their actions would be in breach of the law and so regulate their conduct accordingly. The requirement of legitimate public purpose necessitates that limitations be imposed only for those specified reasons set forth in article 22 of the Covenant. The necessity and proportionality requirement demands that any limitation be “appropriate to achieve its protective function” (A/HRC/31/66, para. 30).

32. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that members of associations should, among other things, be free to determine their statutes, structures and activities without State interference (A/HRC/20/27, para. 64). States should also establish and maintain an enabling environment within which individuals can operate freely without fear of being subjected to any threats, acts of intimidation or violence (*ibid.*, para. 63).

33. According to the non-discrimination guarantees enshrined in articles 2 and 26 of the Covenant, this protection of free association extends to everyone, including all migrants regardless of their status. The Human Rights Committee, in its general comment No. 15 (1986) on the position of aliens under the Covenant, explicitly confirmed that the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of each individual’s nationality or statelessness (para. 1). Aliens receive the benefit of the right of peaceful assembly and of freedom of association (para. 8).

### **C. Right to freedom of association of migrants: achievements and existing barriers**

34. International law guarantees migrants the right to freedom of association so that they can effectively participate in civil society. Allowing migrants to organize empowers migrant communities to care for their own needs directly rather than relying on the advocacy and support of others. As migrants have better access to their peers and understanding of the challenges they face, their collective response to problems is often more effective than that of others. Encouraging migrants to exercise their freedom of association enables them to have a positive impact in the communities and countries in which they reside.

35. There are good examples in law of the recognition of migrants’ right to freedom of association. For instance, in Spain, Basic Act No. 2/2009 of 11 December 2009 provides that foreign nationals have the right to organize freely or to join an occupational organization and to exercise the right to strike under the same conditions as Spanish workers (art. 11). In Turkey, the Trade Unions and Collective Agreements Act (No. 6356), which entered into force in 2012, eliminated the citizenship requirement for trade union founders and provided for the possibility for non-Turkish citizens to become founding union members.<sup>3</sup> In the Republic of Korea, the Supreme Court ruled that “persons living on wages, salary or other equivalent form of income earned in pursuit of any type of job, fall under the category of workers under the Trade Union and Labour Relations Adjustment Act ... and thus a foreign worker who does not have the status of sojourn eligible for employment may organize or join trade unions”. That decision opened up the way for the recognition of a migrant workers’ trade union in the country, which had been denied registration given that its members included workers in an irregular situation.<sup>4</sup> There has also been cooperation between trade unions aimed at enhancing the protection of migrants’ rights. For example, the General Federation of Nepalese Trade Unions signed a memorandum of understanding with the General Trade Union of Workers in Textile, Garment and Clothing Industries in Jordan to ensure adequate protection of Nepalese garment workers in Jordan and their participation in elections to the Federation board.<sup>5</sup>

36. Notably, countries that have active migrant associations have seen some important improvements for migrant rights. In the United States of America, migrant communities’

<sup>3</sup> ILO, *Promoting fair migration: general survey concerning the migrant workers instruments*, document ILC.105/III/1B, para. 408.

<sup>4</sup> *Ibid.*, para. 288.

<sup>5</sup> ILO, Integrated Programme on Fair Recruitment (FAIR): phase II (2018–2021), “Providing fair recruitment opportunities for workers along migration corridors”, May 2019.

efforts to organize have resulted in several political advances at the local and the national levels. For example, they were responsible for the municipal “sanctuary” policies that prevent local law enforcement officials from questioning people about their migration status and holding migrants in an irregular situation until the federal immigration officials come to detain them. In Uganda, the Refugee Act of 2006, which recognized the right of refugees to work, move around the country and live in the community, rather than in camps, was greatly influenced by the advocacy of migrant organizations.<sup>6</sup>

37. Reportedly, so-called migrant caravans transiting through Central America and Mexico have prioritized both their own protection and good relations with the communities through which they pass. In Thailand, the Fishers’ Rights Network organized more than 2,000 migrant fishers, leading to, inter alia, an increase in the minimum wage for fishers; the distribution of fully stocked medicine and first-aid kits on boats; emergency training for workers; and assistance to workers in ensuring that employers adhered to payment and benefit obligations. Similarly, the Southern Seafood Workers’ Group in Thailand successfully resolved immigration issues with the Department of Employment and the Immigration Department in Songkhla Province for migrants who faced problems relating to work permits.<sup>7</sup> Often migrants bring valuable experience in activism and collective action from their home country; their participation can thus be extremely valuable in strengthening the realization of rights for all community members or workers, not only migrants.

## 1. Legal barriers

38. In countries on the different continents, legislation and policies interfere with migrants’ freedom of association. Some of the laws that apply generally to a State’s population have a disproportionate impact on migrants. For example, many States that require mandatory registration for any group or association also allow government discretion in determining whether to accept such registration. Where migrants may be seen as an undesirable segment of society, such discretion allows the authorities to refuse to register the group, thus leaving migrant groups with the choice of disbanding or operating illegally.

39. Migrants may also find it difficult to produce the required documentation for registration. For instance, in some countries, founding an association may require the presentation of a number of travel documents from the country of issue, which may be difficult for asylum seekers or undocumented migrants to obtain. High registration fees for forming an organization can also dissuade migrants from organizing, as many migrant workers and refugees come to their new country with minimal financial resources.

40. The danger of operating an association without formal registration is particularly acute for migrants who, in addition to facing fines or criminal penalties for operating an unregistered organization, may also face the risk of losing their legal status, thus increasing the risk of deportation. Even where failure to register an organization may not result in criminal penalties or fines, such lack of formal recognition may make already onerous administrative tasks nearly impossible, such as opening a bank account to receive or disburse funds.

41. Generally, where a State enforces a restrictive law on associations, migrant groups may feel the constraints most acutely as they are less likely to benefit from the social safety nets or have the political connections needed to continue their work where not sanctioned by the Government. Moreover, in hostile operating environments, migrant-led organizations may find it particularly difficult to access funding from donors owing to the concern that migrant-led groups are too vulnerable to be sustainable in the long term.

42. In many parts of the world, migrants face discriminatory legislation specifically aimed at restricting association rights for non-citizens. Several countries’ constitutions limit freedom of association to citizens only,<sup>8</sup> while other States have laws that explicitly permit

<sup>6</sup> Vanessa Akello, “Uganda’s progressive Refugee Act becomes operational”, UNHCR, 22 June 2009.

<sup>7</sup> International Labor Rights Forum, *Time for a Sea Change: Why union rights for migrant workers are needed to prevent forced labor in the Thai seafood industry* (Washington, D.C., March 2020).

<sup>8</sup> See, e.g., the Constitution of Malaysia, art. 10.

restrictions on non-citizen participation in a group.<sup>9</sup> Some countries allow non-citizens to found an organization only in conjunction with a citizen. Others have laws that prohibit non-citizens from becoming leaders of civil society organizations;<sup>10</sup> limit the percentage of foreign staff allowed; place restrictions on receiving funds or opening bank accounts; or even prohibit the formation of certain types of organizations by non-citizens. Some countries restrict the right to freedom of association only to documented migrants. For example, Uganda has claimed that its constitutional guarantee of freedom of association, including the freedom to join trade unions, excludes undocumented migrants (CMW/C/UGA/CO/1, para. 36).

43. Any legislation or policy that gives law enforcement officers expanded ability to arrest and deport migrants will have a chilling effect on migrants' ability to challenge authority by exercising their freedom of association rights, especially for migrants who are undocumented or in an irregular situation. Where migrants may be arbitrarily stopped and deported, they will refrain from taking any action that puts them on law enforcement's radar, which includes organizing. In countries where migration status takes precedence over rights redress, undocumented workers may doubt whether the fruits of their association and advocacy are worth the risk.

44. Research shows that, across Europe, migrants have lower levels of unionization than native workers.<sup>11</sup> While challenges arise in the collection of data on migrant workers' trade union membership, since few unions keep disaggregated data on members' migration status, it is believed that in some countries, migrant trade union membership level is extremely low.<sup>12</sup> This is problematic given the central importance of trade unions in protecting the rights of migrant workers through collective bargaining for fair wages and labour conditions. Trade unions may also aid migrants in creating a forum for discussion with employers, delivering safe migration training, acting as trusted information sources for migrants, encouraging bilateral cooperation, facilitating complaint processes or addressing recruitment agency abuses.

45. Migrants who wish to form or join trade unions may face additional limitations in law. Unfortunately, certain States bar migrants from joining trade unions, restrict migrants' ability to form or hold office in a trade union or otherwise deny them full rights to engage in union activities. For example, in Qatar, although about 90 per cent of the total population are migrant workers,<sup>13</sup> article 116 of the Labour Law permits only Qatari citizens to join workers committees and unions.<sup>14</sup> In Turkey, undocumented migrant workers are prohibited from joining trade unions (CMW/C/TUR/CO/1, para. 61). In Thailand, the Labour Relations Act bars non-citizens from forming unions and from membership in a union committee or subcommittee.<sup>15</sup> In Senegal, the Labour Code limits the right of migrant workers to serve as officials in trade unions, subject to a reciprocal agreement with the migrant worker's country of origin (CMW/C/SEN/CO/1, para. 16). In Singapore, migrants may not act as an officer of or be employed by any trade union without prior ministerial approval.<sup>16</sup> Given that many migrants work in sectors that are almost entirely migrant-staffed, the prohibition on migrants' forming or leading their own trade unions can act as a complete bar to unionization, as there may be no national union available to them. Even where migrants work in a sector in which there is a pre-existing union, it may not have the resources to reach out to migrants, given the additional outreach barriers, such as language

<sup>9</sup> See, e.g., India, Foreigners Act, 1946, Act No. 31 of 1946, sect. 3 (2) (e) (vi); Timor Leste, Immigration and Asylum Act, Law No. 9/2003 of 2003, art. 11 (1) (c).

<sup>10</sup> See, e.g., Malaysia, Societies Act 1966, Act 335, as amended 1 January 2006, art. 13 (1) (a) and schedule 1 (2), which allows the Registrar to remove non-citizen officers of non-profit organizations and requires that officers of political parties be citizens.

<sup>11</sup> Torben Krings, "'Unorganisable'? Migrant workers and trade union membership", paper presented at the Industrial Relations in Europe Conference, Dublin, September 2014.

<sup>12</sup> In Malaysia, for example, fewer than 3 per cent of migrant workers are part of a union. See Nicholas Chung, "Bosses stopping migrant workers joining unions, says MTUC", FMT News, 27 November 2019.

<sup>13</sup> Rebecca Ratcliffe, "Qatar law change hailed as milestone for migrant workers in World Cup run-up", *The Guardian*, 6 September 2018.

<sup>14</sup> Qatar, Labour Law, Law No. 14 of 2014.

<sup>15</sup> Thailand, Labour Relations Act, B.E. 2518 (1975), sects. 88 and 101.

<sup>16</sup> Singapore, Trade Unions Act (Chapter 333), 31 July 2004, sects. 30 (3) and 31 (4).

or cultural difference. Restricting migrants from holding leadership positions in unions makes it less likely that the union will focus on migrant-prioritized issues and can make it more difficult to convince other migrants to join.

46. Some countries exclude large sectors dominated by migrant workers, such as agriculture, construction, seafood or domestic work, from existing legal protections for union activities. Other countries restrict trade union membership to workers in the formal sector, which excludes large sectors of migrant workers. Qatari law, for example, excludes domestic workers from its Labour Law and the protections it guarantees.<sup>17</sup> In Lebanon, domestic workers are excluded from the Labour Code, therefore migrant domestic workers cannot benefit from the protection of this law, including the right to engage in collective bargaining.<sup>18</sup> In the United States, agricultural labourers and domestic workers are excluded from the federal National Labor Relations Act, which guarantees other workers the right to bargain collectively.<sup>19</sup> Some categories of workers are also excluded from the enjoyment of the right to collective bargaining through judicial decisions. For instance, in Malaysia, a judicial decision in the paper industry ruled that migrant workers under fixed-term contracts could not benefit from the conditions agreed in collective agreements.<sup>20</sup>

47. In an effort to attract companies that stand to benefit from weaker association rights for workers, many States also exclude export processing zones from national legislation protecting labour organization, which disproportionately restricts the association rights of migrant workers, who constitute a large part of the workforce in such zones.<sup>21</sup> For example, Pakistan exempts such zones from the application of national labour legislation, which recognizes the right of workers to organize.<sup>22</sup>

48. Sometimes, legal barriers are a result of disharmony between a country's labour and migration laws. Labour laws may not include any restrictions on organizing, but immigration law may permit employers or recruitment agencies to place restrictions on employment contracts. For example, in Malaysia, the work permits issued by the Immigration Department prohibit migrant workers from joining associations or trade unions as a condition of employment.<sup>23</sup>

## 2. Practical barriers

49. Apart from legal barriers, migrants' life experience may affect how they can exercise their freedom of association. Migrants in an irregular situation or with particular vulnerabilities may be so focused on survival that organizing and other rights unrelated to basic services lose priority. Migrants who work long or irregular hours can find it difficult to carve out the time to leave the workplace to organize.

50. Certain migrant workers, like maritime workers or domestic workers, find it difficult to organize because of their isolated, informal workplaces. Migrant domestic workers, in particular, face significant obstacles to trade union membership, including a lack of time off to organize, difficulty in negotiating a collective bargaining agreement without one single large employer counterpart, and the spectre of gender-based violence and sexual harassment in their isolated workplaces.<sup>24</sup> The exemption of domestic work from laws protecting association rights is especially egregious considering that domestic work is a type of job with little government oversight. In its general comment No. 1 (2011) on migrant domestic workers, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families affirmed that the right to organize and to engage in collective bargaining is essential for migrant domestic workers to express their needs and defend their rights, in particular through trade unions and labour organizations. The

<sup>17</sup> Qatar, Labour Law, Law No. 14 of 2004, art. 3.

<sup>18</sup> ILO, Lebanon – CEACR, observation, Convention No. 98, published in 2019.

<sup>19</sup> United States of America, National Labor Relations Act, 29 U.S.C. §§ 151–169, sect. 2 (3).

<sup>20</sup> ILO, Malaysia – CEACR, observation, Convention No. 98, published in 2017.

<sup>21</sup> ILO, *Trade Union Manual on Export Processing Zones*, 2014, p. 15.

<sup>22</sup> European Parliament, Directorate-General for External Policies, *Labour rights in Export Processing Zones with a focus on GSP+ beneficiary countries*, 2017, p. 6.

<sup>23</sup> See [www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:2911366](http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2911366), sect. 1048.

<sup>24</sup> ILO, Dominican Republic – CEACR, direct request, Convention No. 189, published in 2019.

Committee urged States to recognize the right of migrant domestic workers to form and join organizations, regardless of migration status, encourage self-organization, and provide migrant domestic workers with information about relevant associations that can provide assistance in the country/city of origin and employment (paras. 45–47).

51. Language differences may also prove a formidable barrier, particularly when trying to organize migrants from different linguistic backgrounds into a common association. In some countries, instructions on the application process for associations are available only in national languages. All organizational documents also need to be translated into and made available in the required languages. The language barrier proves particularly onerous where migrants also lack information about laws and procedures governing the exercise of their freedom of association in the destination country. This may be exacerbated by a lack of good freedom of information laws and practices.

52. Concern over loss of status, deportation or placement in a detention camp also dissuades migrants from organizing in a way that they fear might place them at odds with the authorities. This is even more the case where a migrant’s status depends on a restrictive visa regime that subjects migrants to a character test, therefore allowing officials broad discretion in visa cancellation.

53. Furthermore, stigmatization against migrants can interfere with their ability to associate by making it more difficult for them to find safe spaces in which to congregate or to access the information or services that they need to organize. Discrimination against migrants is likely not only to destabilize their lives by, for example, obstructing their ability to find work or housing, but also to impede any attempts to organize.

#### *Private employers*

54. Private employers may erect practical barriers to migrant workers organizing. For instance, where migrant employees live in employer-provided housing, employers can hinder union organizers’ access to migrant workers by threatening to prosecute under trespass laws. Even where labour organizers may have the legal right to access migrants in company housing, there have been reports of employers denying outreach workers access to migrant housing by calling local authorities who, even when their understanding of the law is incorrect, reiterate the employers’ threats to drive labour organizers from “private property”. This has reportedly also been a problem for health or religious outreach workers in some countries.

55. Employers may also retaliate against migrant workers who attempt to organize. Retaliation against migrant workers is a concern for both the migrant workers themselves and the community at large as it promotes a climate of secrecy that can damage the health and safety of the wider public. Retaliation is an aggravated problem where a migrant worker’s visa is tied to a particular employer – for example, as with the *kafalah* sponsorship system of employment – so a decision to fire the worker will result in deportation. The inordinate power exercised by the employer creates an environment in which migrant workers’ rights may be violated and remain unredressed.<sup>25</sup> The Special Rapporteur welcomes the efforts of Qatar to reform its labour market with a view to ending the *kafalah* system. This marks a major step forward in upholding the rights of migrants.<sup>26</sup>

56. Employer retaliation for migrant organizing may also take the form of firing the migrant employee, denying employees better work assignments or overtime, filing a defamation suit against an outspoken employee, or putting temporary migrant workers on a blacklist so that when they attempt to apply for another temporary work permit, it is denied. To combat blacklisting as a retaliatory measure, migrant workers should be given a presumption of eligibility for future work unless an employer can show cause for their non-employment.

<sup>25</sup> Migrant Forum in Asia, “Policy brief No. 2: reform of the kafala (sponsorship) system”. Available at [http://mfasia.org/migrantforumasia/wp-content/uploads/2012/07/reformingkafala\\_final.pdf](http://mfasia.org/migrantforumasia/wp-content/uploads/2012/07/reformingkafala_final.pdf).

<sup>26</sup> ILO, “Landmark labour reforms signal end of kafala system in Qatar”, press release, 16 October 2019.

*Trade unions*

57. Barriers to migrant workers' organizing may sometimes stem from trade unions themselves, particularly in places where the dominant narrative suggests that migrant workers are "stealing" jobs from local workers or driving down wages and labour conditions. Trade unions may consider that they do not have the resources or expertise to take on migrant-specific issues, resulting in poor outreach to migrant workers or an unwillingness to form strong coalitions with migrant-led organizations. Trade unions may also consider that outreach is likely to return few rewards as migrant workers leave the country.

58. Cultural barriers may also constitute an obstacle between national trade unions and migrant workers, particularly where a migrant's home country is one where trade unions are non-independent or quasi-State institutions or where trade union affiliation has a reputation of being dangerous or is demonized by the Government. Moreover, some trade unions fear that reaching out to migrants, especially undocumented workers, could open them up to government accusations of promoting illegal employment or trafficking in persons.

59. Where migrant worker participation in trade unions has faltered, other forms of association – some beneficial, some detrimental – may emerge in response to migrant concerns. On the positive side, migrant workers' centres that holistically address the unique issues faced by migrant workers can enable them to collectively organize to defend their interests. Conversely, Governments and employers may attempt to replace independent trade unions with alternative association structures such as joint employer-employee committees or welfare committees that purport to support migrant workers' rights, but in practice simply replace independent unions with weak associations led by employer-selected representatives without the power to negotiate binding legal agreements. For example, Thai law requires medium-sized and large companies in most sectors to facilitate the establishment of employee committees and welfare committees, which some employers try to use as a substitute for genuine engagement with a trade union.<sup>27</sup> Particularly among migrant workers and in labour sectors dominated by migrant workers, these committees are often treated as a substitute for unions without serving equivalent functions.

### 3. Additional challenges faced by migrants with vulnerabilities

60. Migrant women may find it acutely difficult to exercise their freedom of association because, in addition to the common barriers facing all migrants, they may also encounter patriarchal pushback from their own community members who consider that women should remain in domestic spaces or that it is inappropriate for them to organize to advocate for their own interests. Sexual harassment or gender-based violence can also serve to quiet women's voices, and such methods may be strategically deployed against women as a means of discouraging their collective action. Migrant women may particularly struggle with a lack of knowledge and information about existing opportunities to organize, or about the political system and institutions of the destination country. Outside of textile and agricultural work, female migrant workers tend to work in the domestic, caregiving or other informal sectors. The isolation and lack of formality in these areas often means that migrant women lack the support networks available to male migrants, which poses yet another obstacle to their organizing.

61. However, migration can offer migrant women new opportunities to associate and organize, especially when they move from traditional, patriarchal and rigid spaces where their activities are tightly controlled to communities with greater respect for women's rights. Migrant women also stand to reap additional benefits from exercising their freedom of association; for instance, group action can provide migrant women with a collective response to societal problems or offer protection to migrant women in transit. Particularly with respect to issues of sexual harassment or gender-based violence, where the stigma attached to individual victims can make remedy through legalistic means such as lawsuits or grievance procedures difficult, collective organizing can help migrant women change crucial social norms and obtain redress. Migrant women's organizations have proved themselves a potent advocacy force. For example, in Argentina an effective campaign

<sup>27</sup> Thailand, Labour Relations Act, chap. 5; International Labor Rights Forum, *Time for a Sea Change*.

propelled by migrant women's groups resulted in the Government allowing the return of Vanessa Gómez Cueva, a migrant who had been deported to Peru with her youngest child, leaving behind two other children of Argentinian nationality.<sup>28</sup>

62. Migrants who are part of a vulnerable minority group in their country of destination often find their efforts to organize particularly challenging. Lesbian, gay, bisexual, transgender and intersex migrants commonly face discrimination both from destination country communities and from other migrants, so that even finding a safe space in which to meet becomes a barrier to association. Transgender migrants in some countries find it difficult to access the identity documentation needed to regularize their status, which may make exercising their right to freedom of association more hazardous as an undocumented migrant. Migrant sex workers, even in countries where sex work is legal for citizens, can be prevented by law from unionizing or from associating with their peer networks through third party criminalization laws. This makes it more difficult for migrant sex workers to openly join sex worker advocacy groups.

#### **4. Impact of a security-oriented approach to migration on migrants' right to freedom of association**

63. States that approach migration through a security-oriented lens tend to erect additional barriers to migrant association, emphasizing criminalization over a rights-based approach and holding migrants in detention for long periods of time. The nature of detention often results in the denial of the right to free association, as migrants are commonly held in remote locations and in centres that operate with strict security protocols, limiting the ability of the detained migrants to interact with family members, religious leaders, human rights defenders, legal assistance, civil society leaders and other community members. For example, attorneys' access to their migrant clients is significantly restricted by such detention owing to the inaccessible locations in which migrants are held in various countries. In addition to the remote locations, cumbersome entry procedures and regulations have also severely limited access to detainees for civil society organization representatives and lawyers. Even within the detention centre or camp, migrants may find it difficult to find the physical space to organize privately with other detainees or to meet with their legal representative.

64. Where migrant detainees held in detention centres or camps are isolated from the outside world, they are particularly vulnerable to retaliation from authorities for attempts to organize and speak out about poor conditions or abuses within the detention centre or camp. In 2018, for example, 115 detained immigrants began a hunger strike to protest against the conditions at Pine Prairie Detention Center in Louisiana, in the United States. Guards responded with tear gas, rubber bullets, beatings, solitary confinement and by completely barring contact with family members and attorneys.<sup>29</sup> Retaliation has a chilling effect on further migrant organizing inside the detention centres or camps.

65. Even outside of detention centres or camps, a security-oriented approach can, in practice, limit the exercise of free association by heightening migrants' fear that they may be under surveillance, accused of national security offences or of terrorist association and deported. For instance, in September 2019, Frontex, the European Border and Coast Guard Agency, published a tender inviting surveillance companies to bid for a project that would monitor the Internet use of migrants and civil society, purportedly to help combat human smuggling and trafficking.<sup>30</sup> After civil society expressed concerns, the call was rescinded.

<sup>28</sup> See [www.amnesty.org/download/Documents/AMR1309892019ENGLISH.pdf](http://www.amnesty.org/download/Documents/AMR1309892019ENGLISH.pdf).

<sup>29</sup> Freedom for Immigrants, "As hunger strikes erupt nationwide in ICE detention, immigrants subjected to retaliation and excessive force", 6 August 2019.

<sup>30</sup> New Neighbours, "Frontex wanted to monitor 'civil society and diaspora communities in destination (EU)'", 11 December 2019; Lina Vosyliūtė, "How could strategic litigation prevent policing of humanitarianism?", Research Social Platform on Migration and Asylum, December 2019, p. 28.

## **D. Challenges faced by civil society organizations and individuals that work on migration and migrant rights**

### **1. Toxic narratives and criminalization of civil society organizations that work with migrants**

66. In the past several years, a toxic narrative around the role of civil society organizations that provide humanitarian assistance or other services to migrants has taken root in many countries, propelled, among others, by nationalist politicians and far-right groups and media, stating that these organizations act as a pull factor for undocumented migrants. This narrative paints these organizations as inciting, aiding and abetting irregular migration, smuggling or even terrorism.<sup>31</sup> Some civil society organizations that work with migrants have been accused of acting as a pull factor for migrants and assisting smuggler networks, including by government officials in public.

67. This narrative has been able to take hold partly because of the criminalization of migration. Although the act of seeking asylum is lawful and crossing borders without authorization should be considered an administrative infraction at the most, the word “illegal” is commonly used to label asylum seekers, undocumented migrants or others in irregular situations.<sup>32</sup> Once the act of migration is tarred as a crime, it is easy to label any group assisting these “criminals” as acting illegally itself.

68. These smear campaigns have created a hostile environment for groups providing services to migrants, and have a significant negative effect on fundraising, recruitment and the psychological well-being of civil society organization staff and volunteers. Most devastatingly, these toxic narratives set the stage for the passage or usage of laws that criminalize humanitarian acts or erect administrative obstacles against the work of these organizations, effectively censoring acts that embody the principles and values of humanity and civility.

69. Laws related to smuggling, trafficking, counter-terrorism, improper disposal of waste, trespassing, facilitation of entry and transit and facilitation of residence and stay and many others have been misused to ensnare providers of humanitarian services to migrants. Activities that have been criminalized in various countries include the provision of assistance in seeking asylum or information related thereto, search and rescue missions, and the provision of humanitarian aid. Some civil society organizations have reported that even activities such as providing food, water, medical supplies and shelter along migratory routes have been criminalized. In Europe alone, between 2015 and 2019, at least 158 individuals were investigated or formally prosecuted on grounds related to their migration work or aid to migrants.<sup>33</sup> Many civil society organizations were affected by the criminalization or investigations of their volunteers.

70. Anti-smuggling and anti-trafficking laws are sometimes misused against civil society organizations that work with migrants. Within the European Union, Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence and its accompanying framework decision (2002/946/JHA) oblige member States to punish anyone who assists a person to enter or stay irregularly in the territory of a member State. Not all European Union countries have introduced humanitarian exceptions for humanitarian assistance without criminal intent or profit motive. Some countries introduced narrow definitions of humanitarian exemptions, leaving many humanitarian actors without protection. Moreover, several States have established extraordinarily harsh penalties for the criminalized behaviour. In Greece, for example, the

<sup>31</sup> Carla Ferstman, “Using criminal law to restrict the work of NGOs supporting refugees and other migrants in the Council of Europe Member States” (Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, December 2019), para. 20.

<sup>32</sup> *Ibid.*, para. 63.

<sup>33</sup> Lina Vosyliūtė and Carmine Conte, “Crackdown on NGOs and volunteers helping refugees and other migrants: final synthetic report”, Research Social Platform on Migration and Asylum, June 2019, p. 25. Available at [www.resoma.eu/sites/resoma/resoma/files/policy\\_brief/pdf/Final%20Synthetic%20Report%20-%20Crackdown%20on%20NGOs%20and%20volunteers%20helping%20refugees%20and%20other%20migrants\\_1.pdf](http://www.resoma.eu/sites/resoma/resoma/files/policy_brief/pdf/Final%20Synthetic%20Report%20-%20Crackdown%20on%20NGOs%20and%20volunteers%20helping%20refugees%20and%20other%20migrants_1.pdf).

maximum penalty for anyone found to have facilitated the entry or transit of an undocumented migrant is the same penalty given for human trafficking.<sup>34</sup>

71. Laws used to criminalize the work of civil society organizations that work with migrants have also been leveraged against people working in an individual capacity. However, several of these laws provide for increased penalties when the alleged criminal activity is related to group activity. For example, the base penalty for facilitation of entry without a profit motive in Italy is up to five years' imprisonment; in Belgium, this base penalty is up to one year's imprisonment. Nevertheless, if the alleged crime is committed as an "organized crime" activity involving two or more people, it carries a sentence of up to 15 years in Italy and up to 20 years in Belgium.<sup>35</sup>

72. Most cases against individuals and civil society organization staff that work with migrants in Europe and North America have ended in dismissal or acquittal,<sup>36</sup> which begs the question of whether such charges are used by officials to harass them. Criminal indictments against individuals or civil society organizations that work with migrants can lead to additional harassment measures, such as authorized surveillance, the freezing of bank accounts or the seizure of assets. For example, after Italy alleged that the migrant rescue ship *Aquarius*, operated by Médecins sans frontières, had illegally disposed of infectious waste, the Italian authorities moved to seize the ship and to freeze the bank accounts of Médecins sans frontières in Italy. Criminal indictments, or the risk thereof, also force civil society organizations to spend significant time, money and resources dealing with these threats and negative media exposure rather than carrying out their work by providing services to migrants. This is particularly a problem for smaller organizations with minimal resources.

73. There are also significant negative physical, mental and financial repercussions on the individual staff members or volunteers of civil society organizations that work with migrants who are the direct target of criminal indictments. They face the pain of spending time in detention, paying high fees for attorneys and loss of reputation.<sup>37</sup> The stress of confronting these charges is significant considering the disproportionately high penalties at stake. Despite this worrying trend, it is worth noting that, in addition to the majority of these cases ending in dismissal or acquittal, some courts and constitutional councils have begun to push back against this wave of criminalization. For instance, in France in 2018, the Constitutional Council declared that the law's failure to provide an exemption for humanitarian acts was unconstitutional because the principle of fraternity protects humanitarian assistance to others regardless of their immigration status.<sup>38</sup>

## 2. Campaigns against civil society organizations that work with migrants

74. Even without an open criminal investigation or indictment against them, staff and volunteers of civil society organizations that work with migrants have been subject to campaigns of government intimidation. These have included surveillance and intelligence gathering by law enforcement, targeted financial audits, unreasonable searches, prolonged detention at the border, discriminatory threats, travel restrictions and revocation of fast-track travel documents. There are even reports of government efforts to exclude organizations working on migrants' rights from accessing the asylum process. It is reported that in 2019, journalists discovered that the United States authorities had put in place a confidential database of journalists and migrant advocates working at the United States/Mexico border and used the database, in coordination with the Mexican authorities, to monitor individuals on the list. A number of the individuals listed on the database – which included significant personal information about them – had alerts placed on their passports, causing them to be stopped and questioned for hours when attempting to cross

<sup>34</sup> European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update* (European Union, 2018), pp. 34–35.

<sup>35</sup> Vosyliūtė, "How could strategic litigation prevent policing of humanitarianism?", p. 9.

<sup>36</sup> *Ibid.*, pp.19–20.

<sup>37</sup> Eric Reidy, "Refugee, volunteer, prisoner: Sarah Mardini and Europe's hardening line on migration", *The New Humanitarian*, 2 May 2019; Vosyliūtė, "How could strategic litigation prevent policing of humanitarianism?", p. 25.

<sup>38</sup> Constitutional Council of France, Decision No. 2018-717/718 QPC of 6 July 2018.

borders.<sup>39</sup> Particularly troubling are reports that migrant leaders of civil society organizations that work with migrants have been targeted for detention and deportation as a way of interfering with the work of their organization and dissuading other migrants from organizing. For example, in 2018 the co-founders of a migrant civil society organization were detained within days of each other and one was deported. Although both men had long been permitted to live and work legally in the country where they were residing, human rights defenders who have accompanied migrants on their journeys across State borders or to ports of entry have been attacked, arrested, interrogated and threatened by police or other government officials at the border.<sup>40</sup> Government officials from various countries have publicly attacked organizations and advocates that work on migration-related issues.<sup>41</sup>

75. Harassment has also come from private individuals, including reported instances of office invasion and vandalization, hate mail, cyberattacks, street harassment or even physical attacks. Some of these attacks stem from anti-migrant groups who are incited by toxic narratives painting civil society organizations that work with migrants as traffickers or national security threats; some may come from traffickers themselves who have a financial interest in migrants remaining vulnerable. In places where such organizations also feel under threat from government authorities, many such instances of harassment or attacks from private individuals go unreported to law enforcement.

### 3. Administrative and financial barriers faced by civil society organizations that work with migrants

76. In addition to criminalization and campaigns of intimidation against civil society organizations that work with migrants and migrant human rights defenders, some countries have begun to erect administrative barriers obstructing the work of persons and groups providing services to migrants. In some cases, civil society organizations that work with migrants have been given just a few days to register with the relevant ministry or risk being banned from operations.<sup>42</sup> Some States have also imposed rules requiring civil society organizations to report migrants in an irregular situation to the authorities when such migrants seek humanitarian assistance, thus casting a chill over their services.<sup>43</sup> Numerous civil society organizations have had their rescue ships seized and impounded on unfounded allegations that the crew was smuggling migrants.<sup>44</sup> In one country, the Government banned the use of a hotline that was set up in detention centres by a civil society organization that provided legal assistance to migrants and asylum seekers. In addition, some Governments have tried to prevent workers in detention facilities from speaking out about the abuses that occur in the centres.<sup>45</sup>

77. Civil society organizations that work with migrants also face significant financial challenges. As the Special Rapporteur witnessed during his official visit in 2019, Hungary imposed a special tax of 25 per cent on financial support provided for any activities that support or promote immigration. In some countries, criminal or administrative penalties for the work of civil society organizations that work with migrants now also include large

<sup>39</sup> Scarlet Kim, Esha Bhandari and Mitra Ebadolahi, “The U.S. Government tracked, detained, and interrogated journalists. We’re suing on their behalf”, *American Civil Liberties Union*, 20 November 2019.

<sup>40</sup> Front Line Defenders, Programa de Asuntos Migratorios de la Universidad Iberoamericana Tijuana-Ciudad de México and Red TDT, “Defenders beyond borders: migrant rights defenders under attack in Central America, Mexico & the United States”, September 2019.

<sup>41</sup> Submission from the Refugee Advice and Casework Service, p. 1. Available at [www.ohchr.org/Documents/Issues/SRMigrants/submissions/CallFreedomAssociationMigrations/RA\\_CS.pdf](http://www.ohchr.org/Documents/Issues/SRMigrants/submissions/CallFreedomAssociationMigrations/RA_CS.pdf).

<sup>42</sup> Civic Space Watch, “Greece gives NGOs 10 days to register or face ban”, 28 November 2019.

<sup>43</sup> Ferstman, “Using criminal law to restrict the work of NGOs supporting refugees and other migrants in the Council of Europe Member States”, para. 105.

<sup>44</sup> European Union Agency for Fundamental Rights, “2019 update: NGO ships involved in search and rescue in the Mediterranean and criminal investigations”, 19 June 2019.

<sup>45</sup> Submission from the Refugee and Immigrant Center for Education and Legal Services, pp. 4–5. Available at [www.ohchr.org/Documents/Issues/SRMigrants/submissions/CallFreedomAssociationMigrations/RAICES.pdf](http://www.ohchr.org/Documents/Issues/SRMigrants/submissions/CallFreedomAssociationMigrations/RAICES.pdf).

finer. For example, in 2019 Italy passed a decree establishing the maximum fine for search and rescue ships that enter its territorial waters without permission at €1 million.<sup>46</sup>

78. Restricting access to public funding is yet another measure used to silence civil society organizations that work with migrants. In 2016, the Ministry of the Interior of Poland annulled the call for civil society organization proposals to the European Union Asylum, Migration and Integration Fund, preventing such organizations from accessing funds that had been earmarked for migration assistance.<sup>47</sup> In Hungary, civil society organizations that apply to that Fund must agree to allow the Ministry of the Interior to directly withdraw money from the organization's bank account at any point during and after the project implementation period. That requirement seriously dissuades civil society organizations from applying for those funds.<sup>48</sup> There are reports that civil society organizations that have accepted government funding for their migrant-related work elect not to report violations against migrants for fear of losing both the funding and access necessary to carry out their work.<sup>49</sup> In Australia, government funding for legal assistance, including interpretation services, for asylum seekers was removed in a drastic manner in 2014.<sup>50</sup>

#### **4. Effect of criminalization and restrictions on both civil society organizations that work with migrants and on migrants themselves**

79. The recent trend towards the securitization of migration, as detailed above, has forced civil society organizations to adapt some of their practices in order to ensure their security and operational effectiveness. Some adaptations to the new environment have been positive; there appears to be renewed interest in building alliances, information-sharing and building protective capacities. For instance, in 2017, organizations performing search and rescue operations in the Mediterranean drafted an informal code of conduct to help prevent future attacks by ensuring best practices among such organizations.<sup>51</sup> Organizations may be better educating their staff on how to respond if their own rights are threatened.

80. Many civil society organizations have been forced to create office security guidelines, set up emergency hotlines, engage in strategic litigation and change fundraising targets and methods, which has sometimes had an adverse effect on their work. Such organizations have been more reluctant to rely on volunteers when they cannot ensure the volunteers' safety, resulting in a reduction in volunteer support. These adaptations take time, mental energy and resources and may increase the psychological toll on staff members and volunteers. Additionally, the funds and energy spent on adapting to the riskier environment diverts civil society organization services and advocacy assistance away from migrants.

81. This increase in attacks and restrictions on civil society organizations that work with migrants has not emerged in a vacuum, but rather in the context of shrinking civic space generally. Laws and practices preventing civil society organizations from fulfilling their human rights and humanitarian missions and the policing of such organizations erode

<sup>46</sup> Emma Wallis, "Larger fines for migrant rescue ships in Italy", *Info Migrants*, 6 August 2019.

Available at [www.infomigrants.net/en/post/18652/larger-fines-for-migrant-rescue-ships-in-italy](http://www.infomigrants.net/en/post/18652/larger-fines-for-migrant-rescue-ships-in-italy).

<sup>47</sup> Lina Vosyliūtė and Carmine Conte, "Crackdown on NGOs assisting refugees and other migrants: policy option brief", *Research Social Platform on Migration and Asylum*, March 2019, p. 12.

Available at [www.resoma.eu/sites/resoma/resoma/files/policy\\_brief/pdf/POB%20Crackdown%20on%20NGOs\\_0.pdf](http://www.resoma.eu/sites/resoma/resoma/files/policy_brief/pdf/POB%20Crackdown%20on%20NGOs_0.pdf).

<sup>48</sup> Rachel Westerby, "Follow the money: assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level", *UNHCR and European Council on Refugees and Exiles*, January 2018, p. 41. Available at [www.ecre.org/wp-content/uploads/2018/01/follow-the-money\\_AMIF\\_UNHCR\\_ECRE\\_23-11-2018.pdf](http://www.ecre.org/wp-content/uploads/2018/01/follow-the-money_AMIF_UNHCR_ECRE_23-11-2018.pdf).

<sup>49</sup> Vosyliūtė and Conte, "Crackdown on NGOs and volunteers helping refugees and other migrants: policy option brief", p. 11.

<sup>50</sup> Submission from the Refugee Advice and Casework Service, pp. 1–2.

<sup>51</sup> See [www.humanrightsatsea.org/wp-content/uploads/2017/03/20170302-NGO-Code-of-Conduct-FINAL-SECURED.pdf](http://www.humanrightsatsea.org/wp-content/uploads/2017/03/20170302-NGO-Code-of-Conduct-FINAL-SECURED.pdf).

democratic rule of law principles and societal trust and cohesion.<sup>52</sup> Laws and practices aimed at restricting the civil society organization sector generally will impede any such organization from providing services to migrants. Likewise, laws and practices targeting civil society organizations that work with migrants may have the effect of shutting down space for other humanitarian or human rights groups.

82. Moreover, the wave of crackdowns on civil society organizations that work with migrants has risen at the same time that Governments increasingly abnegate their responsibilities to provide humanitarian assistance to migrants.<sup>53</sup> Commonly, the Governments that are restricting civil society organizations from providing services to migrants are the same ones that are taking punitive, hostile and security-oriented approaches towards migrants, especially migrants who are undocumented or in irregular situations. Thus, migrants, including asylum seekers, are left without any assistance in often overly complicated legal proceedings or in increasingly risky transit situations.

83. This crackdown on civil society organizations that work with migrants, particularly combined with States scaling back their services, has had a profound effect on the safety and rights of migrants, endangering their rights to life, to seek asylum, information and humanitarian assistance, to other basic services such as legal assistance, housing and education, and to enjoy protection from human traffickers and smugglers. Civil society organizations also report that they hesitate to engage in what they now view as risky operations such as providing humanitarian services to migrants on the border, for fear of being accused of smuggling-related crimes. Death rates of migrants at sea increased ninefold between 2015, when the crackdown began on such organizations providing search and rescue operations in the Mediterranean, and 2018.<sup>54</sup> Migrants, especially those being held in detention camps and centres, have great difficulty accessing robust legal services, sometimes resulting in erroneous fast-tracked deportations. Civil society organizations in many countries are forced to provide fewer humanitarian services to vulnerable migrants, which increases the danger and trauma of their transit and stay. Certain barriers have made it more difficult for civil society organizations to provide full information to migrants, which in turn decreases migrants' ability to make informed decisions about their lives. The reduced access such organizations have to migrants in detention means that they are less able to assist migrants with their health, communication or other needs. Indeed, the reduction of human rights monitors at many detention centres and at borders results in violations against migrants going unreported and unaddressed. This leads to an environment where officials working with migrants may be emboldened to mistreat them with impunity.

84. The lack of trust that migrants and civil society organizations that work with them may have for officials as a result of these crackdowns can affect services provided to migrants in indirect ways. For instance, in one country, it is reported that many migrants prefer to sleep outdoors rather than in shelters given that local authorities are obliged to report migrants in an irregular situation.<sup>55</sup> In another country, concerns about such organizations' potential obligations to share data with government officials about migrant clients may result in less data collection, which has consequences for funding and for monitoring their work.

85. Moreover, where civil society organizations step back from provision of services to migrants because of fear of the legal consequences or harassment, criminal groups and traffickers step in. This subjects migrants to an increased risk of torture, slavery and other severe human rights violations<sup>56</sup> and increases the criminal element within a State's borders. Overall, the reduction in humanitarian and human rights services available to migrants and

<sup>52</sup> European Parliament, *Fit for Purpose?*, p. 10; Vosyliūtė and Conte, "Crackdown on NGOs and volunteers helping refugees and other migrants: policy option brief", p. 23.

<sup>53</sup> Ferstman, "Using criminal law to restrict the work of NGOs supporting refugees and other migrants in the Council of Europe Member States"; Lina Vosyliūtė, "Is 'saving lives at sea' still a priority for the EU?", Heinrich Böll Stiftung, 19 April 2018.

<sup>54</sup> Vosyliūtė, "Is 'saving lives at sea' still a priority for the EU?". See also <https://data2.unhcr.org/en/situations/mediterranean> (last accessed 2 February 2020).

<sup>55</sup> European Parliament, *Fit for Purpose?*, p. 94.

<sup>56</sup> *Ibid.*, p. 95.

robust advocacy initiatives on their behalf unnecessarily increases migrants' risk of death, physical harm and psychological suffering.

#### **IV. Conclusions and recommendations**

86. **The right to freedom of association, including the right to form and join trade unions, is essential for migrants to express their needs, protect their economic, social, cultural and other interests and defend their rights, in particular through trade unions and migrant organizations. Assistance and support from civil society organizations is crucial for migrants, particularly those in an irregular situation or with vulnerabilities, to exercise their rights, including the right to freedom of association.**

87. **By exercising their right to freedom of association, migrants are empowered to claim other rights and overcome jointly the challenges they face at the different stages of migration. Member States and relevant stakeholders must protect and facilitate the exercise of the right to freedom of association of migrants, including through creating, maintaining and strengthening an open civic space where migrants can organize and access assistance, advice, services and support from civil society organizations.**

88. **Migrants must be able to aggregate their voices in order to hold Governments accountable with regard to their concerns, to level the unequal relationship with employers and to counter the ongoing wave of xenophobia in many countries. Solidarity plays a crucial role in supporting migrants in perilous situations, thus the role of civil society organizations that provide much-needed humanitarian and other assistance should be protected and strengthened. Laws, policies and practices need to conform to international human rights standards. Attention to the needs of women and other particularly vulnerable groups of migrants is imperative given the additional risks they face in transit and residence. Ultimately, guaranteeing the right to freedom of association should protect migrants' ability to act in their own interests and should reinforce the notion that migrants are positive contributors to the communities and States in which they live.**

89. **The Special Rapporteur recommends that States:**

(a) **Recognize in domestic laws migrants' right to freedom of association and encourage them to self-organize, regardless of their migration status;**

(b) **Establish laws, policies and practices that are supportive of trade union membership for migrants;**

(c) **Extend labour protection in national laws to migrant workers, including domestic workers, to ensure equal protection under the law. Migrant workers should enjoy treatment no less favourable than that applicable to nationals, including with regard to freedom of association;**

(d) **Take positive measures, including affirmative action, to ensure that migrants with specific vulnerabilities are able to effectively exercise their right to freedom of association;**

(e) **Ensure policy coherence by conducting a review of all national policies that are relevant to the right to freedom of association of migrants and revising those that could adversely affect migrants' exercise of this right;**

(f) **Ensure the accessibility of legal protection and effective judicial or other appropriate remedies to address any violation of migrants' right to freedom of association regardless of their migration status;**

(g) **Establish in law the right for migrant workers, including those without documentation, who are victims of retaliation for their collective organizing to remain in the country of destination while they settle their dispute, and enforce robust penalties for employers who retaliate against migrant workers who organize;**

(h) **Address any threats, intimidation, harassment and use of violence by either public or private actors as reprisals and retaliation against migrants who exercise their right to freedom of association;**

(i) Provide accessible information for migrants, including in countries of origin prior to their departure, on their right to freedom of association, and provide assistance services for migrants with vulnerabilities, including migrant women and domestic migrant workers, to ensure that they can better understand their right to freedom of association and navigate relevant processes and procedures more effectively;

(j) Strengthen civil space and create an enabling environment for civil society organizations, including those working on migration and migrants' rights issues. While the formation of an association with legal personality may require certain formalities, rules on association should facilitate the registration, work and funding of civil society organizations, the process should be simple, practical and free from undue State restrictions and interference. Registration procedures should also be accessible to migrants, including those in an irregular situation;

(k) Provide accessible information for migrants on existing migrant associations and civil society organizations that can provide them with advice or assistance;

(l) Ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants;

(m) Guarantee that administrative and law enforcement officials are adequately trained with regard to the respect of the right of migrants, including those in an irregular situation, to freedom of association, particularly in relation to their specific protection needs;

(n) Ensure that migrants' visa or residence permits are not linked to individual employers and that a migrant's authorization to remain in the country of destination is not tied to his or her employer's good will, as a means to safeguard migrant workers' right to freedom of association;

(o) Ensure migrants' work visa or permits are issued with no effective restrictions on the migrant workers' right to freedom of association, including to form and join trade unions;

(p) Ensure that all legislation concerning smuggling and trafficking has humanitarian exemptions applicable to persons and organizations that conduct humanitarian assistance or provide aid to migrants without criminal intent;

(q) Limit immigration detention to the shortest possible period of time when it is resorted to as an exceptional measure, while ensuring that migrants held in detention have open and confidential access to visitors and telephone calls and that sufficient private spaces are available within detention facilities.

---