

## The nature of the action undertaken by the UN Special Rapporteur on migrant rights. Selected issues and problems

Charakter działań podejmowanych przez Specjalnego Sprawozdawcę ONZ  
ds. praw migrantów. Wybrane zagadnienia i problemy

Характер деятельности, осуществляемой Специальным докладчиком ООН  
по вопросу о правах мигрантов. Отдельные вопросы и проблемы

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**Summary:** Despite the contribution they make to the life of host countries, migrants are often subjected to inappropriate or often cruel treatment because they are third-country nationals or are in an uncertain situation. The growing interest of the international community in the subject matter of human rights means that particular attention is now being devoted to migrant rights. The activity of the UN Special Rapporteur on migrant rights, who operates within the framework of the so-called Special Procedures established by the Human Rights Council, plays a special role among the mechanisms of protection of migrant rights in international relations.

**Key words:** human rights, migration, special procedures

**Streszczenie:** Pomimo wkładu, jaki wnoszą w życie krajów przyjmujących, migranci są często poddawani niewłaściwemu i nierzadko najbardziej okrutnemu traktowaniu, ponieważ są cudzoziemcami lub znajdują się w niepewnej sytuacji. Rosnące zainteresowanie społeczności międzynarodowej problematyką praw człowieka sprawiło, że zaczęto zwracać szczególną uwagę na prawa migrantów. Wśród mechanizmów ochrony praw migrantów ważną rolę odgrywa w stosunkach międzynarodowych działalność Specjalnego Sprawozdawcy ONZ ds. praw migrantów, który funkcjonuje w ramach ustanowionych przez Radę Praw Człowieka tzw. procedur specjalnych.

**Słowa kluczowe:** prawa człowieka, migracje, procedury specjalne

**Резюме:** Несмотря на свой вклад в развитие принимающих стран, мигранты часто подвергаются ненадлежащему, а зачастую и самому жестокому обращению, поскольку они являются иностранцами или находятся в уязвимом положении. Растущий интерес международного сообщества к вопросам прав человека привел к тому, что особое внимание стало уделяться правам мигрантов. Среди механизмов защиты прав мигрантов важную роль в международных отношениях играет деятельность Специального докладчика ООН по вопросу о правах мигрантов, который действует в рамках так называемых специальных процедур, учрежденных Советом по правам человека.

**Ключевые слова:** права человека, миграция, специальные процедуры

## Introduction

The 20th century has been referred to as a century of mass migration, which over time, including in the 21st century, has increased in scale and intensity. Migration understood as the movement of people can be classified generally as internal (within the borders of one country) and external – international migration (when a state border is crossed). The causes for migration are very diverse and arise for many reasons.<sup>1</sup> The most common include a wish to improve one's standard of living, to find a better job, to join one's family members who are already residing in a different country, as well as to escape persecution, war or a natural disaster (so-called forced migration).<sup>2</sup>

The growing occurrence of migration is one of the most important challenges for the world, including Europe and individual Member States of the European Union.<sup>3</sup> It is associated with economic (mainly globalization), cultural and moral changes, and also with the expansion of areas of poverty and international or ethnic conflicts.<sup>4</sup> Migrations are "a mirror" of the transformations that occur throughout the world and affect the life of people and nations.<sup>5</sup> The great intensity of migratory movements observed today means that international instruments that protect migrant rights in their countries of stay must be analysed. In this aspect, the aim of this discussion is to present the action undertaken by the UN Special Rapporteur and its impact on respect for migrant rights in individual countries. It ought to be highlighted that the normative development of migrant rights, regardless of their legal status, accommodated within the contemporary international human rights framework, means that the protection of their rights and freedoms by states should be implemented on three cumulative levels.<sup>6</sup> Namely, establishing migrant rights in

<sup>1</sup> See more in: S. Castles, M.J. Miller, *Współczesne migracje międzynarodowe*, Warszawa 2011, p. 22.

<sup>2</sup> H. de Haas, M. Czaika, M.-L. Flahaux, E. Mahendra, K. Natter, S. Vezzoli, M. Villares-Varela, *International Migration: Trends, Determinants, and Policy Effects Article*, Population and Development Review 2019, vol. 45, no. 4, pp. 888-893.

<sup>3</sup> T. Homoncik, K. Pujer, I. Wolańska, *Ekonomiczno-społeczne aspekty migracji. Wybrane problemy*, Wrocław 2017, p. 5; A. Szczepanikova, T. Van Criekinge, *The Future of Migration in the European Union. Future Scenarios and Tools to Stimulate Forward-looking Discussions*, Luxembourg 2018, pp. 10-12, 24-30.

<sup>4</sup> P.A. Taran, *Human Rights of Migrants: Challenges of the New Decade*, International Migration 2000, vol. 38, no. 6, p. 7.

<sup>5</sup> Ibidem.

<sup>6</sup> J.A. Bustamante, *Immigrants' Vulnerability as Subjects of Human Rights*, International Migration Review 2002, vol. 36, no. 2, pp. 333-354; O. Grech, *Migrants' and Refugees' Rights: a Brief International Law Perspective*, in: *Migration in the Mediterranean. Human Rights, Security and Development Perspectives*, eds. O. Grech, M. Wohlfeld, Msida 2014, pp. 40-49.

positive laws, their correct implementation by national authorities and possibilities of enforcing these rights by individuals by means of instruments of legal protection ensured by the law of a given country.

The subject matter addressed in this study is relevant and valid and has both a theoretical and practical significance. It signals a spectrum of various international approaches to the legal protection of migrant rights and aims to point to selected issues of activity of the UN Special Rapporteur on migrant rights under Special Procedures of the Human Rights Council.

## 1. Special Procedures of the Human Rights Council

The United Nations' independent human rights experts – otherwise known as 'Special Procedures' – are considered by many to be, in the words of then UN Secretary-General Kofi Annan, the 'crown jewel' of the international human rights system. From their first appearance in 1967 when the Commission on Human Rights established an Ad Hoc Working Group on human rights in South Africa, Special Procedures have grown into one of the international community's most important tools for promoting and protecting human rights.<sup>7</sup> The UN Special Procedures are today faced with the serious challenge of protecting migrant rights.

The Special Procedures of the UN Human Rights Council<sup>8</sup> particularly involve the activity of independent experts in the field of human rights with mandates to monitor, report on and promote human rights in various spheres of their operation.<sup>9</sup> The term 'Special Procedures' includes individuals variously designated as 'Special Rapporteur', or 'Independent Expert', Working Groups usually composed of five independent experts, 'Special Representative of the Secretary-General' and 'Representative of the Secretary-General'.<sup>10</sup> The Special Rapporteurs (SR), Independent

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<sup>7</sup> M. Limon, T. Piccone, *Human Rights Special Procedures: Determinants of Influence. Understanding and Strengthening the Effectiveness of the UN's Independent Human Rights Experts. Policy Report*, Versoix 2014, p. 2.

<sup>8</sup> See more: E. Domínguez Redondo, *Rethinking the Legal Foundations of Control in International Human Rights Law – The Case Of Special Procedures*, Netherlands Quarterly of Human Rights 2011, vol. 29, no. 3, pp. 261-288; A. Hernandez-Polczyńska, *Procedury specjalne Rady Praw Człowieka ONZ*, Warszawa 2019, s. 34-194.

<sup>9</sup> See more: J. Gutter, *Thematic Procedures of the United Nations Commission on Human Rights and International Law. In Search of a Sense of Community*, Antwerpen 2006, pp. 1-443.

<sup>10</sup> Although the titles vary, there are no major differences in the general responsibilities and working methods of Special Rapporteurs, Independent Experts, Working Groups, Representative of the

Experts (IE) and members of the Working Groups (WG) serve in their personal capacities and undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith.<sup>11</sup> They are not United Nations staff members and do not receive financial remuneration. They are elected for a 3-year term of office and can be re-elected. Special Procedures report annually to the Human Rights Council; the majority of the mandates also report to the General Assembly.

The Special Procedures system is an important element of the international mechanism of UN human rights protection. It includes all – civil, cultural, economic, political and social – rights and obligations of individuals. As of the end of March 2020, there are 55 Special Procedures (44 thematic mandates and 11 country-specific or territory-specific mandates), with currently 79 mandate-holders.<sup>12</sup> The 44 thematic mandates established, implemented by independent experts, include i.a. Working Group of Experts on People of African Descent, established in 2002, Special Rapporteur in the field of cultural rights, established in 2009, Special Rapporteur on the rights of people with disabilities, etc.<sup>13</sup> The so-called 11 country-specific mandates established under Special Procedures include i.a. Special Rapporteur on the situation of human rights in Belarus, established in 2012, Special Rapporteur on the situation of human rights in Cambodia, established in 1993, or Independent Expert on the situation of human rights in Central African Republic, established in 2013 (as of 30 April 2021).<sup>14</sup> Independent experts undertake the following actions as part of Special Procedures with the support of the Office of the United Nations High Commissioner for Human Rights: country visits, during which the scope of violations of rights and freedoms of individuals are assessed in countries concerned, actions on individual cases of reported violations of human rights and freedoms are undertaken and if there are justified concerns that such violations may occur, communications to States and other stakeholders (e.g. non-governmental organizations) are sent. Independent experts also conduct

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Secretary General and Special Representatives of the Secretary-General. Manual of Operations of the Special Procedures of the Human Rights Council, August 2008, p. 6, [https://www.ohchr.org/Documents/HRBodies/SP/Manual\\_Operations2008.pdf](https://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf) [access: 19.04.2021].

<sup>11</sup> United Nations Human Rights Office of the High Commissioner, Directory of Special Procedures Mandate Holders, February 2021, p. 4, [https://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryFebruary2021\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/SP/VisualDirectoryFebruary2021_en.pdf) [access: 19.04.2021].

<sup>12</sup> Ibidem.

<sup>13</sup> A list of thematic mandates is available at the UN official website: <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=en> [access: 19.04.2021].

<sup>14</sup> A list of country-specific mandates is available at the UN official website: <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?lang=en> [access: 19.04.2021].

annual thematic studies seeking information about cases of violations of human rights in individual countries. They encourage states and social organizations to provide or obtain such information within the scope of consultations with human rights experts. Their expertise involves contributing to the development of international human rights standards, and engaging in advocacy to raise public awareness of the protection of rights and freedoms of individuals in today's world.

The material scope of problems related to the protection of human rights in the activities undertaken as part of Special Procedures is very broad. Independent experts, through their activity, contribute concrete specialist knowledge to contemporary subjects related to the rights of the individual – for example, climate change, new technologies, migration, and COVID-19, to name just a few.

## **2. Special Procedures against violations of rights of migrants**

Migration has been a part of human experience throughout history. The number of migrants is growing globally every year. Cases of violations of human rights and freedoms in the treatment of migrants in countries where they arrive demonstrate that it is a topical and significant problem, not only from the point of view of a discussion based on legal theory, but mostly from a practical stance. Migration is now a key social process that had grave consequences for the operation of domestic and international systems of law. One must be aware that migratory processes are experienced differently by individuals, depending on the standards of legal protection in a given country and economic and socio-cultural determinants of the new place of stay. This is why ensuring that these rights are properly respected is a monumental challenge for the international community.

Special Procedures established by the Human Rights Council were aimed at migration in the context of broadly understood protection of rights and freedoms of migrants, including a cross-sectional examination of this matter in the operation of state practice – both in the context of positive law and the practice of national authorities. The UN Special Rapporteur on migrant rights (hereinafter as SRRM or Special Rapporteur) plays a special role among experts established under Special Procedures and was given a mandate to take action in all fields that concern migration in terms of human rights, including promotion, protection and ensuring the effective enforcement of human rights for all migrants. His efforts here are, therefore, particularly active and extensive, which can be evidenced by the number of annual reports that have been published since this mandate was established.

From 2000 to the end of April 2021, the SRRM has written 34 thematic reports in total that address various problems pertaining to violations of the rights and freedoms of migrants.<sup>15</sup> Nevertheless, it needs to be emphasized that the SRRM is also supported in his work by other independent experts appointed under the so-called Special Procedures, who, within the scope of themes assigned to them, also address the rights of migrants in states. Those mandate holders have been closely following and engaged in the Global Compact for safe, orderly and regular migration (hereinafter as: GCM), which was adopted in Marrakech in December 2018 and then formally endorsed through UN General Assembly resolution 73/195.<sup>16</sup> Thanks to the tremendous contribution made by some experts during GCM negotiations and their participation in the 2018 Marrakech conference on its adoption, an important decision was taken by consensus. It was concluded that the UN human rights mechanisms, including Special Procedures, should be used in GCM implementation and in activities related to this implementation. Moreover, on the 26th Annual Meeting of UN Independent Experts held in June 2019, an analysis was made to investigate activities that they could undertake in the operation of the UN Network on Migration, established on 9 December 2018 (in order i.a. “to ensure effective, timely, coordinated UN system-wide support to Member States in their performance of activities that implement the principles of the UN Network on Migration.”)<sup>17</sup> Contemporary migration issues are clearly visible against this background and constitute, in the human rights scope, a wide spectrum of legal problems in the context of respecting rights and freedoms of migrants as a normative standard of public international law which is universally accepted by states.

### 3. The mandate of the Special Rapporteur on the human rights of migrants

The Special Rapporteur on the human rights of migrants is an independent expert appointed by the UN Human Rights Council. The mandate was established in 1999

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<sup>15</sup> A list of reports of the Special Rapporteur on the human rights of migrants with reference to their content from 2000 to 2021: <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx> [access: 20.04.2021].

<sup>16</sup> Resolution 73/195 adopted by the General Assembly on 19 December 2018, Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195.

<sup>17</sup> <https://www.ohchr.org/EN/HRBodies/SP/Pages/CrosscuttingThematicIssues.aspx> [access: 19.04.2021].

by the Human Rights Commission by virtue of resolution 1999/44.<sup>18</sup> Since then the mandate of the Special Rapporteur has been extended by virtue of Commission on Human Rights resolutions 2002/62<sup>19</sup> and 2005/47.<sup>20</sup> Following the 2006 reform of the UN human rights protection system, the Human Rights Council, established in place of the Human Rights Commission, upheld the Special Procedures, including the Special Rapporteur on the human rights of migrants. As a result, the Human Rights Council, by way of resolution 8/10 of 18 June 2008<sup>21</sup> strengthened the mandate of the Special Rapporteur and extended it for three more years. After that this mandate has been renewed a few times by the Human Rights Council in its subsequent resolutions: resolution 17/12 of 10 June 2011,<sup>22</sup> resolution 26/19 of 26 June 2014,<sup>23</sup> resolution 34/21 of 7 April 2017<sup>24</sup> and resolution 43/6 of 30 June 2020.<sup>25</sup>

On the basis of the latest resolution of the Human Rights Council (43/6 of 19 June 2020), which once again extended the mandate of the Special Rapporteur on the human rights of migrants, the following were listed as his functions: (a) to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation; (b) to request and receive information from all relevant sources, including migrants

<sup>18</sup> Resolution 1999/44 Human rights of migrants adopted by the Commission on Human Rights on 27 April 1999, [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=4660](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=4660) [access: 15.04.2021].

<sup>19</sup> Resolution 2002/62 Human rights of migrants adopted by the Commission on Human Rights on 25 April 2002, [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=4920](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=4920) [access: 15.04.2021].

<sup>20</sup> Resolution 2005/47 Human rights of migrants adopted by the Commission on Human Rights on 20 April 2005, [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=11140](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=11140) [access: 15.04.2021].

<sup>21</sup> Resolution 8/10 Human rights of Migrants: Mandate of the Special Rapporteur on the Human Rights of Migrants adopted by Human Rights Council on 18 June 2008, A/HRC/RES/8/10, [https://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_10.pdf](https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_10.pdf) [access: 17.04.2021].

<sup>22</sup> Resolution 17/12 Human rights of migrants: mandate of the Special Rapporteur on the human rights of migrants adopted by the Human Rights Council on 6 July 2011, A/HRC/RES/17/12, [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_HRC\\_RES\\_17\\_12.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_HRC_RES_17_12.pdf) [access: 17.04.2021].

<sup>23</sup> Resolution 26/19 Human rights of migrants: mandate of the Special Rapporteur on the human rights of migrants adopted by the Human Rights Council on 11 July 2014, A/HRC/RES/26/19, [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_HRC\\_RES\\_26\\_19.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_HRC_RES_26_19.pdf) [access: 17.04.2021].

<sup>24</sup> Resolution 34/21 Human rights of migrants: mandate of the Special Rapporteur on the human rights of migrants adopted by the Human Rights Council on 24 March 2017, A/HRC/RES/34/21, [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_HRC\\_RES\\_34\\_21.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_HRC_RES_34_21.pdf) [access: 16.04.2021].

<sup>25</sup> Resolution 43/6 Human rights of migrants: mandate of the Special Rapporteur on the human rights of migrants adopted by the Human Rights Council on 30 June 2020 43/6, A/HRC/RES/43/6, <https://undocs.org/A/HRC/RES/43/6> [access: 16.04.2021].



themselves, on violations of the human rights of migrants and their families; (c) to formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur; (d) to promote the effective application of relevant international norms and standards on the issue; (e) to recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants; (f) to take into account a gender perspective when requesting and analyzing information, and to give special attention to the occurrence of multiple forms of discrimination and violence against migrant women; (g) to give particular emphasis to recommendations on practical solutions with regard to the implementation of the rights relevant to the mandate, including by identifying best practices and concrete areas and means for international cooperation; (h) to report regularly to the Human Rights Council, according to its annual program of work, and to the General Assembly, bearing in mind the utility of maximizing the benefits of the reporting process.<sup>26</sup>

It should be emphasized that the SRRM covers all categories of migrants, whether they are moving for employment purposes or in search of a new place of residence (in another country). However, SRRM is particularly concerned with migrant rights seeking international protection in other countries due to persecution in their countries of origin, i.e. refugees and asylum seekers.

Current mandate holder as the Special Rapporteur on the human rights of migrants is Felipe González Morales. He has been the Special Rapporteur on the human rights of migrants since 2017.<sup>27</sup>

#### **4. Activities undertaken by the Special Rapporteur on the human rights of migrants**

The activities of the Special Rapporteur include the preparation of annual reports, state visits, preparation of communications addressed to states and preparation of

<sup>26</sup> Resolution 43/6.

<sup>27</sup> Felipe González Morales is a Professor of International Law at the Diego Portales University, in Santiago, Chile, where he is also the Director of a Master in International Human Rights Law. He was a Commissioner and the Rapporteur on Migrants between 2008 and 2015 at the Inter-American Commission on Human Rights, where he was President from 2010 to 2011. Professor González has taught International Human Rights Law since 2003 at several postgraduate programs at the University Carlos III in Madrid, as well as in several other universities in Spain. Since 2001, he has been teaching at the American University Human Rights Academy in Washington, D.C., <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/FelipeGonzalezMorales.aspx> [access: 19.04.2021].



comments on legislation and policy, which are presented to states and UN authorities. The activities of the Special Rapporteur taken with regard to a given country upon individual or group complaints he receives do not mean that these actors have to exhaust domestic appeal measures first. It also needs to be emphasized that where given facts stretch theme-wise across more than one mandate operating under Special Procedures established by the Human Rights Council, the Special Rapporteur may decide to act jointly with a few independent experts from other human rights fields. This joint action may involve going on state visits together, presenting joint annual reports, communications, comments or recommendations relating to the legislation and internal practice of a given state in terms of migrant and other human rights which are directly legally related.

#### **4.1. Annual thematic reports**

Annually, the Special Rapporteur on the human rights of migrants submits reports to the Human Rights Council and the General Assembly. In these reports, the SRRM informs the Council and the General Assembly of the activities undertaken during the reporting period. The Special Rapporteur also formulates specific recommendations on chosen topics pertaining to violations of migrant rights with a view to enhancing their legal protection. From 2000 to the end of April 2020, the SRRM presented 34 thematic reports<sup>28</sup> on various problems related to violations of the rights and freedoms of migrants, e.g. Good practices and initiatives on gender-responsive migration legislation and policies,<sup>29</sup> Impact of migration on migrant women and girls: a gender perspective,<sup>30</sup> Access to justice for migrant persons,<sup>31</sup>

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<sup>28</sup> A list of reports of the Special Rapporteur on the human rights of migrants with reference to their content for 2000 to 2021: <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx> [access: 20.04.2021].

<sup>29</sup> Report of the Special Rapporteur on the human rights of migrants: good practices and initiatives on gender-responsive migration legislation and policies, 18 July 2019, A/74/191, <https://undocs.org/A/74/191> [access: 6.10.2021].

<sup>30</sup> Report of the Special Rapporteur on the human rights of migrants: impact of migration on migrant women and girls: a gender perspective, 15 April 2019, A/HRC/41/38, <https://undocs.org/en/A/HRC/41/38> [access: 6.10.2021].

<sup>31</sup> Report of the Special Rapporteur on the human rights of migrants: access to justice for migrant people, 25 September 2018, A/73/178/Rev.1, <https://undocs.org/A/73/178/Rev.1> [access: 6.10.2021].

Return and reintegration of migrants<sup>32</sup> and 2035 agenda for facilitating human mobility.<sup>33</sup>

In 2020 the SRRM submitted two thematic reports: Ending immigration detention of children and providing adequate care and reception for them<sup>34</sup> and Right to freedom of association of migrants and their defenders.<sup>35</sup> The first addressed the matters of ending detention of children related to migration and ensuring adequate reception and care. In the report, the Special Rapporteur analyzed the international legal framework protecting the human rights of migrant children in particular regarding their right to liberty as well as to adequate care and reception in the country of stay. The report reviewed the impact of immigration detention on children and existing alternative care and reception solutions. In turn, the Special Rapporteur devoted his second 2020 report to the right to freedom of association of migrants and their defenders, which was an effect of the SRRM receiving abundant information demonstrating increasing hostility towards migrants and civil society organizations that work to protect migrant rights. In many countries, this hostile attitude had resulted in the imposition of new restrictions in domestic law and in practice on the exercise of the freedom of association for migrants and their defenders. Given the interconnections between human rights, restrictions on freedom of association of migrants and their defenders further hinder migrants' enjoyment of other rights (e.g. the 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). The Special Rapporteur pointed out that 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. Moreover, as the SRRM emphasized, encouraging migrants to organize empowers them to engage with the host communities directly

<sup>32</sup> Report of the Special Rapporteur on the human rights of migrants: return and reintegration of migrants, 4 May 2018, A/HRC/38/41, <https://www.undocs.org/A/HRC/38/41> [access: 6.10.2021].

<sup>33</sup> Report of the Special Rapporteur on the human rights of migrants: 2035 agenda for facilitating human mobility, 19 July 2017, A/72/173, <https://www.undocs.org/A/72/173> [access: 6.10.2021].

<sup>34</sup> Report of the Special Rapporteur on the human rights of migrants: ending immigration detention of children and providing adequate care and reception for them, 20 July 2020, A/75/183, <https://www.undocs.org/A/75/183> [access: 6.10.2021].

<sup>35</sup> Report of the Special Rapporteur on the human rights of migrants: right to freedom of association of migrants and their defenders, 13 May 2020, A/HRC/44/42, <https://www.undocs.org/A/HRC/44/42> [access: 6.10.2021].

and enables them to have a positive impact in the communities and countries in which they reside.

The SRRM's latest 2021 report titled *Pushback practices and their impact on the human rights of migrants*<sup>36</sup> concerns the current subject matter of "sending back" or "pushing back" migrants on land and at sea from state borders and its impact on respecting human rights. It ought to be noticed that, pursuant to resolution 43/6 of the Human Rights Council, the SRRM has a mandate "to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation."<sup>37</sup> The Special Rapporteur noticed in his report that there is no internationally agreed upon legal definition of "pushbacks" in the context of global migration. This is why, for the purpose of the matters investigated and having regard to state practices, the Special Rapporteur proposed a definition of "pushbacks" as "various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement."<sup>38</sup> In the SRRM's opinion, pushback practices demonstrate a breach of countries' international obligation to protect the human rights of migrants at international borders. Pushbacks result in human rights violations such as forced returns without individual assessment of a migrant's legal and factual status, including collective expulsions.

Annual reports address various problems associated with respecting migrant rights. The Special Rapporteur addresses certain legal issues which in practice cause serious problems for how migrants function in their countries of stay. Therefore, the catalogue of issues dealt with by the SRRM is open, which positively affects his possibilities to undertake any issue that he believes, by himself or on the basis of information received, crucial from the point of view of normative standards of international law relating to the treatment of migrants.

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<sup>36</sup> <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx> [access: 20.04.2021].

<sup>37</sup> Article (1)(a), A/HRC/RES/43/6.

<sup>38</sup> Call for inputs for the Special Rapporteur's report on pushback practices and their impact on the human rights of migrants, 2021, p. 1, <https://www.ohchr.org/Documents/Issues/Migration/pushback/Questionnaire-en.pdf> [access: 21.04.2021].

## 4.2. Country visits

Country visits are an opportunity for the Special Rapporteur of human rights of migrants to better understand the human rights-related situation of migrants in a given state by direct dialogue with all state authorities, including those in the executive, legislative and judicial branches.<sup>39</sup> They allow for contact with and information gathering from victims, relatives of victims, witnesses, national human rights institutions, international and local NGOs and other members of civil society, the academic community, and officials of international agencies present in the country concerned. Country visits generally last between one and two weeks but can be shorter or longer if the circumstances so require. The visit occurs at the invitation of a state. However, the Special Rapporteur may request a state to issue an invitation to visit if he has received specific claims of violations of rights of migrants and when their scope and gravity are significant and so is the potential impact the SRRM's mission on improving legal protection and on ending further violations. It is because the main purpose of a visit is to assess the situation in terms of respecting the human rights of migrants in a given country, including an examination of the relevant institutional, legal, judicial, and administrative aspects and making recommendations in the final report on the visit. The SRRM's country visits are also an opportunity to enhance awareness of the specific problems associated with rights of migrants at national, regional and international levels. This is achieved, inter alia, through meetings, briefings, press reports, press coverage of the visit and dissemination of reports on the visits. From 2000 to the end of 2020, a total of 38 visits to different countries were made as part of the UN Special Rapporteur's mandate (the number of visits in a given year was between 1 and 3), e.g. Bosnia and Herzegovina (24 September to 1 October 2019), Hungary (10 to 17 July 2019), Niger (1 to 8 October 2018), Nepal (29 January to 5 February 2018), Angola (3 to 10 May 2016), Greece (12 to 16 May 2016), Australia and the regional processing centres in Nauru (1 to 18 November 2016), or Malta (6 to 10 December 2014).<sup>40</sup>

<sup>39</sup> More details on country visits made under the so-called Special Procedures in: Manual of Operations of the Special Procedures..., pp. 16-20.

<sup>40</sup> A full list of all visits made in states is available at: <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/CountryVisits.aspx> [access: 21.04.2021].

#### 4.3. Communications and comments on legislation and policy

Most Special Procedures stipulate that holders of independent expert mandates are authorized to send so-called communications to state governments when they receive critical information concerning violations of rights and freedoms of individuals. When it comes to the SRRM, this information concerns violations of migrant rights. Such communications are sent through so-called official diplomatic channels. They address matters of individuals, groups and communities, general trends and continuous practices of violations of human rights in a given country or more broadly – in other countries. Moreover, the communications also point to the scope of legal regulations, both those in force in a given state and draft laws which raise concerns in the light of migrant right protection. Therefore, the mandate holder in his communications comments on the adequacy of normative and political development of a state with regard to international standards for the human rights of migrants. It ought to be emphasized that communications do not imply any type of value judgment from the Special Rapporteur and, therefore, are not accusatory per se – they do not intend to replace judicial or other proceedings at a national level. Their main aim is to obtain explanations in response to the allegations of violations presented by the SRRM and to promote measures aimed at protecting migrant rights. The Human Rights Council, under the Special Procedures, also offers a possibility to send so-called joint communications to states, co-created by independent experts responsible for a given field. Therefore, in the context of migration issues mentioned in the catalogue of communications sent to different states, most are multi-faceted, combine at least a few issues relating to migrant rights, and are co-created by a few independent experts in the field of migration, health protection, or non-discrimination, etc. The numbers prove how common this practice is. Therefore, from 2010 to 31 March 2021 a total of 407 communications were sent to various states (more than 300) and addressed the matters of migrant rights. Only 14 were prepared by the SRRM on his own (without the participation of other independent experts) and focused on general respect for migrant rights. They concerned, for instance, the deteriorating human rights situation of migrants and asylum seekers and refugees on the Turkey-EU border, in particular the Turkey-Greece border (13 March 2020)<sup>41</sup> or the death of a 7-year old Guatemalan girl in custody

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<sup>41</sup> Communication: Mandate of the Special Rapporteurs on the human rights of migrants, 13 March 2020, UE GRC 1/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25116> [access: 26.04.2021].

of the US Customs and Border Patrol, and the related concerns about human rights abuses at the US's southern borders.<sup>42</sup>

The remaining communications referred to the multifaceted violations of migrant rights in various aspects. For example, a communication addressed to Saudi Arabia of 28 January 2021, prepared by five independent experts and one expert group – the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the human rights to safe drinking water and sanitation with the Working Group on Arbitrary Detention. The joint communication concerned information about the current situation of migrants who are stranded in overcrowded detention centers in Saudi Arabia for prolonged, often indefinite periods. These migrants have been held in unsanitary and dehumanizing conditions without adequate access to health care or necessary protection measures in light of the COVID-19 pandemic.<sup>43</sup>

The communication of March 31, 2021 addressed to Greece was prepared as a result of exercising the mandate of three Special Rapporteurs – on the rights to freedom of peaceful assembly and of association; on the situation of human rights defenders, and on human rights of migrants. Independent experts have brought matters to the attention of Greece by directing questions to the Greek government concerning the recently adopted Law 4686/2020 on non-governmental organizations, which introduced new onerous legal requirements and conditions for registrations of non-profit organizations (NGOs) that work with migrants and refugees. These legal regulations might severely hamper the work of independent non-governmental organizations, especially smaller ones that do not have the financial means to comply with the new reporting requirements.<sup>44</sup>

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<sup>42</sup> Communication: Mandate of the Special Rapporteurs on the human rights of migrants, 21 December 2018, AL USA 25/2018, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24279> [access: 26.04.2021].

<sup>43</sup> Communication: Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the human rights to safe drinking water and sanitation, 28 January 2021, UA SAU 13/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25729> [access: 26.04.2021].

<sup>44</sup> Communication: Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special

Contrary to procedural requirements, which often condition the possibility to file complaints at international bodies after judicial review measures have been exhausted in domestic proceedings, the SRRM's communications may be sent to states even if national legal measures for protecting human rights in a given country have not been exhausted. Special Procedures are not quasi-judicial mechanisms. They are about demonstrating to a state that quick actions must be taken to protect victims and potential victims of human rights violations. This means that in no way do they exclude taking appropriate judicial measures at the national level, regardless of the Special Procedure applied in the form of a communication.

The SRRM's urgent appeal may be recognized as a qualified form of communication. Urgent appeals are used to communicate information to states when the alleged violations of migrant rights are time-sensitive as they involve the threat of loss of life, life-threatening situations or a situation which may lead to the occurrence of imminent or ongoing damage of a grave consequence to the victims. The intention is to ensure that the appropriate state authorities are informed as quickly as possible of such circumstances so that they can intervene to end or prevent a human rights violation. Like communications, urgent appeals are directed to states through diplomatic means, unless individual governments have decided otherwise.

The governments are usually asked to provide answers to such communications within two months. In some situations, the SRRM additionally makes responses to those from whom it has received information on violations of migrant rights in order to obtain their opinion. In special situations, including situations of serious concern or in situations where a state has repeatedly failed to provide a substantive response to the communications, the SRRM has the mandate to issue a press release or another public statement or to organize a press conference, individually or jointly with other independent experts, co-authors of the communication.

## Conclusion

The development of the international system of human rights covers all individuals, regardless of their status, nationality or place of residence. Therefore, at the same time it constitutes a key part of legislation pertaining to migrating people. International migration is a process with a world-wide reach and impact, which is why it

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Rapporteur on the human rights of migrants, 31 March 2021, OL GRC1/2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26314> [access: 26.04.2021].



requires global solutions and cooperation in the field of human rights protection.<sup>45</sup> Nation states, being fully aware that they cannot face a challenge such as the movement of people and protection of migrant rights independently, try to engage and use international organizations as planes of cooperation, regulation and inspection of issues relating to migration and migrant rights.<sup>46</sup> The activities undertaken by the UN Special Rapporteur on migrant rights is an important link in the framework of international protection of migrant rights, based on both treaty law and soft law. As the work of SRRM presents, both regular and irregular migration should be addressed in a comprehensive and balanced way, taking into account the causes and reasons, both positive and negative, not only in countries of origin but also in countries of transit and destination. Such an approach could help avoid many actions against migrants that involve violations of their rights, especially discrimination, racism and xenophobia. The Special Rapporteur identifies migrant problems related to poverty, unemployment, modern forms of slavery, political and social pressure, social exclusion or trafficking, etc. They provide guidance to states on how to proceed to eliminate violations of migrants' human rights.<sup>47</sup>

It should be emphasized that the action undertaken by the SRRM is based on formulating recommendations for states. This form of dialogue between the SRRM and states on the issues of migrant rights falls within the category of soft measures. This means that the SRRM has no jurisdiction to impose legal sanctions on states for failing to apply his recommendations. Recommendations addressed to states individually set out recommendations on the observance of migrant rights by states, access to asylum or refugee procedures. Moreover, SRRM reports are also submitted to the UN Human Rights Council and then addressed to all UN States with recommendations for better protection of migrants' human rights in line with existing international standards. It should be noted that the reports and recommendations of the SRRM are based on country visits, as well as on information provided directly by national actors (state authorities, NGOs, etc.), thus the Rapporteur has up-to-date knowledge about the status of migrant rights in a particular country. Therefore, it can be stated that the SRRM has an important and multidimensional role in the system of migrant rights protection, i.e. monitoring the status of observance of their rights, conducting research on them, providing recommendations

<sup>45</sup> O. Grech, *Migrants' and Refugees' Rights...*, pp. 40-41.

<sup>46</sup> R. Cholewinski, *Human Rights of Migrants: The Dawn of a New Era?*, Georgetown Immigration Law Journal 2010, vol. 24, pp. 585-615.

<sup>47</sup> G. Rodriguez, *The Role of the United Nations Special Rapporteur on the Human Rights of Migrants*, International Migration 2000, vol. 38, no. 6, pp. 73-77.

and assistance to states.<sup>48</sup> And despite the fact that these activities are referred to as soft measures (they do not provide for any legal sanctions against countries which violate migrant rights), it plays an important role in the international dialogue on migrant rights.<sup>49</sup>

One might conclude that nowadays the UN undertakes many supportive actions aimed at regulating the legal status of migrants in the Member States and protecting their rights, as well as providing practical support to various categories of migrants. The creation of the SRRM certainly belongs to such activities.

*Translated by Agnieszka Kotula*

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<sup>48</sup> G. Gencianos, *International Civil Society Cooperation on Migrants' Rights: Perspectives from an NGO Network*, European Journal of Migration and Law 2004, vol. 6, pp. 147-155.

<sup>49</sup> G. Rodriguez, *The Role of the United Nations Special Rapporteur...*, pp. 76-77.

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