**Resolution A/HRC/35/L.28 on Protection of the human rights of migrants: the global compact for safe, orderly and regular migration**

In response to the six questions posed in the request of 29 June 2017 in relation to existing principles, good practices, and policies on safe, regular and orderly migration regarding:

1. The promotion and protection of the human rights of all migrants, regardless of status, as well as ensuring social inclusion and cohesion and addressing all forms of discrimination, including racism, xenophobia and intolerance;

* The reference in the HRC Resolution to human rights obligations in treaty and customary law are comprehensive. The second recital of the Preamble refers to the UDHR and that it applies to all without distinction of any kind, and the seventh confirms this applies regardless of migration status; the sixth recital refers to the UDHR and the right leave even one’s own state of nationality. What is missing throughout is any reference to statelessness. The 1954 and 1961 Conventions should be referred to and states should be exhorted to ensure that nationals do not automatically lose nationality by lapse of time outside the country of nationality and that children of nationals born abroad should obtain the nationality of their parents with distinction of any kind - both mother and father should be able to pass on nationality. Reference should also be made to UNHCR’s international responsibility vis-à-vis stateless persons and the #ibelong campaign.
* The document makes no reference to rule of law, despite the fact that this is a core principle of the United Nations and one that has been accepted by all members of the organization in the High Level Meeting of 2012 (UNGA Res 67/1, 24 September 2012). Rule of law has a thick/ substantive interpretation in the United Nations according to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (UN Doc A/67/368,13 September 2012, para 12), one that incorporates Charter principles and international human rights law. As such, rule of law is useful in those states that have not ratified international human rights treaty regime obligations set out in the third recital of the Preamble to A/HRC/35/L.28. Rule of law has been recognised since 2012 as applying to all actors, including the UN and it enhances the operationalization of interoperability to build capacity in states and promote and protect the rights of all individuals.

2. Addressing drivers of migration, including the adverse effects of climate change, natural disasters and human-made crises, through protection and assistance, poverty eradication, conflict prevention and resolution;

* Although Q4 refers directly to the Sustainable Development Goals, the response to this question also has to include reference to the SDGs for internally displaced persons as well as to the Guiding Principles on IDPs and to the 2009 African Convention on IDPs done at Kampala. All those instruments are pertinent to all movement and internal displacement can premise further onward movement across international borders as a migrant. Ensuring internally displaced persons are brought within the SDG planning is essential. Explicit recognition that some migrants are refugees and fall under the international protection of UNHCR or its good offices would also enhance protection where there is onward movement after crossing a first international border as a refugee.

3. International cooperation and governance of migration at borders, in transit, at entry, and in relation to return, readmission, integration and reintegration;

* As part of a consultancy for UNHCR in 2014 with Anna Magdalena Rüsch in 2014-15 on Rule of law and its engagement for solutions, we visited Niger and went to the south-east, to Diffa. Despite Niger being ranked 187th out of 187 states in UNDP’s Humanitarian Index, it has generously kept its borders open to those coming from Mali and Nigeria. In the case of those fleeing Boko Haram in Nigeria, many are Nigeriens who migrated or whose parents/ grandparents migrated to Nigeria and who have returned - since they are coming back to their country of nationality, they do not qualify as refugees. The central and local government authorities in Niger have acted with exemplary generosity to ensure the children can take up school places and that the need for shelter etc. is met in co-operation with the intl community (UNHCR/WFP).

4. Sustainable development and migration, including harnessing the contributions of all migrants and ensuring portability of earned benefits;

* It may be useful to explicitly refer to the SDGs and the principle that no-one should be left behind. As such, migrants should be part of the UN Development and Assistance Framework for each state, balancing the additional pressures migrants add with the skills and resources they offer. Responsibility sharing is a central element of the New York Declaration and that should be included here.

5. Identification, protection and assistance in the context of smuggling of migrants, trafficking in persons and contemporary forms of slavery;

* Good practice here would be of a co-ordinated response where human trafficking and people smuggling are seen as crimes perpetrated by individuals and that the human rights of victims might be violated where the state where they are found does not offer adequate protection, which may include the principle of non refoulement. On the other hand, it needs to be recognised that in some developing states, smuggling can be part of a seasonal economy for fishing communities – development and education strategies need to be combined to end this practice.

6. Decent work, labour mobility, recognition of skills and qualifications and other relevant measures, as well as ensuring regular pathways for migration.

* Complementary pathways out of displacement need to include labour mobility and resettlement programmes in collaboration with ILO, UNHCR, UNDP and governments – recognition that migrants are an essential part of the global market.