



16 February 2018

Open letter from the United Nations High Commissioner for Human Rights on protecting and promoting the human rights of all migrants within the global compact on safe, regular and orderly migration

Excellency,

As I write to you today, we are standing at a crossroad in history.

Two years ago in the New York Declaration on Refugees and Migrants, the international community made a historic promise to craft a compact on migration that would make an important contribution to global governance. The compact would devise a framework for comprehensive international cooperation on migration-related issues and, crucially, it would integrate a human rights lens.

So, in the forthcoming negotiations, I urge States to honour these commitments by developing a compact that explicitly recognises and fully conform to the existing international human rights framework as the authoritative protection agenda for all migrants. I also call on all States to put in place additional safe and regular migration pathways that are responsive to labour markets, family unity, education and humanitarian needs, and to consider guaranteeing access to regularization avenues that are accessible and non-discriminatory.

Put human rights at the centre of any attempt to ensure 'safe, orderly and regular' migration, including specific protection for migrants in vulnerable situations

In order to be truly effective, the compact must promote human rights-based solutions to migration governance challenges, and all measures related to migration must be fully rooted in international human rights, refugee, labour, and humanitarian law. These standards are legally binding commitments and provide authoritative benchmarks and parameters for the development of meaningful and practical commitments for action.

States have increasingly recognized that migrants in vulnerable situations, even where they fall outside the specific legal category of a refugee under the 1951 Convention, will need specific protection because of the situations they have left behind, the circumstances in which they travel, the conditions they face on arrival, or those related to their identity, age, sexual orientation and gender identity, disability or health status. With a view toward translating into practical migration policies the legal obligations of States, my Office has led the work within the Global Migration Group to develop a set of *Principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*.

To all Permanent Missions to the United Nations Organization at Geneva and New York



States should ensure that this practical guidance is incorporated and operationalized in the global compact.

Commit to de-criminalizing migration and establish a presumption against immigration detention including ending the immigration detention of children and families

Across the world millions of migrants are criminalized and deprived of their liberty, often on the mistaken assumption that this will deter future irregular movement or that such practices are the only way to secure borders. This detention rarely meets the requirement of necessity and proportionality, is often arbitrary or indefinite, and can sometimes take place in appalling conditions.

The global compact should commit States to implement as a matter of urgency their pledge to review and amend policies that criminalize cross-border movement, to establish a presumption against immigration detention in law, and to end all detention of children. States should commit to the development of non-custodial community-based alternatives to detention and national plans of action on ending the detention of children and families. The global compact should also commit States to developing firewalls in order to meaningfully separate immigration enforcement activities from public service provision, labour law enforcement and criminal justice processes.

Protect all migrants, regardless of their status, from *refoulement* and collective expulsions, and ensure that returns are rights-based, safe, dignified and sustainable

In recent years, there has been an alarming and disproportionate rise of unlawful, arbitrary and unsustainable returns practices and harmful border governance measures such as push-backs and dangerous interceptions. Returns are carried out in haste, in the absence of safeguards or opportunities to claim human rights protection, and are often intended solely to send a message of deterrence.

The global compact should affirm explicitly that all returns must be lawful, scrupulously avoiding *refoulement* and arbitrary or collective expulsions. It should also make clear that returns should be sustainable. When migrants are sent back to countries in which they face the same conditions that compelled them to leave, there is a high likelihood of repeat migration through increasingly dangerous routes and in increasingly perilous conditions. The global compact should instead commit States to develop appropriate administrative and legislative mechanisms to grant meaningful legal status to migrants who cannot return, including for those who cannot be removed on grounds related to the fundamental prohibition of *non-refoulement* or other obligations under international human rights law.

Ensure accountability through meaningful monitoring and implementation mechanisms at national, regional and international levels

It is imperative that effective mechanisms are developed or strengthened to ensure implementation and to monitor the progress that is being made by States (and other stakeholders) at the national, regional and international levels. Within the New York Declaration and the 2030 Agenda for Sustainable Development, which together provide the conceptual underpinnings for the global compact, States have explicitly committed



themselves to ensuring accountability through systematic follow-up and review. Such review must include all relevant actors including migrants themselves, in recognition that migration is quintessentially a whole-of society and whole-of-government issue. Monitoring must also provide specific scrutiny of the human rights impact of the global compact.

Ensuring that migration takes place in an environment that remains true to the purposes and principles of the United Nations Charter is not incompatible with national sovereignty. On the contrary, human rights are the cornerstone underpinning sovereignty in the twenty-first century. States assume and implement obligations under international law in the same way that they institute domestic systems that recognise and uphold the rule of law – voluntarily and in *exercise of* their sovereignty.

As you embark on the negotiation of this significant agreement, I encourage you to be vigilant in defending the universal values that are enshrined in international human rights law and related standards. The global compact should aim above all to ensure that the dignity and human rights of all involved – migrants as well as communities of origin, transit and destination - are respected, protected and fulfilled.

Enclosed with this letter are a set of key messages developed by my Office, for your consideration and use. My Office looks forward to supporting Member States in negotiating and implementing a human rights-based global compact on safe, regular and orderly migration which remains true to the promise of the New York Declaration.

Please accept, Excellency, the assurances of my highest consideration.

Zeid Ra'ad Al Hussein
High Commissioner for Human Rights

Annex: OHCHR's key messages for the Global Compact for safe, orderly and regular migration

OHCHR's key messages for the Global Compact for safe, orderly and regular migration

1 The Global Compact should be migrant-centred, ensuring that the rights and circumstances of the person - the migrant - are at the centre of any attempt to define 'safe, orderly and regular' migration. 'Orderly' migration governance should refer to migration measures that are non-discriminatory in purpose and effect and provide due process and predictability for all migrants as well as for States in order to guard against migration policy responses that are arbitrary or unlawful. States should put in place accessible and 'regular' migration channels that respond to the needs of economies and societies, the rights of migrants, and the duty of international cooperation. The Compact should aim above all to ensure migration that is 'safe' for all migrants, regardless of their status, as well as for communities of origin, transit and destination. Safety in this context refers not only to physical security, but more broadly to the proliferation of an environment that respects, protects and fulfils human dignity and human rights.

2 The Global Compact should explicitly recognise and fully conform to the existing international human rights framework as the authoritative protection framework for all migrants. In order to ensure safe, orderly and regular migration and to be true to the purposes and commitments of the New York Declaration, the Global Compact must reaffirm, respect, and operationalize existing State commitments and obligations to uphold the human rights, safety and dignity of all people on the move, regardless of their migration status. All measures related to migration must be fully rooted in international human rights, refugee, labour, and humanitarian law. The Office of the High Commissioner for Human Rights has produced a number of principles and practical guidelines on human rights-based migration governance and recently presented to the Human Rights Council a *compendium of principles, good practices and policies on safe, orderly and regular migration in line with international human rights law*, which provide practical guidance to States seeking to operationalize the New York Declaration commitments and negotiate a human rights based Compact.

3 The Global Compact should ensure that all migrants regardless of their status, can exercise their fundamental civil, political, economic, social and cultural rights. States should ensure that legislation and other migration governance measures are consistent with their obligations under international human rights law and permit migrants to enjoy fully all their human rights and fundamental freedoms. As a concrete step to ensure that migrants are able to access these rights in practice, States should develop and implement clear and binding "firewalls" between immigration enforcement and public services at all levels, including within police protection, access to justice, housing, health care, education, social protection, and labour rights.

4 The Global Compact should ensure specific protection for migrants in vulnerable situations who are not refugees but who, nonetheless, are entitled to protection under the international human rights framework. States should operationalize their commitment to combat the abuses and exploitation suffered by countless migrants in vulnerable situations. Migrants in vulnerable situations are unable effectively to enjoy their human rights and are accordingly entitled to call on a duty-bearer's heightened duty of care. Factors that generate vulnerability are not limited to the country of origin, but can also occur during transit or at borders, such as torture, gender based violence, arbitrary detention, or serious health issues. Moreover, some migrants find themselves in vulnerable situations due to individual factors, such as disabilities, gender and sexual orientation, or by virtue of being older, a child or a pregnant or nursing woman. OHCHR, along with partners in the Global Migration Group, has developed a set of *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, which provide normative and practical guidance to States in this regard.

5 The Global Compact should recognise that drivers of migration are often themselves rooted in human rights denial and violations. Notwithstanding the gradual expansion of refugee protection, many people are compelled to leave their homes for reasons that do not fall within the refugee convention definition. Such drivers include climate change induced harm and natural disasters, extreme poverty, food insecurity, and lack of access to education, health care, land,



water, decent work and justice. Migrants who are forced to move are at heightened risk of human rights violations and abuse throughout their migration. Any effort to address the drivers of migration should be rooted in human rights and should aim to address systemic and structural causes of poverty, deprivation, inequality, and conflict.

6 The Global Compact should operationalize the commitment of States to review and amend policies that criminalize cross-border movements, and should reject militarized or overly securitized approaches. Under international law, irregular entry and stay are administrative, not criminal, offences and should be treated accordingly. Migration itself—even when irregular—involves no crime per se against persons, property or national security. States should establish a presumption against immigration detention in law and prioritize human rights-compliant, non-custodial, community-based alternatives to immigration detention, including through ending all detention of children and families. Militarized or disproportionate policing responses in and around borders expose migrants to violence, exploitation and abuse, and waste vital resources.

7 The Global Compact should commit States to ensure that any returns are lawful, safe, dignified and sustainable. All migrants, regardless of their status must be protected from *refoulement* and collective expulsions. States should establish practical and effective mechanisms to assess the individual situation of all migrants at borders, in accordance with due process guarantees. Returns must be premised upon the meaningful and sustainable reintegration of migrants, including access to effective complaint mechanisms and remedies. Any returns of children must be based upon an assessment of the best interests of the child, which should take precedence over migration management objectives or other factors.

9 The Global Compact should contribute to confronting all forms of discrimination, including racism, xenophobia, religious discrimination, and related intolerance against migrants. States should adopt anti-discrimination and equality legislation that protects migrants from all forms of discrimination, including on grounds of nationality or migration status, establish national specialized bodies in this respect, develop benchmarks for the elimination of xenophobia and discrimination against migrants, and provide legal, medical and psychological assistance to migrants affected by racism, xenophobia and other forms of discrimination.

10 The Global Compact should promote human rights-based solutions to migration governance challenges. States should be encouraged to put in place additional safe and accessible migration pathways which are responsive to labour markets, family unity, education and humanitarian needs amongst others. Appropriate administrative and legislative mechanisms to grant legal status to migrants who cannot return should be developed, including for those who cannot be removed on grounds related to the fundamental prohibition of *non-refoulement* or other obligations under international human rights law. The Compact should encourage States to consider regularizing within a reasonable period of time the status of migrants in an irregular situation, in order to address their needs and secure their rights. A singular focus on returning migrants without due attention to the reasons why they left and the conditions to which they will return, is likely to result in repeated cycles of precarious migration and a perpetuation of the human rights violations and abuses to which migrants are exposed.

11 The Global Compact should establish practical, participatory, and effective mechanisms to regularly review progress in its implementation. In order to ensure the human rights of migrants, it will be especially important to establish or strengthen independent internal and external mechanisms at national, regional and international levels to monitor the human rights impact of all measures relevant to migration and migrants. The Compact should incorporate a robust implementation and accountability mechanism, which should remain under the auspices of the United Nations. Such a mechanism should include the participation of all stakeholders, including migrants themselves as well as the range of relevant UN agencies, in recognition of the complex and multidimensional nature of migration. A whole-of-government, whole-of-society and whole-of-UN system approach should be a central tenet of the Compact.