



TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 7 June 2018

A/TO: All Permanent and Observer Missions to the United Nations in New York

CC: H.E. Mr. Juan José Gómez Camacho
Ambassador
Permanent Representative of Mexico to the United Nations

H.E. Mr. Jürg Lauber
Ambassador
Permanent Representative of Switzerland to the United Nations

EMAIL:

DE/FROM: Beatriz Balbin
Chief
Special Procedures Branch
OHCHR

FAX: +41 22 917 9006

TEL: +41 22 917 9402

E-MAIL: migrant@ohchr.org

REF:

PAGES: 11 (Y COMPRIS CETTE PAGE/INCLUDING THIS PAGE)

OBJET/SUBJECT: **JOINT OPEN LETTER FROM SPECIAL PROCEDURES ON DRAFT REV2 OF
THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR
MIGRATION**

Please find attached a joint open letter sent by the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the rights of persons with disabilities; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights in Eritrea; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 the situation of human rights defenders; the Special Rapporteur on the human rights of

internally displaced persons; the Independent Expert on human rights and international solidarity; the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; and the Working Group on the issue of discrimination against women in law and in practice.



PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9402 • FAX: +41 22 917 9006 • E-MAIL: migrant@ohchr.org

**Open letter of mandate holders of the special procedures system
of the Human Rights Council¹ on draft Rev2 of the Global Compact for Safe,
Orderly and Regular Migration**

7 June 2018

Excellency,

We have the honour to address you in our capacity as mandate holders of the special procedures system of the Human Rights Council.²

We have been actively following the inter-governmental consultations and negotiations on issues related to the Global Compact for Safe, Orderly and Regular Migration (GCM or Global Compact). It is our understanding that the GCM offers a unique opportunity for better migration governance that would enable States to develop clear, long-term and evidence-based migration policies ensuring the full protection of the human rights of all migrants.

¹ Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on the rights of persons with disabilities; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the situation of human rights in Eritrea; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of internally displaced persons; Independent Expert on human rights and international solidarity; Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 34/21, 33/30, 35/27, 35/6, 36/6, 35/35, 35/15, 32/32, 33/9, 34/5, 32/11, 35/3, 33/4, 34/35, 34/16, 33/1, 35/5, 36/10, 32/4.

² Ibid.

All Permanent and Observer Missions to the United Nations in New York

As we approach the last rounds of inter-governmental negotiations, we would like to share our views on the progress made so far, as well as concerns on the updated and revised draft (draft Rev 2) shared by the co-facilitators on 28 May 2018, which reflects the conclusions from previous discussions.

The **protection of the human rights of migrants** must be at the heart of the Global Compact. Migrants are human beings entitled to human rights, regardless of their status, based on international human rights law. In this respect, we welcome the reference to the core international human rights treaties in the preamble of the draft, as well as to human rights among the guiding principles. Decisions of States to determine their national migration policies must be in compliance with their international obligations to respect, protect and fulfil the human rights of all persons within their jurisdiction, **irrespective of the migration status of individuals**. Non-refugee migrants are also entitled to appropriate protection under international human rights law. In this regard, we encourage Member States to include a reference to the fact that, as stated in the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights, without distinction of any kind.

The role of **human rights defenders** in promoting and protecting the human rights of migrants also needs to be acknowledged in the Global Compact. People showing acts of solidarity towards migrants, as well as defending their human rights should not lead to the criminalization of the rendering of humanitarian assistance to migrants. It is essential that the GCM includes explicit language to this effect, including the obligation of States to provide an enabling environment for civil society organizations working on issues related to migration, in order to ensure protection towards these people.

In respect to the **drivers and factors that compel people to leave their countries of origin** (objective 2), we are concerned that it does not fully acknowledge that a large number of internally displaced persons (IDPs) may seek protection and assistance as migrants in other countries, thus making migration an act of desperation. Therefore we urge Member States to include stronger reference to the need for mitigation of drivers of internal displacement, as well as adequate protection and assistance of IDPs, in order to prevent this forced migration.

We welcome the strengthening of the objective of **providing all migrants with proof of legal identity and adequate documentation** (objective 4) based on the right of all individuals to a legal identity, including free birth registrations, and in line with the Sustainable Development Goal 16 Target 9. We also welcome the stronger reference to reducing and preventing statelessness based on the human right to a nationality. These provisions are key to ensuring equality of all migrants and non-discrimination.

In respect to another key objective, namely the **enhanced availability and flexibility of pathways for regular migration** (objective 5), we encourage the strengthening of references to human rights within the commitment, as in previous drafts, by adding language on facilitating access to human rights protection to all migrants.

We also welcome the protection of **migrants in vulnerable situations** (objective 7), and encourage Member States to include specific references to women, men and children at **risk of exploitation deriving *inter alia* from debt bondage and from being victims and potential victims of trafficking, slavery and sale of children**, and stress that they are entitled to protection measures regardless of whether criminal proceedings have been initiated. We also welcome the reference to a **disability responsive approach** to reviewing migration policies and practices, and encourage Member States to include specific references to persons with disabilities in relation to their access to information, service points at local levels, justice, health services, and labour and market integration, among others.

We welcome objective 8 on **saving lives and establishing coordinated international efforts on missing migrants**. We believe that this objective should be consistent with the provisions set out in the Mytilini Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys. We recommend that the wording of the objective be strengthened by including references to forcefully or involuntary disappeared migrants and by reflecting customary international law and ensuring that all forms of humanitarian assistance are protected (not only “life-saving”). We welcome the demand that deceased migrants should be respectfully and properly treated and suggest that this be done in accordance with the beliefs of the deceased, to the extent these can be identified. Moreover, every reasonable measure should be taken by States to ensure that families are able to pursue without hindrance their rights to justice in relation to the identification and/or cause of death of a missing or deceased relative, including effective participation at all stages of the process, from investigation and determination, to remedy and funerary arrangements.

In respect to **returns** (objectives 21), we highly welcome the clear reference to the obligation to uphold the **fundamental principle of non-refoulement** and the prohibition of collective expulsions, including as concerns persons within the control of a State operating outside its own territory.

We also emphasize the importance of ensuring **due process and effective remedy** in connection with all procedures affecting migrants, which are key to ensure access to justice and human rights protection. Similarly, the acknowledgement that all voluntary returns must take place on the basis of the **migrant’s free, prior and informed consent** is an addition that we welcome, as well as the prerequisite that pre-removal individual assessments must take into consideration the individual’s real and foreseeable risks of death, torture or other serious human rights violations.

We encourage Member States to acknowledge the legal obligations under international human rights law that may arise when migrants are compelled to leave their countries of origin, in particular when their return would entail risk of serious human rights violations. In this regard, we also encourage Member States to include the recognition of appropriate protection measures, including residence status and regularization, when an individual cannot be returned. In addition, **sustainable return and reintegration** of migrants should include the effective enjoyment of rights and prevent human rights

violations in the country upon return. It should also include consideration of whether support for durable solutions is available in the country of origin.

We welcome the commitment to uphold the **principle of the best interests of the child** and call for the Global Compact to recognize this as the primary consideration concerning children, in line with the Convention on the Rights of the Child. We also welcome the **protection of migrant children** with references to health, education and all forms of violence (objective 2), access to information (objective 4), **facilitation of family reunification** (objective 5), child labour (objective 6), cooperation with child protection authorities (objective 7), identification of children, age assessment and referral (objective 12), and access to basic services regardless of status (objective 15). Children should only be returned after a best interests of the child determination.

We note with regret that draft Rev 2 lacks a strong commitment to **end child immigration detention** (objective 13). Furthermore, implementation of this international child rights standard is closely linked to national and regional initiatives to increase access and availability of alternatives to child immigration detention, as well as to facilitate procedures towards **residence status, regularization and social inclusion and integration**. Consequently, we call on Member States to **prohibit immigration detention of children and families**, and encourage to prioritise human-rights compliant and community-based alternatives to detention.

We further call on Member States to ensure their laws, policies and practices **do not criminalize migrants** and that personal liberty of migrants is recognized as the general rule. Furthermore, the Global Compact should include a reference to the **exceptional nature of the detention of migrants** in the context of migration policies (objective 13). It should be made clear that automatic or indefinite detention in the migration context is arbitrary and thus contrary to international law. The draft Rev 2 should recognize that no one shall be subjected to arbitrary arrest or detention or to exile, and that every person has the right to leave any country, including his or her own, and to return to his or her country, as well as to seek asylum in other countries. We further call to specify that detention in the migration setting must only take place in appropriate facilities and not those falling under the realm of the criminal justice.

In respect to the **collection of data** (objective 1) and access to economic and social rights (objective 15), we encourage Member States to add a specific provision that data should not be used for immigration enforcement efforts. States should implement strong **“firewalls”** between immigration enforcement and public services, allowing for access to justice, shelter, housing, healthcare, education, social and labour services for all migrants, regardless of their status, without fear of detection, detention and deportation.

The core human rights principles of equality and non-discrimination require non-discriminatory access to all human rights, including **economic and social rights** (objective 15), and States have an obligation to take appropriate steps towards the full realization of these rights at all times and for all people, regardless of status.

We welcome the commitment to **gender-responsiveness** with understanding of the specific needs of women and girls as well as men and boys, and recognizing the importance of women and girls as agents of change. We urge that this commitment be fully integrated throughout the Global Compact, and the State's obligation to eliminate all forms of discrimination against women and gender-based violence against women be reaffirmed. In particular, we recommend acknowledging gender-based and domestic violence as adverse drivers of migration (objective 2), as well as specific factors to be taken into account in regulating residence status of migrant women and girls, independent of their spouses (objective 5) and recognizing the importance of the provision of sexual and reproductive health services to address the particular needs and vulnerabilities of migrant women and girls (objective 7).

We welcome the development in further detail of the sections on **implementation, as well as follow-up and review** of the draft Global Compact, which include the main conclusions of the institutional rearrangements resulting from the Secretary-General's internal consultations. According to draft Rev 2, the International Organization for Migration (IOM) will serve as the coordinator and secretariat of the United Nations network on migration that will ensure system-wide support to implementation, including the follow-up and review of the Global Compact. In this respect, the **protection of the human rights of migrants should be a central component of the institutional arrangement** of implementation and follow-up. We also emphasize the need for **the Office of the UN High Commissioner for Human Rights** and other relevant UN agencies with a protection mandate to have a central role in the implementation, capacity-building, follow-up and review of the Global Compact.

On follow-up and review, Member States must ensure a **multi-stakeholder approach**, with the participation of international organizations, civil society, the private sector, migrants and other stakeholders. We encourage Member States to include specific references to the role that international and regional human rights mechanisms, including the UN treaty bodies, special procedures and Universal Periodic Review of the Human Rights Council can play in ensuring accountability through **effective monitoring** of implementation of a human-rights based and gender-responsive GCM at the national, regional and international level.

The Global Compact is the beginning of a long-term endeavour to ensure effective and safe migration, complementary to the 2030 Agenda for Sustainable Development. For the GCM to be meaningful, it should provide for a strong, human-rights based, normative and institutional framework for migration at the UN, taking into account the rights and needs of migrants, and the benefits of organized mobility.

In the next crucial rounds of negotiations for a Global Compact on Migration, we urge States to honour the commitments made in the New York Declaration two years ago, by fully protecting the human rights of all **migrants as rights holders, regardless of status**.

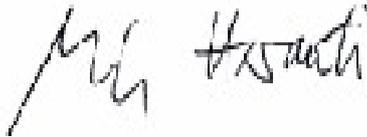
Please accept, Excellency, the assurances of our highest consideration.



Felipe González Morales
Special Rapporteur on the human rights of migrants



Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention



Miklós Haraszti
Special Rapporteur on the situation of human rights in Belarus



Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities



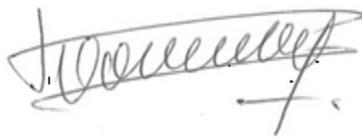
Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances



Sheila B. Keetharuth
Special Rapporteur on the situation of human rights in Eritrea



Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions



Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association



Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health



Michel Forst
Special Rapporteur on the situation of human rights defenders



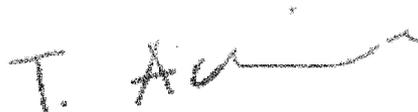
Cecilia Jimenez-Damary
Special Rapporteur on the human rights of internally displaced persons



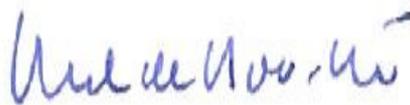
Obiora C. Okafor
Independent Expert on human rights and international solidarity



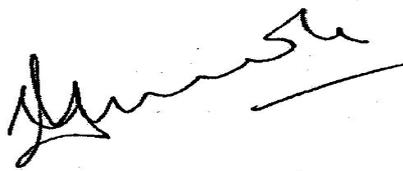
Gabor Rona
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination



E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

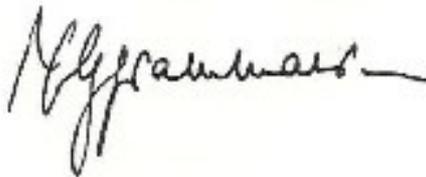


Maud de Boer-Buquicchio
Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material



Urmila Bhoola

Special Rapporteur on contemporary forms of slavery, including its causes and consequences



Maria Grazia Giammarinaro

Special Rapporteur on trafficking in persons, especially women and children



Idriss Jazairy

Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights



Ivana Radacic

Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice