

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

(Approved by Committee on 7 September 2017)

Input for the Secretary-General's Report on the Global Compact on Migration

Any global commitment on migration should be supported by the Convention on the protection of the rights of all migrant workers and members of their families, as the most robust and comprehensive international instrument on human mobility since 1990, as well as the general comments of the Committee in addition to the human rights treaty body framework as a whole. The Convention has proven to be effective in those States parties that apply its provisions in legislation and public policy, both within and beyond national territory. The Convention provides for the protection of the rights of migrant workers and offers a holistic approach to address the needs of migrant workers and their families in countries of origin, in transit and in destination countries.

The Global Compact must ensure that all migrants and their families, both documented and undocumented, enjoy fundamental human rights as contained in the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights on a non-discriminatory basis, including the right to life, freedom from torture and other cruel, inhuman or degrading treatment, freedom from slavery and forced labour, right to liberty, security of the person and protection against violence, and protection against arbitrary arrest and detention. States shall also ensure that migrant workers and members of their families have access to justice and effective legal redress for violations of human rights, labour standards and any other legal claim on a non-discriminatory basis.

Border management

- A. States shall respect human rights obligations at all border crossings, and ensure that border governance measures address and combat all forms of discrimination by State and private actors at international borders, and are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsion. States shall ensure that all migrants and members of their families regardless of their status are provided with adequate assistance and are afforded due process guarantees and access to justice and effective remedies, in particular with respect to migrants in situations of vulnerability, and also ensure that border governance measures are gender-responsive and address the specific needs and situation of women. States shall also ensure that the best interest of the child principle shall be a primary consideration applicable to all children who come under the State's jurisdiction at international borders, regardless of their migration status or that of their parents.

Labour exploitation and other forms of ill-treatment

- B. States shall ensure that domestic labour laws comply with international human rights norms and labour standards and that labour laws and regulations cover all sectors, including domestic work. States shall abolish sponsorship systems whereby migrant workers are dependent on employers for residence visas and work permits and thus vulnerable to abuse and exploitation. States shall ensure that domestic labour laws comply with international human rights norms and labour standards and that labour laws and regulations cover all sectors, including domestic work. With respect to domestic migrant workers, States shall cooperate regarding frameworks and agreements for the protection of the rights of domestic migrant workers, including the use of standard, unified and binding employment contracts with fair, full and clear conditions and labour standards that are legally enforceable in both States of origin and employment and well as access to remedies and other services for domestic migrant workers whose rights have been violated.
- C. States shall also address exploitative and abusive recruitment practices and ensure that international recruitment agencies are effectively regulated and monitored. States shall also ensure that contracts for migrant workers within different sectors and at different skills levels are standardized, specifying the job description, wages and labour conditions.
- D. States shall also ensure that migrant children or children remaining in countries of origin whose parents have gone abroad to work, are not subjected to labour exploitation, including begging, in particular in the informal economy, and that the domestic legal framework is in line with international human rights standards, including the Convention on the Rights of the Child, as well as international labour norms, including ILO Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

Due process and detention

- E. States shall ensure that migrant workers and members of their families, both documented and undocumented, are guaranteed due process on an equal basis with nationals and that they have access to information in a language that they understand in all migration-related administrative and judicial proceedings. States shall also ensure that migrant workers and members of their families are not subjected to collective expulsion, that expulsion proceedings are fully regulated by law and that a decision to expel is made by a competent authority in accordance with the law. States shall additionally ensure that the decision to expel be communicated to affected migrant workers and members of their families in writing, and in a language that they understand, and that migrant workers and members of their families are made aware of and exercise their right to appeal the order of expulsion.
- F. States shall ensure that administrative detention for migration-related matters is used only as a measure of last resort, and never for children, and that non-custodial alternatives are provided. States shall cease the detention of children on the basis of their or their parents' immigration status and adopt alternatives to detention that allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being reviewed,

consistent with the best interest of the child principle as well as the child's right to family life.

Labour rights

- G. States shall guarantee the labour rights of all migrant workers, including through labour inspections and ensure that firewalls are in place to encourage reporting of labour abuses by migrants without fear of being reported to immigration authorities. States shall ensure the right of migrant workers to join trade unions.

Access to health care and education

- H. States shall ensure access to medical care for migrants and members of their families as well as access to education for children, both documented and undocumented, ensuring that firewalls are in place to allow access to health care and education without fear of being reported to immigration authorities.

Birth registration

- I. States of origin and destination shall cooperate to ensure that all children of migrants are registered at birth and issued personal identity documents in line with the Sustainable Development Goals (Target 16.9), and that States raise awareness on the importance of birth registration among migrant workers and members of their families, especially those in an irregular situation.

Returns

- J. States shall ensure that returns are carried out in accordance with international law with due process guarantees, in particular with respect to non-refoulement and protection against arbitrary and collective expulsion. States of origin shall also take measures to ensure appropriate social, economic, legal and other necessary conditions to facilitate the return and durable reintegration of migrant workers and members of their families.

International cooperation and irregular migration

- K. States shall establish human-rights based frameworks for overall migration and border management taking into account the rights and needs of migrant workers and the benefits of organized mobility, and incentivize regular, open and facilitated labour mobility. States of origin shall promote decent work opportunities for people at home and identify and address push factors related to precarious labour migration. States of destination should invest in sufficient social protection systems in countries of origin to ensure that poverty, economic, environmental or other shocks do not force people into precarious labour migration.

Trafficking and smuggling

- L. States shall take measures to prevent and combat trafficking in persons, especially women and children, develop guidelines for the early identification of victims of trafficking and reinforce mechanism of support, referral, rehabilitation and social reintegration. States shall also ensure that both women and children victims are provided with appropriate assistance and protection taking full account of their specific rights and needs. States shall additionally ensure that victims are not

detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit or destination or their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

- M. States shall also cooperate to detect and prevent irregular migration and prosecute criminal groups responsible for smuggling of migrants and other related offences. States shall also ensure that migrants in an irregular situation are not criminalized and that measures aimed at addressing irregular migration or smuggling operations do not adversely affect the human rights of migrants and members of their families, in particular with respect to non-refoulement and the prohibition against arbitrary and collective expulsion.