

## **Input to the Secretary General's report on the Global Compact Migration**

### **Contribution by Felipe González Morales**

#### **Special Rapporteur on the human rights of migrants**

##### **Structure of the Global Compact;**

Migration cannot be conceptualized without human rights, and any framework for migration governance must duly take into account the human rights of migrants. Migrants are human beings with inalienable human rights. States have committed to respect, promote and protect in the Universal Declaration of Human Rights, the human rights treaties and international labour conventions, as well as in regional human rights systems, to which they are party. States should now initiate and play a global leadership role on the issue of migration policies and practices. The Global Compact Migration should be based on the duty to protect, principle of equality and non-discrimination and access to justice for everyone. Consequently, all migrants should be recognized and treated as equal rights holders, regardless of their migratory status in relation to the sovereign territory they find themselves in, which should be recognized and reflected in the Global Compact Migration.

##### **Key elements of a human-rights based Global Compact Migration and its' actionable commitments;**

- 1) Provision of regular, safe, accessible and affordable pathways for migration at all skills levels

Many factors influence the decisions of migrants as to why, when, to where and how they want to migrate. The main push factors are poverty, violence, discrimination and poor governance. There are many pull factors, such as official or unacknowledged labour market needs and family reunification.

Rather than addressing the reasons behind migration, States often respond to increased migration movements by creating and progressively increasing barriers to mobility, with a focus on securitization, repression and deterrence policies. Their central objective has been to secure their borders by building fences, using violence to stop undocumented population movements across land and sea borders, using long-term detention as a deterrence tool and carrying out collective expulsions to countries of origin and transit, all of which are too often conducted without sufficient assessment of individual protection needs and adequate oversight. Moreover, States have moved their border management activities beyond their territorial borders, extending them to the high seas and third countries.

States must honestly look at their own market labor needs and develop regular labour migration channels. Many labour markets in the North - particularly in agriculture, hospitality and health care - depend on migrant labor. As these migrants are often undocumented, they suffer from exploitation and labor discrimination, without being able to denounce their employer for fear of being detained or deported. It is essential, among other measures, to facilitate the unionisation of all migrant workers regardless of their situation, to strengthen labor inspection mechanisms to enforce their labor rights and to create multiple opportunities for the migration of workers,

including unskilled which has the incentive to use regular migration channels, through the granting of visas and work permits.

States should take many additional labour migration opportunities to those already in place to provide accessible, regular, secure and affordable channels of mobility and migration for all levels of specialization, by creating labour migration opportunities, including for low-skilled migrants, visas for family reunification and foresee regularization of irregular migrants..

2) Respect for human rights in border control, including readmission, post-return monitoring and establishing accountability measures

States should develop and implement a human-rights-based approach to migration and border management and adopt approaches that reduce the precariousness of migrants, in particular by avoiding the securitization of migration policies and the externalization of border control.

This would translate in increased search and rescue capacities and the commitment to refrain from push-backs at land borders and collective expulsions. Upon arrival, all irregular migrants should have proper individual assessments carried out for all their human rights protection needs, and not only for those who are manifestly refugees and victims of trafficking: children, families with children, pregnant women, persons with disabilities or illnesses and elderly migrants also have need of protection or need to be referred to respective protection system, independently from the asylum stream. Irregular entry and stay has to be decriminalized. The protection needs of those who are part of the migratory movements can already emanate from the conditions they are leaving behind, from the conditions they experience during transit and / or the circumstances they encounter in the state to which they arrive. Gender- and age sensitive guidelines to protect migrants in precarious situations should be developed. Quick screening processes should not increase the risk of refoulement for those needing protection.

States must not return anyone under a readmission agreement without effective oversight by a post-return human rights monitoring mechanism that verifies whether the human rights of returnees are actually respected. The return of migrants who do not meet the required international or national legal standards to remain in their host country must be conducted in safety, with regard to dignity and respect for human rights, on the basis of: (a) the primacy of voluntary returns; (b) cooperation between States of origin and reception; and (c) enhanced reception and reintegration assistance for those who are returned. , (d) any return is carried out with due procedural guarantees. (e) There should be readmission and post-return monitoring, with accountability mechanisms. Post-return human rights monitoring should be part of any readmission agreement. Children, whether unaccompanied, separated or accompanied by their parents or other caregivers, should only be returned or repatriated when it has been determined to be in their best interest through an appropriate procedure before a competent institution with proper representation of the child. Families should never be separated unless separation is necessary to ensure the best interest of the child

3) End the use of immigration detention

Immigration detention is unfortunately, extensively used as a border management and deterrence tool against migrants and too often as a means to prevent their access to justice. In line with international human rights law, detention should only be used as a measure of last resort. Administrative detention can be justified only if an individual presents a danger to the public or risks absconding when their presence is necessary in further proceedings, and such determinations must be made individually and on the basis of evidence. Furthermore, when detention becomes a

routine measure of border enforcement, it may be, per se, arbitrary insofar as it is neither an exceptional measure of last resort, nor based upon a meaningful individualized assessment of risk. States should ensure that the detention of migrants is always a measure of last resort, permissible only when reasonable, necessary, proportionate, decided on a case-by-case basis and enforced for the shortest possible period of time and commit to promote, develop and make use of viable, rights-based alternatives to detention. The reasons for immigration detention must be defined and exhaustively enumerated in legislation, in accordance with international human rights law. The access of migrants to justice is severely hampered by a failure to guarantee appropriate detention safeguards for vulnerable individuals and access to proper legal representation, legal aid, consular services, interpretation and translation services and effective remedies.

Unaccompanied migrant children and families with children must never be detained for reasons relating to their administrative immigration status. The detention of children, even for short periods, can have severe psychological consequences for their development. The Committee on the Rights of the Child and other human rights mechanisms have made it clear that immigration detention can never, ever, be in the best interest of a child and that the immigration detention of children, whether unaccompanied or with their families, always constitutes a violation of their rights. Consequently, both unaccompanied migrant children and families with children should always be provided with alternatives to detention.

#### 4) Combatting discrimination and xenophobia against migrants and migration

States must counteract perceptions of migration that underpin public debates and counterproductive and ineffective security policies, which unnecessarily translate into the stigmatization, marginalization and criminalization of migrants and encourage xenophobia, fostering public discourse in favour of migration, mobility and diversity, as well as public policies and plans in the same direction.

States should commit to use appropriate language and studies, present facts and policies that favour diversity. The inclusion of migrants is key to facilitating the integration of migrants and their contribution to development and to reducing negative populist representations of migrants. States must develop a long term strategy to create a narrative on migration and diversity that will give meaning, coherence and direction to current and future action.

States should monitor inequalities and discrimination against migrants by establishing and enforcing a policy-specific time frame for the reduction of such acts in laws, policies and practices. They should prohibit by law acts of violence and manifestations and expressions of racism, discrimination, xenophobia and related intolerance against migrants to ensure the protection of migrants and guarantee their access to means of recourse, redress and remedies. Another way to combat xenophobia, would be to promote inclusive institutions, policies and practices, at all levels of government, that recognize and value all forms of diversity.

#### 5) Protect the labour rights of migrants, regardless of their status

Migrants face discrimination and exploitation in the workplace and are the victims of forced labour, verbal abuse, physical and sexual violence. They often find themselves in debt bondage as a result of exorbitant recruitment fees. Nevertheless, migrants most often do not seek redress for the violations of human rights and labour standards that they suffer, owing to their limited command of the local language, their lack of knowledge of the laws and systems, cultural barriers and the fear of detection, detention and deportation. This holds especially true for the most precarious migrants, including undocumented migrants, temporary migrant workers in

sponsorship programmes and live-in migrant domestic workers-majority of whom are women. States must ensure that labour inspections target exploitative employers rather than exploited migrant workers.

States should commit to abolish all temporary migration schemes, such as those based on single employer sponsorship mechanisms or kafala systems, in favour of open work visa and develop legislation to guarantee ethical recruitment practices by recruitment agents and recruitment intermediaries. They should implement policies that effectively sanction employers and recruitment agencies and recruitment intermediaries who exploit migrants, and increase the share of migrants who benefit from cross-border recognition of skills and qualifications and the portability of social security benefits, inter alia, by increasing an effective labour inspection system, including for private households. They should promote the progressive formalization of the informal sectors of industries in which migrants are often exploited, such as construction, extraction, fisheries, hospitality and caregiving and facilitate unionisation and collective bargaining. They should further open channels for regularization of migrants, irrespective of status. Only through such policies, can they effectively protect the labour rights of migrants, including by ensuring equal opportunity and treatment in employment, in compliance with international labour standards

6) Ensure easy access for all migrants to basic services, including education and health

Access to public services, such as health care, education, local police, social services, public housing, labour inspection and health and safety inspection, is key to ensuring that such services are able to perform their mission with the trust of all beneficiaries, including migrants, and that migrants do not fear detection, detention and deportation.

To that effect, States should implement “firewalls” between immigration enforcement and public services, thereby allowing for access to justice, housing, health care, education, social and labour services for all migrants, whatever their status, without fear of detection, detention and deportation. States must also ensure that all migrant workers, irrespective of their skill level, job sector or administrative status, are protected by labour standards, and should facilitate the unionization of all migrant workers, regardless of status, in order to ensure their effective empowerment to defend their own rights.

7) Effective access to justice for all migrants, regardless of status

States must remove barriers to access to justice, ensuring that migrants can effectively — and not simply on paper — access legal remedies for violations of their rights.

Perpetrators of abuse, exploitation, violations of rights and violence against migrants too often do not face prosecution for their acts.. Effective and accessible justice systems can be tools to overcome exclusion, discrimination and marginalization, through the development of progressive case law on economic and social rights, the enforcement of the human and labour rights of migrants and the systematic enforcement of laws prohibiting their exploitation by private or public actors.

The key to effective access to justice is to empower migrants to seek and obtain a remedy through the justice system-by setting up firewalls-, and strengthen their ability to seek and exercise influence upon law-making and law implementing processes and institutions. Hence, States should ensure and facilitate equal and effective access for all migrants whose labour or human rights are violated to independent, competent, fair, effective, accountable and responsive judicial and quasi-judicial institutions available for protecting rights, controlling abuses of power and resolving conflicts and,

in particular, to national courts, administrative tribunals, national human rights institutions, ombudspersons, labour arbitration and other dispute resolution mechanisms.

#### 8) Protection of migrants with particular vulnerabilities

Although some migrants, such as children, families with children, pregnant women, persons with disabilities or illnesses and elderly migrants, are vulnerable, the majority are not intrinsically vulnerable. However, through policy and practice decision, States may create precarious conditions of legal status or regulatory frameworks that allow many to abuse and exploit migrants with impunity. On a general level, migrant girls and women are more vulnerable to multiple forms of abuse and human rights violations given their intrinsic vulnerability. However, in some situations, migrant boys and men may be exposed to similarly exploitative and abusive situations and will require additional protection. States should develop referral mechanisms to ensure to immediately meet protection needs of migrants with particular vulnerabilities.

Children are disproportionately represented among those forcibly displaced, be they unaccompanied, separated or accompanied by family members. They should qualify as beneficiaries of various forms of international protection. All policies relating to the migrant child are bound by the principle of the best interests of the child, as defined by the Committee on the Rights of the Child.

#### **Means of implementation and a framework for the follow-up and review of implementation;**

##### The GCM is the starting point to effective and well-managed migration governance

States should collect disaggregated data and indicators in all areas relevant to migration, while ensuring data protection and respect for the right of migrants to privacy, in particular by establishing firewalls in order to enable societies to conduct better-informed public debates and States to make evidence-based policy decisions. Based on these, States can develop well-informed, fact-based migration policies.

For the Global Compact to be meaningful, it should develop a plan of action. It should provide for a strong, human rights-based, normative and institutional framework for migration at the United Nations, ensuring accountability, monitoring and oversight. It should ensure the following functions; standard-setting and normative oversight; capacity-building and provide technical assistance; define a platform for dialogue, collaboration and political facilitation; and contribute to the development of a knowledge base or capacity through data, indicators and dissemination.

This would require an explicit whole-of-government approach by each State, cooperation among all levels of government, and a global collaboration among all States to fulfil their duties and responsibilities, as well as a global partnership between States and other key stakeholders, such as the business community, trade unions, civil society and migrant associations. As outlined in the report of the Special Representative of the Secretary General, Peter Sutherland, a dedicated financing facility would be needed to support capacity development for the implementation of migration-related international commitments.