

Geneva, 12 September 2017

Dear Ms. Arbour,

In response to your letter requesting inputs to the UN Secretary-General's report on the global compact for safe orderly and regular migration, I would like to contribute with the following suggestions.

In recalling the New York Declaration, the global compact for orderly, safe and regular migration must recognize the obligations of Member States under international law regarding their duty to protect and respect the human rights and fundamental freedoms of migrants, as well as the need to address the special needs of all people in vulnerable situations, including victims and potential victims of trafficking in persons and victims of exploitation and abuse in the context of migration. Current migration policies contribute to exacerbate migrants' vulnerabilities and are very often in evident contrast with the declared aim of eradicating trafficking in persons, as they create illegality and make it easier to exploit migrants, who are induced to accept exploitative conditions for fear of deportation. The first imperative of the compact is to establish significant and legal channels for migration, including for work and family reunification.

In the context of the protection of victims of trafficking, the global compact must recognize the obligation of States to extend to all victims of trafficking and related crimes – be they victims of trafficking, forced labour or slavery or servitude, and the worst forms of child labour - assistance and support measures, access to justice and remedies including compensation, and the non-punishment provision for illicit acts they have committed as a direct consequence of their victimization. Such protection measures should never be made conditional to cooperation with the authorities in charge of investigation and prosecution.

In addition to measures aimed at ensuring effective protection of the rights of people identified as victims of trafficking or related crimes, through the global compact States should commit to address a wider area of migrants in vulnerable situations and in need of protection.

In this light, I would like to submit the following considerations:

- In the context of the global compact, we are talking of trafficked persons, smuggled persons, asylum seekers, people subjected to slavery, and vulnerable migrants. The first issue is to define the notion of migrants in vulnerable situations. Migrants' vulnerabilities can be linked with the reasons for leaving their countries, especially as a consequence of conflict, natural disasters, environmental degradation, discrimination, gender violence, extreme poverty, often a combination of different factors. Vulnerabilities can derive from circumstances encountered during the travel, such as extortion, rape, sexual and labour exploitation, detention in inhuman conditions, and the use hazardous means of transportation. Finally, vulnerabilities can derive from personal conditions such as age, pregnancy, disabilities, or poor health conditions.

- How should this categorization be used to ensure more effective protection of migrants' rights? To start with, procedures of accurate and early screening should be established in places of first arrival of large influx of migrants, based on interviews carried out in a friendly setting, preferably by trained social workers. This early screening should aim to assess – not necessarily if people are trafficked, smuggled or enslaved or in a vulnerable situation but rather – their entitlements and needs on an individual basis. In fact, although the definitions of trafficking and smuggling are different, in reality it is very difficult to distinguish between the two situations, as people originally smuggled can be trafficked at a certain stage. Therefore such an early screening should aim to listen to the person, check the credibility of the story - as no police operations are involved in places of first arrival, and exploitation has taken place in another country - and identify the most appropriate protection channel. This individual assessment must comply with international human rights standards, and not infringe the right of every person to apply for asylum or other forms of international protection. This means that a person must be allowed to initiate simultaneously asylum procedures and other procedures based on trafficking schemes or child protection schemes.
- Such protection channels are partially in place, namely asylum and international protection, child protection, assistance measures for trafficked persons, and in very limited terms for smuggled persons. All these channels should be taken into consideration and used on the basis of an individual assessment, to reach the best solution for every person. However, as far as anti-trafficking measures are concerned, it is necessary to understand why existing anti-trafficking regulations are so rarely applied, and correct this distortion. In this light, an innovative model is needed, not primarily based on police operations and decision making of immigration authorities, which very often have made the granting of a residence status conditional on cooperation with investigation and prosecution, but rather based on the assessment of every migrant's background and personal conditions, by social authorities and in cooperation with civil society organizations.
- In addition to measures aimed at accurate and early identification of victims of trafficking and related crimes, new protection schemes should be designed and implemented to address the needs of migrants in vulnerable situations. Under the trafficking standard, vulnerability has been addressed as an element of "abuse of a position of vulnerability", and also as a prevention issue. In other words, migrants in vulnerable situations are always at high risk of falling prey to traffickers. In this respect, indicators used by IOM, UNHCR, ICMPD and some NGOs to identify people at risk of trafficking are at the same time indicators of vulnerability. Migrants in

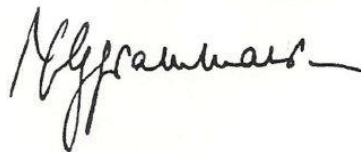
vulnerable situations should be entitled at least to healthcare, legal counselling, temporary residence, access to justice and remedies including compensation, and help to find non exploitative job opportunities.

- Children on the move, especially children traveling alone, are always at high risk of being trafficked for any illicit purpose, and constitute a vulnerable group. They must be protected first and foremost as children. Child protection systems and best interest determination procedures must be established in order to identify and implement viable and long term solutions for every child. Detention of children for immigration reasons must be banned, as it is never in the best interest of the child.

Finally, the implementation of measures aimed at fulfilling Member States' commitments through the global compact should be followed up through current existing review processes at international and regional level. Given that these actionable commitments are based on existing international human rights instruments and labour standards, follow up of States' compliance with the global compact provisions should be integrated within the human rights treaty body mechanisms, the Universal Periodic Review, or the ILO various means of supervising the application of Conventions and Recommendations in law and practice, among other existing mechanisms, as well as through an enhanced follow up mechanism for the 2030 Agenda for Sustainable Development. At the national level, the implementation of the global compact could also be part of national action plans of the governments as well as be integral parts of UN Country' team's work plan within existing structures such as the United Nations Development Assistance Framework (UNDAF) and common country assessment (CCA).

Moreover, effectively implementing the measures set out in the global compact requires cooperation and coordination between States, institutions, CSOs and businesses among others, at the international, regional and national levels. Such cooperation is crucial in achieving safe orderly and regular migration and addressing trafficking within this context.

With my best regards,



Maria Grazia Giammarinaro

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