

First Regional Review of the Global Compact for Safe, Orderly and Regular Migration in the UNECE region

Roundtable 3

Friday, 13 November 2020, 10:10 a.m.

Speaker 2: Representative from Stakeholders (Special Rapporteur on the human rights of migrants)

Statement of the Special Rapporteur on the human rights of migrant, Mr. Felipe González Morales

Distinguished delegates from States, Representatives from UN agencies, NHRIs, civil society, municipalities, trade unions, private sector and other stakeholders, Ladies and Gentlemen:

I am very glad to participate in this first Regional Review of the GCM, which will be followed by similar reviews around the world. I hope to be able to participate in all Regional Reviews as my mandate has a universal scope.

The Global Compact on Migration is a landmark initiative in the development of a **multilateral approach** in migration. Migration cannot be addressed by each country in isolation, but requires instead a collaborative approach by States, UN agencies, the civil society and other stakeholders. The adoption of the GCM was indeed the outcome of such a collaborative work.

The GCM sets out a road map to strengthen migration policies through a series of practical measures. It provides a wide range of alternatives to enhance migration policies. Addressing its implementation at the regional level will contribute to compare experiences among countries, to learn from each other's experiences and to enhance regional actions in regard to migration policies and measures. Regional dynamics is crucial for achieving the Global Compact objectives.

As part of the activities of my mandate, I engaged actively throughout the process of the preparation of the Global Compact and have been working since its adoption to contribute to its effectiveness through different means of implementation. I do so with a human rights-based, gender-responsive and child-sensitive understanding of the Compact. For this purpose, I participate in the UN Network on Migration, including as a member of the Steering Committee of the Start-Up Fund for Safe, Orderly and Regular Migration, which plays an important role in the implementation of the Compact. I also make use of the Compact in communications with States, thematic reports, country reports as well as through other means.

In many meeting with organizations from the civil society since the adoption of the Compact, I have been asked about my assessment on its level of implementation so far. To be sure, the ambitious initiative which is the Global Compact on Migration requires many efforts to put it in movement and make it effective. The COVID-19 Pandemic has put an additional, serious obstacle to move forward expeditiously in this regard. However, almost 2 years has passed since the Compact adoption, so it is time to ensure that its implementation moves forward in a decisive manner.

In my capacity as Special Rapporteur on the human rights of migrants, I have been working on a number of issues related to the GCM objectives subject to the discussion of this roundtable. I would like, in particular, to stress the following topics:

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- **Collective responsibility to save lives of migrants in distress at sea.** This implies an active role of States. It also requires the adoption of measures to ensure protection of humanitarian initiatives oriented to this purpose and not criminalizing them. In my recent report to the Human Rights Council about the Right to Freedom of Association of Migrants and their Defenders, I emphasized the legitimacy of humanitarian actions in this regard and the States obligation to guarantee the human rights of those who undertake such actions.
- **Coordinated EU external border management that ensures security of migrants.** This should be at all times consistent with human rights standards, including the protection of the right to life, the right to physical integrity and the *non-refoulement* principle, among others;
- **Strengthened regional response to smuggling of migrants;** eradicating trafficking in person and enhanced protection of migrant victims of trafficking. These responses should make sure that they do not criminalize as smugglers or traffickers those who save the lives of migrants and asylum-seekers for humanitarian concerns, nor they should criminalize the migrants or asylum-seekers themselves.
- **Safe and dignified return and readmission which guarantees due process, individual assessment and uphold the prevention of collective expulsion.**

In relation to these issues, my mandate has received information on a number of practices in the region in violation of international standards. A list of the most relevant of them should include the following:

- **Pushbacks, sometimes violent operations;**
- **Forced returns outside official procedures;**
- **Lack of individual assessments which impair the right to seek asylum; and**
- **Collective expulsions on land and at sea**

Since I took office, 3 years ago, I have transmitted, often jointly with other Special Procedure mandate holders, a number of letters to concerned Member States in this regard. I have also addressed these issues in country reports and at thematic reports.

While recognizing challenges encountered by all countries in the world in responding to the current public health crisis. I wish to emphasize that **migrants are among those in the most vulnerable situations**. I am particularly concerned about the reduced capacity to save lives at sea, the suspension of access to asylum procedure and the lack of appropriate COVID-19 preventive measures at immigration detention facilities during the pandemic.

I would like to refer Member States to the **Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants**, prepared jointly by my mandate and the Committee on Migrant Workers, issued in last May, for some recommendations the two mechanisms wish to share with Member States. I wish to highlight our recommendations

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in regard to the Objectives addressed at this cluster. These include to conduct processes of **regularization of migrants** so as they get documentation; to **suspend forced returns**; to **reduce the number of adult individuals at immigration detention to the lowest possible level** during the pandemic and to **prohibit immigration detention of children**. Any feedback from your region is most welcome.

Migrant children continue to be detained, some are separated from their families, in a number of countries in this region. I have participated at a series of webinars and meetings at which it has been shown that immigration detention of children is pervasive in some countries of the region. **The deprivation of liberty of adults in the context of migration must be applied as an exceptional measure of last resort.** In GCM objective 13, States are committed to prioritize non-custodial alternatives to detention that are in line with international law. Deprivation of liberty should indeed be a measure of last resort applicable to all persons. In the case of migratory detention, this should be applied even more exceptionally as irregular immigration cannot be considered a crime under International Law. Migratory detention should not be used as a deterrence measure.

To this end, I also wish to stress that **distinction should be made between adult migrants and migrant children. Migrant children should be considered as children first and foremost.**

I highlighted in my recent report to the General Assembly (A/75/183) that the **detention of any child for reasons related to their, their parents' or their legal guardians' migration status is never in the best interests of the child and is always a child rights violation under international human rights law.** The **deprivation of liberty of migrant child should be prohibited and the detention of children whose parents are detained should not be justified on the basis of maintaining the family unit.**

Many migration policies in the countries participating at the Regional Review have mostly a security focus. While security is a legitimate concern, it cannot override the human rights of migrants. In fact, there are human rights that cannot be restricted on the basis of security, such as the right to life, to physical and psychical integrity, and others. The Global Compact on Migration explicitly states that it is based on the existing international human rights instruments. This means that the adequate approach to the Compact is a human rights-based one.

I look forward to the interactive discussion and hearing from Member States on their plans to address these issues and achieve the respective Global Compact objectives. The Compact provides us a unique opportunity to move forward on migration policies on a cooperative basis.

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