

Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

6 June 2018

Open Letter from the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on Draft Rev 2 of the Global Compact on Migration

Excellency,

I have the honour to address you in my capacity as the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

I have reviewed the updated and revised draft (Rev 2) of the Global Compact on Migration (hereafter GCM) with great interest and take this opportunity to share some recommendations from my mandate for bringing the GCM in line with international human rights law and principles regarding racism, racial discrimination, xenophobia and related intolerance. I wish also to align myself fully with the recommendations made by the Special Rapporteur on the Human Rights of Migrants and other special procedures mandate holders in their open letter on this revised draft.¹

First, at this important stage in the negotiations, I wish to highlight the significant ways that migration governance affects racial equality all over the world. Globally, immigration law and policy and their enforcement are too often means through which migrants are discriminated against on the basis of their race, ethnicity, national origin and religion. Furthermore, it is not migrants alone who experience or are at risk of discriminatory treatment in immigration policy and enforcement. Often racial profiling, prejudice, and even administrative barriers to proving citizenship combine such that racial, ethnic and religious minority communities fully entitled to citizenship and even in possession of it are targeted through immigration enforcement. Unless decisive steps are taken to embed equality and non-discrimination principles in migration law, policy and enforcement, experience shows that both migrants on the one hand, and racial, ethnic and religious minorities bearing citizenship status on the other, suffer gravely even where racial discrimination is not the intent of the State. These are issues I address in more detail in my first report to the Human Rights Council on racial discrimination in the context of laws policies and practices concerning immigration, citizenship and nationality.² This reality on the ground means that Member States must take deliberate steps to ensure that the Global compact for migration provides strong safeguards against racial

¹ Available at <http://www.ohchr.org/Documents/Issues/Migration/JointOpenLetterGlobalCompactMigration.PDF>

² A/HRC/38/52 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/117/79/PDF/G1811779.pdf?OpenElement>.

discrimination, xenophobia and intolerance within its framework for migration governance.³

The exercise of State sovereignty over national borders is protected in international law, and at the same time, migration governance—including through the GCM—must be in accordance with international human rights law and principles. In this regard, the updated and revised draft (Rev 2) contains important improvements in its inclusion of vital international human rights commitments rooted in existing legal obligations that States have towards migrants. The current draft does more than prior versions to recognize that the prohibition on racial discrimination—found in customary and treaty law—is a central part of a human rights-based approach to international migration. All the same, stronger entrenchment of this prohibition is required in the final draft.

Regarding the section on the vision and guiding principles of the GCM, I welcome the provisions of the current draft stressing that the Global Compact is based on international human rights law and upholds the principles of non-regression and non-discrimination, and which reaffirm Member States commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance against migrants and their families. However, I am concerned that in the Preamble, the International Convention on the Elimination of All Forms of Racial Discrimination is mentioned only in a footnote. It is important that this treaty be mentioned in the main text of the Preamble (paragraph 2, Rev 2). This will better reflect the international commitment to safeguarding non-discrimination in migration governance. I also strongly urge Member States to make no changes in the remaining negotiations, that would undermine the commitments to the elimination of all forms of discrimination, including as listed in Objective 17.

With respect to Objective 1 on data collection and utilization for evidence-based policies, I wish to stress the need for the GCM to ensure that migrant data collection and utilization do not result in racial, ethnic or religious discrimination, but that they are conducted in conformity with States' obligations under international human rights law. Often such discrimination occurs when data that should be used to inform policy-making is instead deployed in immigration enforcement or public service provision. In some countries, immigration enforcement even occurs via the social sector (through hospitals, schools, universities) further escalating racial and related forms of discrimination against migrants *and* those perceived to be migrants. Collection of disaggregated migration data is vital but the collection and use of this data must fully comply with international human rights principles and safeguards. To this end, I strongly urge states to include a provision ensuring data “firewalls” that prevent the sharing of migrant data between immigration enforcement agents and public and social services.

Concerning Objective 4 on proof of legal identity and adequate documentation, it is vital that Member States mention explicitly that their commitment to providing all nationals with adequate documentation and proof of citizenship includes a commitment to do so without discrimination on the basis of race, ethnicity, national origin or religion. I commend the explicit inclusion of a commitment to gender equality in this context but urge inclusion of a commitment to racial equality. In this regard, I encourage Member States to take into consideration the recommendations of my report to the Human Rights

³ For ease of reference I have underlined references to specific GCM Objectives as well as specific recommendations for amendments.

Council⁴ referenced above. I also urge Member States to include in paragraph 19 of the updated and revised draft (Rev 2) a commitment to provide all nationals with proof of citizenship without discrimination on the basis of race, ethnicity, national origin or religion.

With respect to Objective 5 on enhancing availability of pathways to regular migration, I wish to stress the importance of stronger language on how such pathways must reflect human rights commitments to equality and non-discrimination. A significant contributor to irregular migration status is insurmountable administrative or other barriers to maintaining regular status and such barriers can often disproportionately target or affect migrants on the basis of race, ethnicity and religion. For this reason, paragraph 20 of the revised draft (Rev 2), should be amended to include an explicit commitment to pursue legal pathways to regular migration that in intent and effect comply with State obligations to equality and non-discrimination.⁵

With respect to Objective 6 on facilitating fair and ethical recruitment and safeguard conditions that ensure decent work, I encourage Member States to include in paragraph 21 of the draft an explicit commitment to protecting all migrant workers from discrimination, in addition to exploitation and abuse.

Finally, with respect to implementation, it is imperative that the United Nations network on migration and its secretariat and institutional framework formally include a role for UN human rights mechanisms. Although paragraph 44 (a) states that the network will draw on the experience and expertise of “relevant entities within the United Nations system [...]” this language is not sufficient to ensure that the human rights-based approach to migration that the GCM should promote will have the institutional and material support it requires in order to be successful. A formal, institutionalized role for human rights bodies or personnel is a necessary complement to the role foreseen for IOM, and must be included in paragraph 44.

In conclusion, I wish to align my mandate with OHCHR substantive inputs to the revised draft (Rev 2) aimed at helping Member States to harmonize the Global Compact for Migration with their existing commitments and obligations towards all migrants, including irregular migrants under international human rights law and principles.

If I can offer any clarification on the above, or if I can be of further assistance on any issues related to my mandate, please do not hesitate to contact me through the Office of the High Commissioner for Human Rights (Ms. Yaye Ba, yba@ohchr.org and Ms. Claire Mathellié, cmathellie@ohchr.org or racism@ohchr.org.)

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

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⁴ A/HRC/38/52

⁵ For example: “We commit to adapt options and pathways for regular migration in a manner that reflects human rights commitments to equality and non-discrimination, demographic and labour market ...”