

GFMD 2016
Roundtable 2.2
Protection of migrants in all situations

Intervention by Mr Jose S. Brillantes, Chair of the Committee on Migrant Workers

I. Importance of the Convention

- I am speaking on behalf of the Committee on Migrant Workers as its Chair. Our Committee oversees the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families. As defined by the Article 2(1) of the Convention the **term “migrant worker”** refers to any person who “is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” Accordingly, the Convention expressly provides **protection** to migrant workers and their family members not only when the migrants are actually working, but “**during the entire migration process** of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence”. The Convention delineates rights that apply to all migrant workers regardless of their status and then distinguishes further rights of migrants who are documented or in a regular situation.

- The Convention is a robust and agreed international legal framework for the rights of all migrant workers and their families **in countries of origin, transit and destination**. It lays out the most effective strategies for preventing abuses and for providing sound, equitable and lawful conditions for all migrant workers and their families. Unfortunately **the number of ratifications of this vital text remains low** – 49, the lowest of all human rights treaties. No major destination country has ratified the Convention. Gaining new ratifications thus remains a priority for my Committee. I hope that some of you present here can show leadership on this issue so that we can soon celebrate our 50th ratification and many more to come.

II. Main problems faced by migrant workers

- International migration is a complex phenomenon dealing with overlapping issues relating to the human rights of migrants, mixed migration flows, international protection, smuggling and trafficking, as well as other push and pull factors affecting migration, which calls for a comprehensive approach placing the human rights of migrants at the forefront.

- The rights of migrant workers are frequently violated. They work in harmful and dangerous conditions, with high incidences of injury, death and sickness, receive wages that are under the minimum baseline, and are subjected to fraudulent practices, excessive working hours and even illegal confinement by their employers, as well as sexual harassment, threats and intimidation.

- These abuses of migrants are intensified when their immigration status is irregular. Not only are they often denied the most basic labour protections, personal security, due

process guarantees, health care and, in the case of their children, education; they may also face abuses at international borders, and in some cases they risk being trafficked, enslaved, sexually assaulted or even killed.

- In order to guarantee **access to legal protections and social services as well as labour rights and secure working environments**, States should:

- Guarantee to all migrants access to complaint procedures and effective legal assistance, as well as to redress from the courts and other mechanism, including labour courts;
- Ensure that all migrant workers and members of their families have recourse to consular support for the protection of the rights;
- Enter into bilateral and multilateral social security agreements in order to guarantee the social protection of migrant workers;
- Ensure that all migrants have access to health care services and all migrant children have access to education;
- Guarantee in law and in practice the labour rights of all migrant workers and safe and secure working environments;
- Ensure that labour inspections focus on conditions of work of migrant workers. Migrant workers themselves must be consulted during those inspections, in a confidential manner. Labour inspectorates must work independently from other departments, in particular immigration authorities, to encourage reporting to labour authorities cases of abuse and exploitation by migrant workers without fear of immigration authorities becoming involved.

- States also need to ensure in line with **Sustainable Development Goals (SDGs)** (Target 8.8) that domestic work is regulated by national legislation and domestic migrant workers should enjoy the same rights as nations with respect to minimum wage, hours of work, days of rest, freedom of association, and other conditions of work, as well as the right to freedom of movement and residence, and to retain possession of travel and identity documents. They should also be able to access justice and have the support of their consular services.

- In order to inform policy, States must commit to compiling **information and statistics** on all aspects of migration that are disaggregated inter alia by sex, age, nationality, migratory status, disability, reason for entry and departure from the country, and the type of work performed in line with the SDGs Target 17.18.

III. Need for vision and leadership

- As a percentage of the world population, the rate of migration remains low, actually slowing between 2010 and 2015. What we have is not a “migration crisis”, but rather a crisis of moral and political leadership, based on fear, fantasies, exclusion and sometimes outright bigotry.

- This is a critical moment for the international community to demonstrate its commitment to the human rights of all people on the move based on international human rights law and standards, and robust and principled political leadership is needed in this regard.

- Migration governance cannot be only about closing borders and keeping people out. States need to develop long-term strategies and policies to facilitate rather than restrict

migration. We must regulate mobility by opening regular, safe, accessible and affordable migration channels. We must also promote integration and celebrate diversity.

- Present migration policies remain short-sighted, focusing on trying to stop migrants or extract as much labour for as little pay as possible. As they do for energy, agricultural, transport or environmental policies, States need to develop a long-term strategic vision of how they see their migration and mobility policies and practices in a generation from now.
- We hope that that the two-year process for developing the UN Global Compact on migration will produce a long term strategy to facilitate mobility – as outlined in target 10.7 of Agenda 2030 for Sustainable Development.
- Emulating the SDG process, the Global Compact could set up an ‘**Agenda 2033 for Facilitating Human Mobility**’, outlining a human-rights-based long term vision and setting out goals, targets and indicators for all member states. Such a concrete outcome would add meaning and action to the rhetoric of 19 September’s UN High Level Summit on large movements of refugees and migrants.
- We need appropriate public consultations and debate, inclusive of migrants’ voices, for States to forge a shared understanding when negotiating the Global Compact.
- In the current climate of an openly xenophobic public narrative on migration often based on misperceptions, prejudice and fear, strong leadership is also needed to work towards evidence-based and migrant-centred narratives that promote tolerance and counter xenophobia against migrants, emphasising the positive contributions of migrants in bringing diversity, enriching societies, cultures and economies across the world.

IV. Way forward: The global compact on migration

- The global compact on migration must stress the fundamental importance of the international human rights treaty framework, including our Convention, which sets out the normative grounds to prevent abuses and address challenges that migrants face, including through international co-operation based on respect for human rights and the rule of law
- The global compact should include **a monitoring and accountability framework through relevant mechanisms such as the United Nations mechanisms -- treaty bodies and special procedures**
- States should commit through the compact to:
 - Ratify the Migrant Workers Convention and enact into law key international legal standards protecting migrant workers, including ILO Conventions no. 87, 97, 143, 181 and 189;
 - Address the situation of migrant workers who are victims of the Kafalah system, in particular in Gulf countries, raising this issue with a view towards abolishing this system and enhancing protection of specific categories of workers, in particular women, against exploitation and abuse;
 - Strengthen the effective regulation and monitoring of recruitment agencies, labour brokers and intermediaries to ensure that the rights of migrant workers are respected;
 - Establish sanctions, including loss of accreditation, for such agencies and intermediaries that engage in unethical and illegal practices that violate the rights of migrant workers;
 - Adopt codes of conduct on the recruitment of migrant workers, including specific rules governing fees and salary deductions, provide for appropriate penalties and sanctions to enforce them, and consider banning recruitment fees payable by the migrant workers;
 - Implement “firewalls” between immigration enforcement and public services, thereby allowing for access to justice, housing, healthcare, education, social and labour services for

all migrants, whatever their status, without fear of detection, detention and deportation, as recently recommended by the Council of Europe.

- States should commit through the compact to:
- States should also commit through the compact to **expeditiously and completely 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 a family life. In this regard we are concerned about the weak language concerning child immigration detention in the New York Declaration on Refugees and Migrants which is based on the erroneous assumption that detention may sometimes be in the best interests of the child or that the Convention on the Rights of the Child, which allows for detention as an exceptional measure in the juvenile justice context, somehow permits it. Let us be clear: immigration detention is never in the best interests of the child and is always a child rights violation.
- Finally I would like to emphasize that **the distinct needs of women and girls** must be addressed in the compact and in all national and international policy responses, and dedicated human and financial resources must be made available to address these needs in practice.