

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellencies,

I have the honour of addressing you in my capacity of United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment pursuant to Human Rights Council resolution 34/19.

I have been closely following the inter-governmental consultations and negotiations on issues related to **The Global Compact for Safe, Orderly and Regular Migration** ("GCM"). As you approach the crucial last round of inter-governmental negotiations, please allow me to draw your attention to my latest report to the UN Human Rights Council entitled "Migration-Related Torture and Ill-Treatment" (A/HRC/37/50) and, in this connection, to share **three concerns and recommendations** with regard to the current drafting of the GCM:

1. Non-refoulement towards risks of torture and ill-treatment: First of all, in my view, the final text of the GCM should fully reflect the human rights law principle of *non-refoulement* which prohibits the removal of any person to another State's jurisdiction or to any other territory where he or she would be exposed to a real risk of torture or ill-treatment (Art. 3 UNCAT). Please note that the prohibition of refoulement towards risks of torture or ill-treatment is absolute and non-derogable and applies to all human beings without discrimination. Thus, while refugee law may limit *non-refoulement* protection against persecution to persons entitled to refugee status and allows for exceptions based on considerations of national or public security, no such limitation or exception is permissible where removal would give rise to a real risk of torture or ill-treatment. As an intrinsic component of the peremptory prohibition of torture, the prohibition of refoulement towards the risk of such abuse trumps not only national immigration laws, but also contradicting international obligations, such as under extradition treaties.

Recommendation: I therefore urge member States to expressly reaffirm, within the text of the GCM, the absolute, non-derogable and peremptory character, as well as the comprehensive, generalized and unconditional scope of the prohibition of refoulement towards the risk of torture and ill-treatment.

2. De-criminalization of irregular migration: Second, I feel compelled to remind member States, that the primary cause for the massive abuse suffered by migrants in all regions of the world, including torture, rape, enslavement, trafficking and murder, is

neither migration itself, nor organized crime, or the corruption of individual officials, but the growing tendency of States to base their official migration policies and practices on deterrence, criminalization and discrimination, rather than protection, human rights and non-discrimination. By pushing migrants onto unsafe and irregular pathways, such policies and practices create an environment conducive to a wide range of human rights violations, including torture and ill-treatment, arbitrary detention, family separation, slavery, and murder.

Recommendation: I therefore urge member States to expressly reaffirm, within the text of the GCM, their strong and unequivocal commitment towards decriminalizing irregular cross-border movements in line the consensus expressed in the 2016 New York Declaration.

3. Migration-related detention: Finally, the criminalization of irregular migration often results in mandatory, prolonged or indefinite detention of migrants without regard to the requirements of necessity and proportionality and without any meaningful judicial review. It is my considered view that prolonged detention based solely on migration-status may well amount to cruel, inhuman or degrading treatment or punishment, or even torture, most notably where it is being intentionally imposed or perpetuated for purposes such as deterring, intimidating, or punishing irregular migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, providing information, and agreeing to extortion or removal, or for reasons based on discrimination of any kind, including discrimination based on immigration status.

Recommendation: I therefore urge member States to expressly reaffirm, within the text of the GCM, their strong and unequivocal commitment towards preventing mandatory, prolonged or indefinite detention of persons, in particular children, based solely on their irregular migration status or the impossibility of their expulsion.

In conclusion, Excellency, let me reiterate that, in my view, the GCM offers a timely and important opportunity for the international community to make a significant step in **preventing torture and ill-treatment in the context of migration** and safeguarding the human rights of migrants in line with the 2030 United Nations Sustainable Development Goals (A/RES/70/1).

In your capacity as co-facilitators of the Global Compact I would greatly appreciate if you could share this letter with all participant states engaged in this process.

I also believe that the wider public should be informed of the potential implications of the above-mentioned concerns; I therefore intend to share this communication on the website of the Special Rapporteur on Torture.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment