

1 February 2018

### **Amnesty International recommendations for the Global Compact on Migration**

Pursuant to paragraphs 6 and 7 of the General Assembly resolution A/RES/71/280, Amnesty International calls upon states to pursue the following actionable commitments during the intergovernmental negotiations leading to the adoption of the Global Compact for safe, orderly and regular migration (“GCM”):

1. To uphold the principle of non-refoulement and refrain from implementing external migration policies which pose risk to human rights.
2. To design and implement mechanisms to respect, protect and promote the rights of migrants at all stages during the migration journey.
3. To end child detention.
4. To increase opportunities for irregular migrants to regularize their migration status at least in the following cases:
  - Family reunification;
  - Unaccompanied migrant children;
  - Individuals who were born in the country of destination or migrated there as young children and have since reached the age of majority;
  - Victims of human rights violations or abuses; and
  - Created irregular migrants.
5. Promote regular labour migration pathways.
6. To ensure that businesses employing migrant workers in their operations and supply chains, or that are directly involved in the recruitment of migrant workers, are legally required to ensure that the recruitment process adheres to ethical principles that uphold human rights and that it does not involve or lead to criminal acts such as trafficking, forced labour or other similar criminal acts.
  - Strengthening and enforcing national laws and regulatory frameworks to combat human trafficking, forced labour and other serious recruitment and labour abuses with respect to migrant workers;
  - Developing and enforcing regulations that put a ban on migrant workers paying recruitment fees and other related costs for their jobs overseas;

- Ensuring that migrant workers who are victims of recruitment abuse or serious labour abuses have access to justice and effective remedies;
  - Enhancing business transparency and accountability for recruitment and labour rights abuse.
7. Ensure that safe and regular pathways respect, promote and realise the human and labour rights of migrant workers, in line with international law, and deliver benefits to migrants.
- End abusive labour migration policies
  - Clearly state the human rights risks of temporary and circular migration programmes in the GCM and ensure that recommendations for temporary and circular migration programmes are not presented as a panacea solution to current migration challenges.
  - Require states that implement temporary and circular migration programmes to prevent, address and mitigate their human and labour rights risks, in line with international law, and with due consideration of the actual benefits such programmes will provide to migrants.
  - Require states to ratify essential international instruments related to the protection of migrant workers, and to incorporate their provisions into domestic law, and implement them in law, policy and practice.

In the following pages each one of the actionable commitments will be further explained. Amnesty International trusts that these recommendations will be carefully reviewed and further taken into consideration in phase III of the GCM preparatory process.

**1. Uphold the principle of non-refoulement and refrain from implementing external migration policies which pose risks to human rights**

Amnesty International recognizes the sovereign power of states to regulate entry and stay in their territories. However, migration policies and border control measures must be consistent with international human rights law and refugee protection frameworks.

In recent years, some countries have put an increasing emphasis on “external migration policies” (a broad spectrum of actions implemented outside of the territory of the state that people are trying to enter, usually through enhanced cooperation with other countries). These policies may consist of formal, stand-alone legal agreements, or a variety of informal arrangements or actions contained within broader cooperation agreements, diplomatic dialogues, projects, compacts or programmes established between and among states which include – but go beyond – migration issues. Although from the perspective of international law, external migration policies – which often simply entail cooperation between states on migration issues – are not unlawful *per se*, Amnesty International considers that several types of external migration policies, and particularly the externalization of border control and asylum-processing, pose significant human rights risks. As in all state actions, external migration policies must be in line with the state’s international human rights obligations.

Examples of external migration policies that pose risks to human rights are:

- Capacity-building and funding for specific border control measures or activities in other countries such as: the construction of border fences or walls; the provision of technology, equipment and training for the law-enforcement agencies (border guards, coast guard, security forces, police) who control a country’s borders, where these agencies have a poor human rights record; and the construction or refurbishment of detention facilities for migrants, asylum-seekers and refugees; providing extraterritorial financial, logistical and technological assistance in apprehending, detaining and returning migrants to third countries.
- Signing readmission agreements to facilitate the forcible return of failed asylum seekers or irregular migrants to their country of origin or to a transit country, where these agreements do not afford adequate procedural and substantive guarantees against refoulement.

The external policies mentioned above can result in refoulement or violate the individual’s rights, such as the right to seek asylum, the right not to be subjected to torture and other ill-treatment or the right not to be arbitrarily detained. Amnesty International would welcome external migration policies that are genuinely aimed at creating safe and orderly routes for people to move across borders which uphold the principle of non-refoulement.

Amnesty International calls upon states to not engage in cooperation on border control matters with countries where systematic human rights violations are committed. In particular, states should refrain from engaging in any form of cooperation that might prevent refugees and migrants from leaving or force refugees and migrants to return to a country where they do not have access to effective protection and are exposed to a real risk of human rights violations.

## **2. To design and implement mechanisms to respect, protect and promote the rights of migrants at all stages during the migration journey.**

Migrants face different risks of human rights abuses throughout the migration journey, including in countries of origin, transit, destination and return. Migrants and asylum-seekers are frequently subject to muggings, extortions, kidnappings and killings on their journey. Women are particularly at risk of sexual and gender-based violence; LGBTI individuals also often suffer discrimination or violent attacks during the migration journey. Therefore, Amnesty International calls upon states to:

- Design and implement mechanisms to respect, protect and promote the rights of migrants before, during and after migration occurs.
- Ensure that all reception and reintegration programmes for migrants ensure their rights and address the specific needs of each individual on a case-by-case basis, including children, the elderly, survivors of torture, trafficking victims, indigenous people, LGBTI people, etc.
- Ensure that migrants have access to justice and effective remedies for human rights violations and abuses.

## **3. To end child detention**

The New York declaration commits to “work towards the ending of this practice” (paragraph 33). Children should never be detained for immigration-related purposes, as it will never be in their best interest. Amnesty International opposes all detention of children – whether accompanied or unaccompanied – solely for immigration purposes and recommends that a presumption is established in law against detaining family units of parents or guardians and children for immigration-related reasons.

The GCM should contain concrete actions to be taken by states to end the practice of child detention across the globe, including by:

- Publically committing to end the detention of children solely for immigration purposes.
- Immediately putting in place national legislative and policy frameworks which prevent all detention of children for immigration purposes.

#### 4. To increase opportunities for irregular migrants to regularize their migration status

Although all migrants, regardless of their migration status in countries of transit and destination, may face human rights violations, migrants whose status is irregular are exposed to an increased risk of human rights violations and abuses. There may be specific contexts in which regularization of irregular migration status is necessary or highly desirable in order to protect human rights and/or prevent and address impunity for human rights violations and abuses.

Amnesty International calls upon states to increase opportunities for irregular migrants to regularize their migration status, at least in the following cases:

- Family members of nationals or regular migrants: States have an obligation to respect the right to found a family and refrain from arbitrary or unlawful interference with the family.<sup>1</sup> The individual right to family life is one of the factors that a state needs to be taking into account when deciding upon entry, residence, deportation or expulsion.<sup>2</sup> The right to family reunification, which derives from the right to family life<sup>3</sup>, is one of the most commonly recognized grounds for regularization.
- Unaccompanied children: The notion of ‘best interests of the child’ is relevant when discussing regularization of children, in particular those who are unaccompanied. The Committee on the Rights of the Child has stated that repatriating unaccompanied children to their country of origin can only occur if it is in the best interests of the child. This in turn requires taking into account the socio-economic conditions awaiting the child upon return.
- Individuals who were born in the country of destination or migrated there as young children and have since reached the age of majority: The concept of “one’s own country” under Article 12.4 of the ICCPR is broader than the concept of country of nationality.<sup>4</sup> This is particularly relevant with respect to persons who were born in the country of destination or migrated as young children. While some countries grant citizenship to all children born on their territory, many don’t. In many cases, national legislation allows children who were born in the country or migrated as children (either with their parents or as unaccompanied minors) to stay in the country as long as they are minors. In these circumstances, the notion of “best interests of the child” would be relevant (see above). However, upon reaching the age of majority these persons

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<sup>1</sup> UDHR, Article 16(1); ICCPR, Articles 17(1), 23(2).

<sup>2</sup> Human Rights Committee, General Comment No. 15, par5.

<sup>3</sup> The right to family reunification is explicitly recognized in Articles 9(1) and 10(1) of the CRC and Article 44 of the MWC.

<sup>4</sup> Human Rights Committee, General Comment No. 27, Un Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, para20. According to Manfred Nowak, “The protection of Art. 12.4 extends to aliens and stateless persons who have such a strong attachment to a State that they view it as ‘their own country’ or their home country”. M. Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary, N.P.Engel, 2nd revised edition 2005, p284. This interpretation is confirmed by the travaux préparatoires. Contra: Human Rights Committee, Stewart v. Canada, Communication No. 538/1993, 18 March 1994, Un Doc. CCPR/C/50/D/538/1993\*; Canepa v. Canada, Communication No. 558/1993, 1997, U.N. Doc. CCPR/C/59/D/558/1993.

may lose their right to stay in the country and be required to reapply for a residence permit, even when they have strong links with the country and weak or no links with the country of origin. Human rights experts have argued that in such cases individuals should be entitled to the right to remain in “one’s own country”.<sup>5</sup>

It can be assumed that persons who were born in the country or migrated as young children have developed strong links with that country by the time they reach the age of majority. As a consequence, they cannot be considered to be a “mere alien”; the country in which they live may to them be “one’s own country”.

- Victims of human rights violations or abuses in an irregular migration status: Irregular migrants who suffer human rights violations or abuses should have access to justice and be able to report and/or file legal complaints for the abuses suffered without fear of deportation or repatriation.
- “Created” irregular migrants. The development of complex, onerous migration and labour regulations in receiving countries increases the risks that migrant workers who arrived in the country legally will fall into irregular status. The so-called “created” irregular migrants (migrants that fall into an irregular status as a result of bureaucratic failings) include persons whose residence and/or work permits have expired due to long delays and excessive bureaucracy, onerous or excessively expensive requirements for the renewal process, corruption in the process and/or inconsistencies in residence and work permit procedures.

## **5. Promote regular labour migration pathways**

Discrepancies between insufficient regular labour migration pathways and real market demands for migrant labour create irregular migration. In turn, irregular migration status puts migrant workers at risk of labour exploitation. States should expand the regular labour migration channels in order to better take account of the reality of the labour market and to provide better protection for all migrant workers. In so doing, they should encourage dialogue and consider evidence from all relevant actors, including businesses, migrant workers, local authorities, trade unions and civil society groups.

- 6. To ensure that businesses employing migrant workers in their operations and supply chains, or that are directly involved in the recruitment of migrant workers, are legally required to ensure that the recruitment process adheres to ethical principles that uphold human rights and that it does not involve or lead to criminal acts such as trafficking, forced labour or other similar criminal acts.**

Migrant workers, especially those that fulfill low-skilled jobs, are highly vulnerable to the conditions of debt bondage, human trafficking, forced labour and other serious labour abuses as a result of

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<sup>5</sup> M. Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary, N.P.Engel, 2nd revised edition 2005, p288.

exploitative and criminal labour recruitment processes.<sup>6</sup> In non-transparent and poorly regulated recruitment chains and labour markets, migrant workers are systematically charged excessive and illegal recruitment fees; deceived about the terms and conditions of their work abroad; manipulated by their recruitment debts to consent to working in exploitative conditions; and restricted in their freedom of movement through passport confiscation and other means. Domestic and cross-border corruption is also deeply embedded in recruitment business models, which undermines the enforcement of state regulations to protect migrant workers and drives up the total cost for recruitment, which is then passed on to migrants. The extortion and overcharging of migrant workers is significant because it diminishes their freedom to exercise their rights and easily traps them in situations of extreme vulnerability. Exploitative and criminal recruitment processes, especially those that turn aspiring migrants into bonded labourers and/or trafficked workers, are a key contributing factor to the high prevalence of forced labour and modern-day slavery in the global economy.

Under international human rights law, states have an obligation to protect people from abuses of their rights by third parties, including companies, and to take appropriate steps to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudication. Amnesty International therefore calls upon states to:

- Strengthen and enforce national laws and regulatory frameworks to combat human trafficking, forced labour and other serious recruitment and labour abuses with respect to migrant workers. States should ratify the eight fundamental ILO conventions that stipulate international standards on trafficking, forced labour and other serious labour abuses.<sup>7</sup> States that have ratified these conventions must ensure the provisions of these instruments are fully incorporated into domestic law, and that they have taken effective measures to fulfill their legal obligations. National laws and frameworks relevant to the protection of migrant workers must tackle the full spectrum of fraudulent, abusive and other criminal recruitment and labour practices. States, therefore, should strive toward better coherence and linkages between legislation on human trafficking and forced labour with the laws governing labour recruitment. Serious acts of recruitment abuse, such as those amounting to human trafficking and forced labour, should be treated as criminal offences under domestic law, and not as administrative offenses as they often are.

Companies may also be involved in recruitment or labour rights abuse, either directly or through

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<sup>6</sup> Migrants in general (not only migrant workers) are at risk of human trafficking as well as, separately, forced labour / modern slavery. This section focuses narrowly on the risks to migrant workers during labour recruitment processes and the duty of states to protect migrants against abuse by the businesses that recruit migrant workers, or that employ them in their operations or supply chains.

<sup>7</sup> Including the Forced Labour Convention 1930 (No. 29), and the Migrant Worker Convention 1975 (No. 143), the ILO Private Employment Agencies Convention, 1997 (No. 181) and accompanying Recommendation (No. 188, 1997), and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). The Supplementary Convention on the Abolition of Slavery, Slave Trade and Practices Similar to Slavery also outlines the obligation of states to take practical, legislative and other measures to bring about progressively the end of slave-like institutions and practices, including debt bondage.

their business relationships. States must have laws in place to ensure that companies are held legally liable for serious human rights abuse, including human trafficking and forced labour. Such laws should provide for corporate accountability through criminal sanctions or equivalent measures. In addition to developing laws to hold companies accountable for human and labour rights abuse against migrants, states must ensure that law enforcement bodies have adequate resources to investigate cases, especially in the case where corporations domiciled or operating in its territory are involved in human rights abuse in another jurisdiction. States should also seek to remove legal constraints that prevent migrant worker victims, who will not receive effective remedies in their countries of recruitment or work, from seeking jurisdiction for cross-border cases where corporates are involved in recruitment and labour rights abuse.

- Develop and enforce regulations that put a ban on migrant workers paying recruitment fees and other related costs for their jobs overseas. Migrant workers become more vulnerable to trafficking and forced labour when they are trapped in situations of debt bondage. Recruitment fees demanded up front from migrant workers are a key driver of debt bondage, especially when migrant workers must take out high-interest loans to pay them, and receive salaries for less than what was promised to them by their recruitment agents. Amnesty International calls for states to enshrine provisions in law that prevent migrant workers from paying any fees associated with their recruitment. These laws should have effective and proportionate sanctions in place to punish any recruiter/recruitment agency along the recruitment chain who charges workers fees for their recruitment.
- Ensure that migrant workers who are victims of recruitment abuse or serious labour abuses have access to justice and effective remedies. Predatory business behavior and cross-border corruption in the labour recruitment sector is rarely punished. States must improve and expand claims processes, making justice mechanisms more accessible, transparent and accountable to migrants seeking redress for labour rights and recruitment abuse.
- Enhance business transparency and accountability for recruitment and labour rights abuse. Under the U.N. Guiding Principles on Business and Human Rights, companies have a responsibility to respect human rights. This requires businesses to avoid infringing on the human rights of others and address any adverse human rights impacts of their business activities. Businesses meet that responsibility by undertaking due diligence to identify and address human rights risks in their operations and supply chains. If a company causes or contributes to a human rights abuse, they must provide for or cooperate in its remediation. These international standards on business and human rights apply to both multinational and national companies.

Even when multinational companies are not the ones directly recruiting migrant workers, they still have a responsibility to assess and address the risk that they are causing or contributing to human rights abuses through their operations or supply chain business relationships. To avoid causing, contributing or otherwise being linked to serious recruitment and labour abuses, multinational companies must carry out human rights due diligence throughout their operations and supply chains (including in relation to their suppliers and subcontractors that



employ migrant workers) to check for and respond to the risk of such workers paying high recruitment fees and being trafficked or otherwise exploited. Companies must then report publicly on the steps they have taken to meet their responsibility to respect the human rights of migrant workers in their operations or supply chains.

States should therefore institute the legal and policy reforms necessary to require companies domiciled or headquartered in the country to carry out adequate human rights due diligence throughout their global operations, including their supply chains. Companies should be required to report publicly on their human rights due diligence policies and practices. States should also have adequate resources and systems in place to verify or monitor company claims related to the protection of migrant and other workers in their business operations or supply chains. This includes holding companies accountable for any false or misleading claims about how they have assessed and addressed the risks that they are causing or contributing to through their operations or business relationships.

## **6. Ensure that safe and regular pathways respect, promote and realise the human and labour rights of migrant workers, in line with international law, and deliver benefits to migrants**

States should end labour migration policies that increase migrant workers' risk of suffering labour exploitation and other abuses at the hand of private actors such as recruitment agencies and employers.<sup>8</sup> These include:

- Labour migration policies that give the employer control over the migrant worker's residence. In particular:
  - Policies that grant the employer the exclusive responsibility to complete the administrative procedures to issue migrant workers with visas and work permits, which provide the employer with the power to arbitrarily deprive migrant workers of a regular migration status, thereby reducing their ability to access assistance by the authorities in case of labour exploitation;
  - Policies that grant the employer the power to provide migrant workers with the necessary documents to obtain residency, as this power can easily become a tool to intimidate or threaten them, undermining their ability to negotiate better wages and working conditions.
- Labour migration policies that tie migrant workers to a specific employer. This is the case, for example, of:
  - Visas or work permits which require permission by the first employer for the migrant

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<sup>8</sup> For more detail see: Amnesty International, *Abusive Labour Migration Policies: Submission to the UN Committee on Migrant Workers' Day of General Discussion on Workplace Exploitation and Workplace Protection*, 2 April 2014, Index number: IOR 42/002/2014.

worker to change jobs;

- Visas or work permits immediately or rapidly expiring when a migrant worker leaves a job or is fired.

During the GCM preparatory process, some states and other stakeholders have suggested developing more agreements for temporary and circular migration. These recommendations have been made in the context of expanding safe and legal migration routes, and have been proposed by states as a means of reducing irregular migration, trafficking and smuggling. While recognising the need for more regular migration opportunities, Amnesty International is concerned with these proposals and recommendations by states.

Amnesty International's view is that existing modalities of temporary and circular migration pose significant human rights risks for migrants and rarely fulfil the above-mentioned aim of reducing severe forms of migrant abuse and exploitation. Circular migration has traditionally been built upon the objective of bringing in disposable labour to service labour market gaps, with limited obligations on states and foreign employers to look after the protection and well-being of workers on short term contracts.

Circular and temporary migration programmes often foster an environment conducive to human and labour rights abuse because workers are dependent on their employers to nominate them for re-migration and employment after their temporary work contracts have been terminated. Under these circumstances, workers may face serious restrictions in fully exercising their human and labour rights. The flexible hiring and firing power of employers leads to disincentives for migrants to report poor and exploitative work conditions, such as delayed and unpaid wages, or to participate in collective bargaining mechanisms for better wages and working conditions. Circular migration schemes, furthermore, rarely offer migrants freedom to select their jobs; change employers; partake in access to free, locally-available public services; bring families with them; or return home according to their desired timeframe. The long-term benefits of these programmes for migrants are also questionable given that migrants are traditionally barred from receiving social security benefits in destination countries, nor are these benefits transferred to them in their home countries. This has an impact on the enjoyment of their economic and social rights. Finally, the re-recruitment and migration process itself can expose migrants to exploitation on their journeys back to their countries of work. Migrants can face illegal and extortionate fees and other forms of fraud and recruitment abuse during their recruitment and departure processes. In light of these human rights risks and concerns, Amnesty International respectfully calls upon states to:

- Clearly state the human rights risks of temporary and circular migration programmes in the GCM and ensure that recommendations for temporary and circular migration programmes are not presented as a panacea solution to current migration challenges.
- Require states that implement temporary and circular migration programmes to prevent, address and mitigate their human and labour rights risks, in line with international law, and with due consideration of the actual benefits such programmes will provide to migrants. This includes:
  - Removing requirements that effectively prevent migrant workers from changing their

employers.

- Removing requirements that prevent migrant workers from leaving the country without permission of their foreign employers.
- Having adequate resources to monitor workplaces and thoroughly investigate cases of abuse and exploitation.
- Having robust labour and anti-trafficking laws that are in line with international law.
- Prohibiting employers from retaining workers' passports and punishing those who violate this provision.
- Providing migrant workers with access to justice and effective remedies for human and labour rights abuses, allowing them to hold employers accountable.
- Protecting workers' right to collective bargaining.
- Addressing current barriers to migrant worker participation in social security systems and accessing locally-available public services at no extra cost.
- Requiring foreign employers to abide by ethical recruitment principles that adhere to international standards.
- Require states to ratify essential international instruments related to the protection of migrant workers, and incorporate their provisions into domestic law, and implement them in law, policy and practice.