

## Rights-based Governance for Migrant's Rights



Global Alliance Against Traffic in Women

Global Compact for safe, orderly and regular migration: Thematic consultation on international cooperation and governance of migration in all its dimensions, including at borders, on transit, entry, return, readmission, integration and reintegration

19 and 20 June 2017, Geneva

Position paper by the Global Alliance Against Traffic in Women (GAATW)

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### 1. GOVERNANCE AND INTERNATIONAL COOPERATION

The Global Compact should:

- **Ensure a human rights-based and gender-responsive approach to migration governance.**
- **Call on states to ratify and implement all relevant international instruments to respect, protect and fulfil the human rights of migrants, regardless of their migratory status.**

In the first thematic consultation for the Global Compact for Migration, most states affirmed the human rights of migrants. To realise this, the centring of rights must extend to the governance of migration. This should engage the human rights agencies and mechanisms of the UN and the ILO, given the importance of labour migration.<sup>1</sup> To ensure transparency and accountability and the meaningful access and participation of civil society, governance of migration needs to be located within the UN, implemented by and monitored within bodies with normative and rights-based mandates.

The existing international legal framework, comprising international human rights law, the refugee regime, international labour standards, and transnational criminal law (on smuggling of migrants and trafficking in persons), provides a strong framework for policy-making on and governance of migration. The Global Compact should call on states to ratify these standards where they have not already done so, and remove any reservations. However, this alone will not be sufficient. What is lacking is the application of this rights-based body of international laws and standards. The Global Compact needs to provide guidance to states on how to implement these existing obligations without discrimination, for all migrants. This means moving away from the standardised recommendations that often treat migrants as a homogenous group and being responsive to the realities of how multiple and intersecting discriminations change individual's experiences of migration. It is an opportunity to recognise the agency of women in migration, promote their autonomy and leadership and stop addressing migrant women primarily through a lens of victimhood.<sup>2</sup>

To improve accountability, there needs to be a monitoring process for states to share their progress regularly, in addition to the periodic reporting under the different treaty body monitoring mechanisms. The work of the international human rights treaty bodies already applies to migrants and some have specifically considered implementation of human rights standards in the context of migration: these can be the basis on which the Global Compact should build. The Global Compact should strengthen the role on migration of the rights-based institutions of the United Nations and cooperation between them.<sup>3</sup>

The Global Compact should also address the use of bilateral agreements, such as those on migrant workers, and ensure they are not used to circumvent international human rights obligations. Similarly, to ensure good governance of migration, trade agreements that include migration governance mechanisms must not erode human rights protections and engender a precariousness that leaves migrant workers at risk of exploitation and abuse.<sup>4</sup>

States need to domesticate these human rights standards and implement them as gender-responsive, rights-based migration policies, in consultation with migrants, civil society, and national human rights institutions. In order for states to support comprehensive institutional framework for rights-based global migration governance, they need to resist and challenge the populist anti-immigrant discourse and associated political pressure at the national level.<sup>5</sup>

The Global Compact for Migration should support coherence in the governance of migration by ensuring complementarity with the Global Compact on Refugees,<sup>6</sup> acknowledging the high degree of interlinkage between the two issues if they are to address the realities of mixed movements of migrants and refugees that take place in all regions of the world, sometimes at large scale.<sup>7</sup>

## 2. TRANSIT, ENTRY AND AT INTERNATIONAL BORDERS

The Global Compact should:

- **Call on states to review and amend any gender discriminatory restrictions on migration in law, policy or practice that limit opportunities for women to migrate and ensure gender equity and respect for women’s autonomy in relevant policies including those regarding access to visas, residence permits, work permits and other documentation for migration.**
- **Ensure migrants are not criminalised for irregular entry or stay, including if they have used the services of smugglers.**
- **Ensure that measures aimed at addressing migration at international borders – including irregular migration, smuggling of migrants and trafficking in persons – shall not adversely affect the enjoyment of the human rights of all migrants.<sup>8</sup>**
- **Incorporate, and urge states to implement, the *Recommended Principles and Guidelines on Human Rights at International Borders*.<sup>9</sup>**

- **Ensure effective non-discriminatory screening and referral processes at international borders to determine that every migrant’s individual situation and reasons for entry, upholding the right to privacy, and providing appropriate referral for any migrants who may have particular protection needs.**<sup>10</sup>
- **Ensure any data on migrants is collected or stored in line with the right to privacy and data protection laws and standards.**
- **Establish a presumption against immigration detention in law, and until that time ensure all forms of immigration detention follow international human rights law and its procedural safeguards in all cases.**

Although there are thought to be at least 244 million international migrants,<sup>11</sup> they are not all “on the move” at any time – many are living their lives in and contributing to their countries of destination, whether that was their intended destination or turned in to that during their migration. For those individuals who are in transit, there are clear protection gaps and transit migration remains little studied or addressed by migration governance measures.<sup>12</sup> To be effective, the Global Compact needs to address all stages of migration.

Women migrants face particular challenges in securing regular migration and residency documentation due to factors including limited access to travel documents compared to men, and discriminatory residency regulations where women’s documentation is premised on the sponsorship of an employer or spouse.<sup>13</sup> Women often face discrimination in accessing regular channels of migration for example through gendered bans on some migrations, or gendered restrictions in MOUs.<sup>14</sup> Limited regular migration channels and increased border security do not stop migration but they do make it more difficult which often makes it more dangerous and expensive. Far from helping women, these restrictions on women’s mobility violate their rights heighten their risk of being targeted for human rights abuses including trafficking.<sup>15</sup> As gendered social norms mean they often have fewer resources and may have had less access to education than men, women are more likely to migrate in debt, giving them less control over their migration experience, which may mean they face longer and more precarious journeys than those who can pay for better and easier options, and will have limited or no access to assistance or redress for human rights abuses.<sup>16</sup> Women who travel in spite of migration bans often find themselves blamed if they experience any abuses of their human rights rather than locating the blame with the perpetrator(s) of the abuse.<sup>17</sup> Importantly for migration governance, there is some evidence that restrictions on women’s migration can strain diplomatic relations reportedly making bilateral relations and negotiations more difficult.<sup>18</sup>

Many migrants rely on the services of facilitators for assistance with their migrations – for transport, border crossings, housing, work, and in some cases, return. Where in regular migrations individuals use the services of travel agents, migrants in irregular status use the services of smugglers and the clandestine nature of the services can shift the power to the facilitator at the same time as making migrants’ access to the criminal justice system more difficult, opening up opportunities for abuse. However, smuggling of migrants does not in itself constitute a human rights abuse and migrants often

gratefully rely on their assistance.<sup>19</sup> States' efforts to stop smuggling of migrants or prevent entry of migrants in irregular status, including those in large and/or mixed movements, has led to dangerous interception methods that violate migrants' rights and can result in injury or death.<sup>20</sup> Delays in transit can increase risks of human rights violations including aggravated smuggling and trafficking in persons.

Whilst states have the sovereign right to control their borders, irregular entry or stay are not crimes, per se. As border crossing, management of residence and work permits are administrative issues, migrants who enter a country through irregular channels or move into irregular status since entry should not be criminalised.<sup>21</sup> This includes migrants who have used the service of facilitators.<sup>22</sup> Criminalisation of migration can heighten migrants' risk of being targeted for human rights abuses including trafficking in persons and limit opportunities to seeking assistance.

Good border management, implemented in accordance with states' obligations under the international legal framework, is a critical component of meeting states' commitments to facilitate migration.<sup>23</sup> States often position policy choices on mobility and security as being in conflict, prioritising a securitisation agenda over human rights obligations, when in fact respecting the human rights of all migrants regardless of their nationality, migration status or other circumstances, facilitates effective border governance.<sup>24</sup> Only a rights-based approach will achieve the aspiration of this process – to facilitate safe, orderly and regular migration. Such measures as restricting rights, militarising borders, limiting regular channels of migration, implementing migration agreements that discriminate based on factors such as gender and age, do not stop migration but serve to make it more dangerous, pushing migrants into taking riskier routes and leading to more violations of migrants' human rights, including of migrants in regular situations.<sup>25</sup> States are entitled to exercise jurisdiction at their international borders, and border agents face a complex reality of migrations in their many forms and migrants with their diverse experiences and motivations, but state actors must act in light of their human rights obligations.<sup>26</sup> Border governance should facilitate border crossings, including by establishing landing points for safe disembarkation, and giving primacy to humanitarian assistance: arbitrary expulsions or push-backs constitute a violation of migrants' rights. Increasingly, the externalisation of international border controls, the transfer of border management to third countries, means that migrants are being intercepted or prevented from moving even before they have left their country of origin or transit.<sup>27</sup> This can result in abuses of migrants' rights and undermine the right to asylum and the international protection of refugees and of trafficked persons.

There exists authoritative human rights guidance for the realities at international borders for migrants and border staff.<sup>28</sup> These set out some of the steps to establish rights-based processes in border control, law enforcement and other state objectives, including the right to an individual examination, the right to a judicial and effective remedy, and the right to appeal.

Data, including the collection and storage of sensitive information, is central to administrative procedures at international border for the deciding on entry and stay, determining applications for particular visa categories, and assessing protection needs. As such, states must ensure migrants' right to privacy and adhere to data protection laws and standards.<sup>29</sup>

States are obligated to ensure that trafficked persons are identified and referred for assistance that is not contingent on any compliance with law enforcement officials.<sup>30</sup> This means ensuring there are adequate and appropriate guidelines, procedures, and trained staff, to enable the rapid and accurate identification of trafficked persons and referral to appropriate services and support.<sup>31</sup>

Recognising that crossing borders without authorisation should be considered an administrative rather than a criminal offence, the Global Compact provides states with the opportunity to establish a presumption against immigration detention in law.<sup>32</sup> While states work progressively ending such detentions,<sup>33</sup> all forms of immigration detention should be limited, never arbitrary or mandatory, and following international human rights law and its procedural safeguards in all cases. Detention conditions guarantee due respect for the dignity of the person by ensuring adherence to the UN Standard Minimum Rules on the Treatment of Prisoners and all other relevant international standards.<sup>34</sup> Trafficked persons should not, in any circumstances, be held in immigration detention or other forms of custody.<sup>35</sup>

### 3. RETURNS AND RE/INTEGRATION

The Global Compact should:

- **Ensure returns are carried with migrants' voluntary consent and in full respect for the human rights of migrants and in accordance with international law and its procedural safeguards.**
- **Uphold the principle of non-refoulement.**
- **Commit to ensuring the safe reception, as well as economic and social re/integration of returnees to enable full enjoyment of their human rights.**

The right to return is enshrined in international law and provides migrants with the right to return to and re-enter their country of origin.<sup>36</sup> States also have the right to remove migrants from its territory if that is lawful: carried out in accordance with international human rights and refugee law. That means that returns should be informed, with migrants fully and meaningfully informed of their choices, voluntary, with migrants giving their consent, and carried out only after each migrant has had an individual assessment of their case and the situation to which they would be returned, in accordance with due process guarantees. This right is too often ignored in fast-track migration processes. Voluntary returns must be free of any actual or implied coercive measures and conditions. This includes return schemes which include coercive measures such as the conditionality of availability of Assisted Voluntary Return and Reintegration (AVRR) for those who appeal rejected asylum status.<sup>37</sup> Returns should not prejudice future migrations.<sup>38</sup> In conducting returns and in all engagement with migrants at international borders, states are obligated to uphold the principle of non-refoulement, ensuring that no migrant is returned to a place where there are substantial grounds to believe that the individual would be at risk of torture or cruel, inhuman, or degrading treatment or punishment, or other serious human rights violations or irreparable harm.<sup>39</sup> The deportation of migrants into unstable and hostile

environments puts their human rights at risk and may further increase instability in those contexts.<sup>40</sup> Human rights monitoring of returns – pre-removal, during and after returns when migrants have arrived back in their homes and communities – is essential to ensure that returns are voluntary and in line with international standards.

Identification of trafficked persons is essential in order to enable return processes in line with standards outlined in international law.<sup>41</sup> Research shows that in some contexts states are returning trafficked persons, given that migrants are not aware their experience fits the definition of trafficking and they are entitled to assistance, a clear breach of the legal obligations of states to the trafficked person.<sup>42</sup> Any decision to return a trafficked person should be preceded by a risk assessment and with due regard for their safety and that of their families.<sup>43</sup> Trafficked persons who wish to seek asylum should be allowed access to asylum procedure for an examination of their claim.<sup>44</sup>

Return is a concept built-in to temporary and circular migration schemes. However, the returns involved in circular migration are often unsustainable, and leave migrants no better off, and sometimes worse off on return than when they started, with no option but to re-migrate, often in risky, temporary re-migration schemes to provide for their families or repay a debt incurred in the initial migration. Migrants' return to their countries of origin or to third countries can be fraught with difficulties. Migrants face difficulties in readapting to the local context, such as poverty, discrimination, and marginalization, or retaliation from brokers in instances of disagreements over contracts. The Global Compact should support the conditions necessary for sustainable returns for all migrants, meaning that their human rights are respected, protected and fulfilled and they return to liveable areas free of repeated extreme weather or and slow onset events. Models of migration should be judged by their ability to support the enjoyment of human rights of migrants before, during and after their migration. The Global Compact should commit to ensuring that the rights of migrant workers are protected after returns, by, among other measures, promoting the portability of social security, cross-border recognition of skills and education qualifications, and the right to remedy for human and labour rights abuses suffered in the migration process or countries of destination.<sup>45</sup>

Rights-based return is an essential component of a successful reintegration process. 'Reintegration' often implies a return to the person's community/country of origin, which may not always be the best solution and might, in fact, work against their social inclusion in the long term. It also implies that the person was integrated into society prior to their migration, which may not have been the case – a factor that may have contributed to their decision to migrate. It is likely that the socio-economic factors, which caused the migration in the first place, such as poverty and unemployment, violence in the family or conflict, have not been resolved. Assistance provided to migrants should be evidence-based and respond to migrants' needs and priorities, rather than be based on gendered stereotypes or the interests of the service providers or donors. Where a migrant has experienced serious human rights abuses such as trafficking in persons, they need individualised, adequately resourced, long-term support to enable their successful social and economic reintegration upon return.<sup>46</sup>

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<sup>1</sup> ILO, Resolution concerning fair and effective labour migration governance, 106th Session of the International Labour Conference (2017)

<sup>2</sup> See General Assembly, Violence against women migrant workers: Report of the Secretary-General, UN Doc. A/66/212, 29 July 2011, para.5; UN Women, *Recommendations for Addressing Women's Human Rights in the Global Compact for Safe, Orderly and Regular Migration*, Outcome of expert meeting in Geneva, November 2016, recommended commitment 1.3.

<sup>3</sup> See: OHCHR, *Improving Human Rights-Based Governance of International Migration*, 2013; ILO, *Addressing governance challenges in a changing labour migration landscape*, 2017, Reference: ILC.106/IVtest data; ILO, Resolution concerning fair and effective labour migration governance, 106th Session of the International Labour Conference (2017)

<sup>4</sup> Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on the impact of bilateral and multilateral trade agreements on the human rights of migrants, A/HRC/32/40, 4 May 2016

<sup>5</sup> General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/68/283, 7 August 2013, para.87

<sup>6</sup> See <http://refugeesmigrants.un.org/refugees-compact>

<sup>7</sup> General Assembly, In Safety and Dignity: Addressing Large Movements of Refugees and Migrants, Report of the Secretary General, A/70/59, 21 April 2016; General Assembly, High-Level Meeting on Addressing Large Movements of Migrants and Refugees, 19 September 2016, <http://refugeesmigrants.un.org/summit>

<sup>8</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP.1, 23 July 2014, II.A.5.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid., Guideline 6, see also Guideline 7.6; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 2.

<sup>11</sup> As of 2015. General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/70/L.1, 13 September 2016, para.3

<sup>12</sup> There is no agreed definition of “transit migration”; the term is commonly understood as the temporary stay of migrants in one or more countries, with the objective of reaching a further and final country of destination. The other main conceptual challenge is the temporality of transit migration: what is the length of a period of transit migration? How long does a migrant stay in a transit country before it becomes their country of destination? Does that depend on why they stay? See, OHCHR, *Situation of migrants in transit*, A/HRC/31/35, 2016, para.5

<sup>13</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.24(a),(e), 26(a),(f).

<sup>14</sup> Global Alliance Against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, GAATW 2007, in particular the chapters on Nepal and Nigeria; ILO, *No easy exit: Migration bans affecting women from Nepal*, ILO, Geneva, 2015; R. Napier-Moore; K. Sheill, *High rise, low pay: experiences of migrant women in the Thai construction sector*, International Labour Organization, Bangkok, 2016, p.20; R. Napier-Moore, *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries*, International Labour Organization and UN Women, Bangkok, 2017, International Labour Organization, Bangkok, 2017; Committee on the Elimination of Discrimination against Women, General recommendation No.26 on women migrant workers, paras.5, 10, 24(a), 26(a); CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, para.40; ILO Committee of Experts, *Promoting fair migration: General Survey concerning the migrant workers instruments*, ILC.105/III(1B), 2016, para.543.

<sup>15</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, para.40; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, para.123/p.27.

<sup>16</sup> Committee on the Elimination of Discrimination against Women, General recommendation No.26 on women migrant workers, para.10; OHCHR, *Situation of migrants in transit*, A/HRC/31/35, 2016, para.15; ILO, *No easy exit: Migration bans affecting women from Nepal*, ILO, Geneva, 2015

<sup>17</sup> Migrants in transit should have the same rights in national law as other victims of crime: UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34, annex.

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<sup>18</sup> R. Napier-Moore, *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries*, International Labour Organization and UN Women, Bangkok, 2017

<sup>19</sup> OHCHR, *Situation of migrants in transit*, para.56; Global Alliance Against Traffic in Women (GAATW), *Smuggling and Trafficking: Rights and intersections*, GAATW Working Papers Series, 2011

<sup>20</sup> See for example, Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on trafficking in persons, especially women and children, Joint letter concerning the allegation of "push back" policies of irregular migrants, including asylum seekers, from Myanmar and Bangladesh in the Bay of Bengal, 21 May 2015, available at [https://spdb.ohchr.org/hrdb/30th/public\\_-\\_UA\\_Malaysia\\_21.05.15\\_\(2.2015\).pdf](https://spdb.ohchr.org/hrdb/30th/public_-_UA_Malaysia_21.05.15_(2.2015).pdf)

<sup>21</sup> Commission on Human Rights, Report of the Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, para. 53; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.24. See also, Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.58; Committee against Torture, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, para.17(a); CMW, Concluding observations on the combined second and third periodic reports of Senegal, CMW/C/SEN/CO/2-3, 20 May 2016, para.27(a); Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras. 13, 14; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 2, para.4; OHCHR, *Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms*, A/HRC/34/CRP.1, 23 February 2017, paras.3 (under Principle 1); Council of Europe Commissioner for Human Rights, *Issue Paper: Criminalisation of Migrants in Europe: The Human Rights Implications*, 10 February 2010, <https://wcd.coe.int/ViewDoc.jsp?id=1579605>; European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, Strasbourg, CRI(2016)16, Recommendation 8, available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N16/REC-16-2016-016-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf); European Union Agency for Fundamental Rights, *Criminalisation of migrants in an irregular situation and of persons engaging with them*, 2014, available at [http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants_en.pdf).

<sup>22</sup> Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, Article 5; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 2, para.5; OHCHR, *Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms*, A/HRC/34/CRP.1, 23 February 2017, para.28 (under Principle 5).

<sup>23</sup> For example, General Assembly, Declaration of the High-level Dialogue on International Migration and Development (adopted on 3 October 2013), in A/RES/68/4, 21 January 2014, para.18; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 10.7; General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/70/L.1, 13 September 2016, paras.16, 41, 54, 57, Annex II 8(e).

<sup>24</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP.1, 23 July 2014, para.4

<sup>25</sup> Office of the High Commissioner for Human Rights (OHCHR), in cooperation with the Global Alliance Against Traffic in Women (GAATW), *Expert consultation of Human Rights at International Borders: Exploring Gaps in Policy and Practice – Background Paper*, 22–23 March 2012; Oberoi, Pia and Taylor-Nicholson, Eleanor, *The Enemy at the Gates: International Borders, Migration and Human Rights*, *Laws*, 2013, 2, 169–186; doi:10.3390/laws2030169

<sup>26</sup> For example, Article 11.1 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime calls on states to take action, including strengthening border controls, to prevent and detect trafficking in persons, *without prejudice to international commitments in relation to the free movement of people*.

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<sup>27</sup> Office of the High Commissioner for Human Rights (OHCHR), in cooperation with the Global Alliance Against Traffic in Women (GAATW), *Expert consultation of Human Rights at International Borders: Exploring Gaps in Policy and Practice* – Background Paper, 22–23 March 2012

<sup>28</sup> *Recommended Principles and Guidelines on Human Rights at International Borders* op.cit. See also the work of the international human rights treaty bodies – for example, in its General Comment No. 15, the Human Rights Committee makes clear that a foreigner may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise (para.5).

<sup>29</sup> *Recommended Principles and Guidelines on Human Rights at International Borders* op.cit. Guidelines 3.16, 4.12, 6.2. See discussion in Office of the High Commissioner for Human Rights (OHCHR), in cooperation with the Global Alliance Against Traffic in Women (GAATW), *Expert consultation of Human Rights at International Borders: Exploring Gaps in Policy and Practice* – Background Paper, 22–23 March 2012.

<sup>30</sup> The obligation to identify victims of trafficking is implied in the UN Trafficking in Persons Protocol and all legal instruments that provide for victim protection and support. See *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, op.cit., Guidelines 2, 6.1; GAATW, *More ‘Trafficking’, Less ‘Trafficked’: Trafficking for Exploitation Outside the Sex Sector in Europe*, GAATW Working Paper Series 2011, available at [http://www.gaatw.org/publications/MoreTrafficking\\_LessTrafficked\\_GAATW2011.01.31.12.pdf](http://www.gaatw.org/publications/MoreTrafficking_LessTrafficked_GAATW2011.01.31.12.pdf)

<sup>31</sup> *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, op.cit., Guidelines 2.1, 2.2, 6.

<sup>32</sup> See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.24; CMW, Concluding observations on the combined second and third periodic reports of Senegal, CMW/C/SEN/CO/2-3, 20 May 2016, para.27(a); Committee against Torture, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, paras.17(a); CAT, Concluding observations on the fifth periodic report of CAT/C/AUS/CO/4-5, 23 December 2014, para.16; Commission on Human Rights, Report of the Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, para. 53; Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.58.

<sup>33</sup> On this, see the work of the UN Working Group on Arbitrary Detention, including: Human Rights Council, Report of the Working Group on Arbitrary Detention, United Nations Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, A/HRC/30/37, 6 July 2015, Principle 21, paras. 45, 46, and WGAD reports A/HRC/7/4, 10 January 2008, para.53, and A/HRC/13/30, 18 January 2010, para.58.

<sup>34</sup> UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 8 January 2016.

<sup>35</sup> *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, op.cit., Guideline 2.6

<sup>36</sup> Including, Universal Declaration of Human Rights, Article 13(2); International Covenant on Civil and Political Rights, Articles 12(4), 13; Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime, Article 18(5); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Article 8(1,2). International law also prohibits collective expulsion, for example International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 22(1,2).

<sup>37</sup> Norwegian Refugee Council and others, *15 NGOs decry new policy limiting asylum seekers in exercising their right to appeal*, 10 May 2017, available at <https://www.nrc.no/news/2017/may/statement/>

<sup>38</sup> Frances Webber, *The politics of voluntary returns*, *Institute of Race Relations* (UK), 11 November 2010

<sup>39</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3. See also International Covenant on Civil and Political Rights, Article 7; International Convention for the Protection of All Persons from Enforced Disappearance, Article 16(1); Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), para.9; Human Rights Committee, General Comment No 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/ Add.13, 26 May 2004, para.12; Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6 paras.27, 28, 58, 84; Committee on the Protection of the Rights of All Migrant Workers and

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Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.50; Committee on the Elimination of Discrimination against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, paras.17-23; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, paras.33, 70(r); European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3; European Convention on Extradition, Article 3(2); Inter-American Convention on Extradition, Article 4(5).

<sup>40</sup> OHCHR, End of Mission Statement by the United Nations Special Rapporteur on the human rights of internally displaced persons, Mr. Chaloka Beyani, on his visit to the Islamic Republic of Afghanistan, 20 October 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20712&LangID=E#sthash.f1Mq2DIg.dpu f>

<sup>41</sup> Protocol to Prevent, Suppress and Punish, Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 8

<sup>42</sup> See for example, Amnesty International, *The human cost of 'crushing' the market: Criminalization of sex work in Norway*, AI Index: EUR/36/4034/2016, at p.12, reporting a representative of Oslo police district stating that: "We deport trafficking victims. Many of them don't know that they are victims, but they are according to the law."

<sup>43</sup> Return should only happen after a trafficked person has been allowed an adequate reflection period, accompanied by appropriate support. Trafficked persons should be issued a temporary residence permit in the destination country to facilitate their rights to access to justice, obtain redress including compensation and to facilitate access to social, medical and psychological care. See, Protocol to Prevent, Suppress and Punish, Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 8.2, and OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1, 20 May 2002, Principle 11, Guidelines 4(6), 6(7).

<sup>44</sup> UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol*, 2009, p.28 (implementation measures), p.28, available at [https://www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](https://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf); OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1, 20 May 2002, Guideline 1.6, and OHCHR, Human Rights and Human Trafficking, [http://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS36_en.pdf): "all persons, including both smuggled migrants and trafficked persons, should be given full opportunity (including through the provision of adequate information) to make a claim for asylum or to present any other justification for remaining in the country of destination on that basis."

<sup>45</sup> On social security, see: ILO, Social Protection Floors Recommendation, 2012 (No. 202), and ILO, *Multilateral Framework on Labour Migration, Non-binding principles and guidelines for a rights-based approach to labour migration*, Guideline 9.9, April 2006, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_178672.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178672.pdf)

<sup>46</sup> R. Surtees, *After Trafficking: Experiences and Challenges in the (Re)integration of Trafficked Persons in the Greater Mekong Sub-region*. Bangkok: UNIAP/NEXUS Institute, 2013.