

GANHRI  
UNOG - Palais des Nations - Office B423-B425  
1211 Genève, Switzerland  
Tel + 41 22 917 16 74  
email: [info@ganhri.org](mailto:info@ganhri.org)  
[www.ganhri.org](http://www.ganhri.org)

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## INPUT

### GANHRI – Global Alliance of National Human Rights Institutions

*Input to the UN Secretary-General's report on the global compact for safe, orderly and regular migration*

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#### A. OVERARCHING ASPECTS

1. A **human rights based approach** to migration requires that both the objectives of migration **policies** as well as the **process** in which these are being implemented comply with human rights. This means in practice that migration policies at the national and international levels must strive to make human rights a reality for all migrants irrespective of their status. And second, states need to implement these obligations in processes which **are participatory, inclusive, and transparent** and promote the **empowerment** of migrant voices as well as **accountability** to citizens as well as migrants. Human rights obligations of states also apply **extraterritorially**: states have to consider and assess the human rights impact of their policies beyond their borders.

2. **National Human Rights Institutions (NHRIs) are contributing to the realisation of human rights for migrants in a variety of ways and depending on their national context**: They receive complaints, make field visits to migrant detention centres along trafficking routes, engage in capacity-building with state officials, assess laws, regulations and treaties from a human rights perspective and inform and educate about migrants' rights. Just as any human rights defenders, NHRIs depend on an enabling environment which is free from intimidation for themselves and other stakeholders. <sup>1</sup> The global compact for safe, orderly and regular migration (GCM) should require state parties to ensure full independence and sufficient resourcing of NHRIs in recognition and support of their mandate and continued valuable contribution regarding the protection and promotion of the rights of migrants generally and trafficked persons in particular. Taking into account the unique bridging role that NHRIs play with regard to the implementation of international human rights obligations at the national level, the GCM should include NHRIs in its reporting and monitoring process.

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<sup>1</sup> GANHRI, "Protecting and enlarging the space for public debates and participation of all civil society actors for the implementation of the SDGs and human rights", July 2017

- The **National Human Rights Commissions of Kenya, Nigeria and South Africa** have been or are members of bodies which are tasked by the government with the development and/or implementation of policies and practices regarding trafficking in persons.

- In September 2013, the **National Human Rights Council (CNDH) of Morocco** published a report with a set of recommendations for a new migration policy in Morocco. His Majesty the King immediately endorsed the recommendations of the report and asked the government to establish an immigration policy following a holistic human rights-based approach. The policy mainly featured an immediate one-year campaign to document illegal migrants, opening an office for asylum seekers, developing a national integration policy, and drafting three bills on the fight against trafficking in persons, asylum, and the immigration policy.

3. The consultations for the future global compact for safe, orderly and regular migration take place within a close-knit network of **existing international obligations** related to all aspects of migration, which states have committed to implement. This includes the **conventions on refugees and on stateless persons, international core human rights treaties, often complemented by regional human rights conventions, and ILO conventions**. Their ratification and implementation should be furthered. The global compact for safe, orderly and regular migration should **also be coherent** with the **Agenda 2030's** migration-related SDGs as well as the **UN Guiding Principles on Business and Human Rights** in relevant areas such as labour rights and supply chain management.

- The **National Human Rights Institution of Malaysia (SUHAKAM)** has encouraged the ratification of the *Convention on Migrant Workers* and core ILO conventions through various outreach activities with the Government, as well as e.g. in recommendations made in its annual reports, special reports related to migrant workers and press statements.

**4. Non-discrimination is a fundamental structural principle of human rights.** To respect, protect and fulfil the human right to non-discrimination, states are inter alia required not to discriminate between migrants and citizens regarding access to basic services such as housing, education and health as well as to access to justice. It also requires them to work **towards acceptance and integration of migrants** in society and **combat xenophobia, tendencies of hate speech and spreading of prejudices**.

- In 2009, the **Jordan National Centre for Human Rights** entered into Memoranda of Understanding with the **National Human Rights Commission of Indonesia** and with the **Commission on Human Rights of the Philippines**, both countries of origin of many migrant workers in Jordan, with the objective of enhancing respect for human rights of migrant workers. Some of the strategies outlined in the agreements include disseminating information on labour and migrant workers' rights, exchanging studies, education and information materials produced by both NHRIs, as well sharing expertise in the development of education programmes, and engaging the services and cooperation of all relevant foreign affairs ministries/departments and embassies, where needed, to protect and promote the rights of migrants and domestic workers.

5. Migration is a phenomenon as old as humanity itself. Most countries are – albeit each to different degrees – countries of origin, transit and destination of migration. The current international legal regime provides a right

to leave a country, but gives states the authority to arbitrarily decide who may enter and stay or not stay on their territory. **With the global compact for safe, orderly and regular migration, states should strive to enhance the free movement of persons to make the possibility of migration a reality in practice as far as possible.** At the same time, **states have an obligation to readmit their citizens in case of denial of entry, stay or residence status in a third country with assurance that their rights are protected in the process of return.** Underlying factors driving forced migration such as crises, conflict, environmental degradation, and poverty are global in nature. They need to be addressed through improved global governance.

## **B. Particular contents of the global compact for safe, orderly and regular migration**

6. At the centre of many human rights violations related to migration is the distinction between regular and irregular migration: lack of accessible legal migration pathways or information about it, especially for low-skilled labour drives people to smuggling and trafficking in persons. Not having a legal residence status prevents migrants from seeking legal remedy in cases of rights violation, getting adequate health services, housing and education and it prevents them from registering their children. The global compact should address **smuggling and trafficking of persons** inter alia through **complementing the existing international framework on trafficking of persons with its focus on criminal prosecution by establishing a human rights-based approach focusing on the rights of victims.**

*- In late 2016, Morocco launched a second campaign to document migrants, ongoing till the end of December 2017. According to the last available updates, it has been able to regularize more than 23,000 individuals so far. Applications are first handled by the local commissions, following criteria set by the government. The **National Human Rights Council of Morocco (CNDH)** named two civil society representatives to sit as members in these commissions. Applications rejected at the local level are handled again by a national appeal commission, chaired by the **National Human Rights Council**. The appeal commission included members representing several ministries and also members from Moroccan civil society and migrants as well. The commission has been more flexible on some of the government-defined criteria, in order to document groups like women, children, etc.*

**a) Providing mobility solutions also for low-skilled labour in order to reduce underground labour markets, and make sure that migrant workers' rights are secured,**

*- In 2007, the Government of New Zealand introduced a scheme to address seasonal labour demands and to provide viable employment opportunities for Pacific Islander migrants. However, following consultations with employers, migrant workers and other stakeholders, the **Human Rights Commission of New Zealand** identified a number of ongoing problems, including "accommodation, particularly costs and overcrowding; lack of awareness and understanding of rights and obligations, fears of adverse consequences of complaining; and unfavourable reactions from the host community". The Commission has developed recommendations, which it presented to the Department of Labour in 2011, that aim to support the Government and employers to meet their human rights obligations with regard to migrant workers.*

b) Providing legal and policy **frameworks that prevent migrants from becoming victims of smuggling, human trafficking and modern slavery**, such as: simplifying visa procedures, strengthening regulation of labour recruitment, and allowing for change of employer or employment,

*- In 2011, the **National Human Rights Committee of Qatar** concluded a national research examining the legal and policy framework and conditions of unskilled labourers in the construction sector. It also examined the benefits and disadvantages of the sponsorship (kafala) system used in Qatar and other countries in the Middle East. The study found that the wages and living conditions of workers in the construction sector were far from fair and adequate, with the Committee using its findings to recommend that the Government "harmonize Labor Law and the sponsorship system, by reducing some of the powers granted to the sponsor". It also recommended that the Government consider substituting the current sponsorship system with an alternative version that incorporates the views of migrant workers and employers. The Committee made a number of other broad recommendations, including to*

- raise the wages of expatriate workers, in view of the price levels in the State and the nature and difficulty of work, as well as the risks of injury at the workplace*
- improve safety conditions in the workplace*
- require employers to provide meals, water, toilets and shady rest areas for workers*
- inspect companies and ensure they provide adequate housing for workers, as well as medical services*
- raise the awareness of workers regarding their rights and labour laws, as well as organisations they can approach when the need arises.*

c) Obliging states to **appropriately identify victims of human trafficking, forced labour and modern-day slavery**, to guarantee their rights, the identification mechanisms should enable victims to come forward without fear and claim their rights and provide them with medical and psychosocial support. This requires state institutions such as the police and the prosecutor's office as well as non-state actors specialised in trafficking are engaged in confirmation of the status of victim,

*- In 2016, the **Netherlands Institute for Human Rights** drafted "Human rights guidelines for practitioners on Combatting Human Trafficking", a comprehensive document identifying and addressing gaps in the protection of victims of trafficking (including detection, protection, assistance and support as well as remedies and compensation). These guidelines also stress the importance of a coherent and human rights based approach in the transposition and implementation of various relevant regional legally binding instruments (European Union Directives). The members of the European Network of National Human Rights Institutions acknowledged sharing the same concerns and endorsed this document.*

d) Strengthening the **capacities of diplomatic and consular missions** in responding to the rescue and care of victims of human trafficking. Missions like humanitarian aid workers and civil society can be first responders to cases of human trafficking,

e) Detection, interception and prosecution of traffickers, smugglers and traffickers,

f) **The rights of trafficked persons to obtain residence status and assistance, which should not be made conditional upon the initiation of criminal proceedings or their cooperation with law enforcement authorities**, thus ending practical immunity of all those who abuse migrants – in the workplace in particular, and all situations during transit and in countries of destination,

g) The rights of persons subject to all forms of **trafficking to claim compensation for immaterial and/or material damage as well as lost salary.**

*- The **German Institute for Human Rights** has been working to promote the implementation of the right to compensation and remuneration through a legal aid fund, which provided funds for strategic litigation to reconstitute lost salary to trafficked persons which have been coerced into labour exploitation.*

7. When **migrants, who are on irregular status** in the territory of their countries of transit or destination, are returning to their countries of origin, **human rights prohibit “refoulement” as well as mass expulsion. Neither should persons be returned to situations of serious harm deriving from indiscriminate violence caused by armed conflict.**

a) **Repatriation or return migration should be voluntary as much as possible.** Before returning, states must conduct a **prior assessment and monitor the human rights situation** in the country of origin or new destination and assess the cases from the perspectives of the migrants. Responsibilities and procedures in arrangements concluded with third countries need to be clarified and in cases of real harm states must refrain from asking third countries to intercept migrants.

*- The **National Human Rights Commission of Nigeria** has participated in a review of the Memorandum of Understanding on Immigration Returns between Nigeria and the United Kingdom, which helped to mainstream human rights concerns into the MoU. The Commission was also part of a delegation to the UK for the bilateral discussion on the operational framework for the MoU on Transfer of sentenced persons and joint cooperation on the return of Nigerian nationals remaining unlawfully in the UK.*

b) When cooperating with third countries in the context of capacity-building for return and migration management, human rights need to be embedded in any activity.

c) **Those seeking asylum must be provided with the opportunity to do so.** People rescued at sea or at the borders need to be disembarked in or accompanied to safe places and access to international protection at borders needs to be facilitated.

*- **Central American National Human Rights Institutions** worked together in overseeing the passage of Cuban migrants through the sub-region to ensure their safety and the guarantees to their rights, and protect them from falling in trafficking networks.*

*- The **National Human Rights Commission of Niger** has – together with a network of non-governmental organisations – undertaken a field research along the main migrants’ routes and documented abuses of migrants by both state as well as non-state actors, which will inform its political work.*

d) Providing accessible and correct information about working abroad to its own citizens.

*- Nepal’s National Human Rights Action Plan (NHRAP) noted an increasing trend of seeking employment outside the country has been increasing and that often, these workers face unsafe labour conditions. One of the priority goals of the plan was to “help labourers working abroad to achieve and enjoy international labour rights” by addressing the following issues of concern: lack of information and awareness regarding foreign employment and of government mechanisms to control and regularise foreign employment, inadequate monitoring and care of labourers migrating for work, exploitation of labourers working abroad,*

*absence of procedures for supervising migrant labourers to work in the agriculture and industrial sector. The National Human Rights Action Plan states that the **National Human Rights Commission of Nepal** "will play the key role in the independent monitoring of the implementation of the NHRAP".*

8. **The protection of labour rights and the promotion of a safe and secure working environment are enshrined in SDG/target 8.8. Business and private actors** can play a positive role in facilitating migration and integration of migrants. **To enhance the positive role of business actors and prevent harmful business practices such as modern slavery and inhumane labour conditions, states must regulate, monitor and control private businesses effectively, on their territory as well as regarding their activities abroad.** Corresponding obligations, indicators and benchmarks should be set out in the National Action Plans implementing the UN Guiding Principles on Business and Human Rights. **The reduction of the transaction costs of remittances is enshrined in SDG/target 10c. The human right to social security requires states to ensure the portability of social benefits.** Legal, policy and administrative frameworks covering social security need to recognise and protect the cross-national character of migrants.

*- The **Human Rights Commission of South Africa** has been a member of a commission investigating migrant labour and rights violations in South Africa's mining industry.*

*- In 2010, the **Human Rights Commission of New Zealand** became aware of significant claims of labour and human rights abuses involving Indonesian seafarers who were working aboard a Korean-owned vessel before this vessel sank off the coast of New Zealand. It contacted the **National Human Rights Commission of Indonesia (Komnas Ham)** for assistance and advice on the capacity of Komnas Ham to protect those nationals from punishment or retribution by "recruitment/manning agencies" on their return. In November 2011, the Commission also presented a submission to the Ministerial Inquiry into Foreign Charter Vessels in which it strongly supported fair and decent conditions for the crews of foreign charter vessels. The Commission used its submission to promote the use of the Ruggie Principles on business and human rights.*

9. Millions of migrants around the world find themselves in situations of **vulnerability**. While human rights apply to all, **particular attention** needs to be paid to the situation of children, women, LGBTI or older migrants and their specific needs should be addressed. **SDG target 17.18** aims at **enhancing the State's capacity to make available high-quality, timely and reliable data disaggregated** by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts. NHRIs may play an important role, not only by raising awareness on these groups and the need to collect relevant data. NHRIs can provide qualitative data on what is actually behind the statistics, incentivizing more targeted responses from governments to improve the human rights situation of groups in a sustainable manner. This must however not exempt State authorities to develop improved indicators and data collection at national level, including through cooperation with National Human Rights Institutions.

*- According to the **National Human Rights Commission of Korea**, in 2010, legislative and policy restrictions meant that many undocumented migrant children had often been denied access to public and private health care services, e.g. because migrant children are required to prove the current and previous employment status of their parents. As such, the children of undocumented migrant workers are reluctant to access health care services for fear of detection and deportation. In 2011, the Commission recommended that the Ministry of Health and Welfare revise its application procedure to ensure that undocumented*

migrant children are confident to access health services when they need them, e.g. by exempting health care staff from the duty of notification.

- In 2006, the **Belgian Centre for Equal Opportunities and Opposition to Racism** was involved by the Ministry of Interior in the advisory commission consulted on the registration of data regarding a large scale regularisation of undocumented migrants. In this Commission, the Belgian NHRIs had the opportunity to advise the National Statistical Agency on how to design some aspects of the data collection. Based on this data collection, the Centre carried out in cooperation with national academic partners a research project monitoring the socio-economic position of migrants before (while undocumented) and after (once being granted a leave to stay) the regularisation of their administrative status. The fact that a dialogue with statisticians had been possible before the data collection started also ensured that the registered data was useful for monitoring the human rights situation of migrants.

10. **Irregular migration is not a crime**; therefore, it should be dealt with administratively. Disproportionate border measures, including arbitrary detention are not in compliance with international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), and violations by border staff must be investigated impartially. In accordance with international instruments such as the ICCPR and the Convention on the rights of the Child (CRC), **detention should be treated as a last resort and children must never be detained.**

- The **South African Commission** has unlimited access to places where migrants are detained and regularly monitors their condition.

- The **Australian Human Rights Commission** regularly monitors all immigration detention centres in the country. Over the last decade, the Commission's reports have highlighted the serious impact that prolonged and indefinite detention has on the mental health of detainees, particularly those who have experienced torture and trauma. These concerns escalated in 2010–11, with evidence of the deteriorating mental health of many detainees. This included high rates of self-harm, a number of suicides and serious unrest in immigration detention facilities. The Commission has consistently advocated for the use of community-based alternatives, which are "cheaper, more effective and more humane than holding asylum seekers and refugees in closed detention facilities for extended periods." In June 2011, the Australian Government transferred a significant number of families and unaccompanied children from immigration detention facilities to community-based detention. While welcoming the change in policy, the Commission noted that more than 4,500 asylum seekers and refugees were still held in immigration detention facilities across Australia. It continued to recommend that immigration detention be used as a last resort and for the shortest practicable time.

11. **States need to improve urban habitat by making cities and human settlements inclusive, safe and resilient is also a migrant related SDG (SDG/target 11.1).** This requires states to adopt human rights based and forward-looking policies with regard to basic services such as education, health and housing. To make sure that these services are also accessible for migrants, migrants need to be included in their development. In order to prevent a rift between migrants and host communities and promote integration, states need to inform adequately about the positive effects of migration and pay close attention to ensure that both migrants as well as host communities have equal and sufficient access to basic services, especially in situations of economic hardship.

12. State should also provide for the **opportunity for migrants to establish legal identity through a birth certificate (SDG/target 16.9)**.

- The **German Institute for Human Rights** has conducted an awareness-raising campaign for refugees and migrants on how to register their children.

### C. Implementation, follow-up and review

13. At the national level, states must elaborate migration policies in an inclusive and transparent way, which gives voice to migrants and enables accountability. NHRIs should be given the possibility, in accordance with the Paris Principles, to monitor, assess and advise on the design and implementation of these policies. States should report on the implementation of the GCM and its human rights-based obligations in their state reporting within the framework of international human rights treaties.

At the international level, a reporting and monitoring process similar to that of the Agenda 2030 should be installed: it needs to be inclusive, participatory, transparent, efficient and effective. In particular, the GCM should provide Paris Principles compliant NHRIs and their regional and global networks participation rights and an explicit role and space in its reporting and monitoring process.

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