

A Human Rights Based Global Compact for Safe, Orderly and Regular Migration

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Introduction

The issue of international migration requires the urgent attention of the UN human rights system. The scale of human suffering was one of the principal factors leading to the 19 September 2016 Summit on large movements of refugees and migrants, to the commitment of all 193 Member States to protect the human rights of refugees and migrants — pursuant to their international law obligations — and to develop a Global Compact for Safe, Orderly and Regular Migration ([New York Declaration for Refugees and Migrants](#), para. 5 and Annex II, para. 6).

For this commitment to be fully realised, the Global Compact must be grounded in international human rights law. This means that it must be underpinned by—and compliant with—human rights in its adoption process, its content and in its impact on migrants themselves. Ultimately, the Global Compact will not be judged by its support among Member States, but by how well it helps to respect, protect, and fulfil the human rights of migrants.

The history of humanity through the ages demonstrates that migration can be a positive and empowering experience not only for migrants themselves, but for all. Yet, the current political climate of dehumanising migrants and of overt anti-immigrant xenophobia is fuelling a lack of political will to uphold the human rights of people on the move, threatening to weaken the human rights framework and leading to widespread exploitation, violence and abuse of migrants every day.

The Global Compact provides an opportunity to chart a different path forward. But to do so, it must include the experiences and expertise of migrants themselves, as well as of civil society organisations and National Human Rights Institutions (NHRIs) working directly with migrants, and relevant actors from across the UN human rights system. The Global Compact should include a specific chapter or pillar on human rights that is mainstreamed throughout each of the thematic and regional consultations, ultimately ensuring that the Global Compact is rights respecting and consistent with existing international human rights standards.

The Human Rights Council, its Special Procedures and the Human Rights Treaty Bodies should play a critical role in ensuring that the Global Compact is human rights based. As core pillars of the United Nations human rights system, these institutions must be given an active and vocal role in the development of the Global Compact, including by identifying critical violations of human rights in the context of migration, by promoting and clarifying existing human rights standards and obligations of Member States vis-à-vis migration, and by ensuring the participation of migrants as an essential component of the Global Compact process.

The Global Compact must contain adequate implementation and follow up mechanisms, including by relying upon the existing mechanisms of the Human Rights Council, its Special Procedures and Human Rights Treaty Bodies. Rhetoric and lofty words will not save lives or prevent human rights violations and abuses — the time for upholding the human rights of migrants is now.

Acknowledgements

This document was prepared by a group of civil society and non-governmental organizations (NGOs) working together on the human rights of migrants. Full list of group members is shown on the back cover of this document. Cover photo credit: (*UN Photo/Cia Pak*)

Critical Human Rights Issues for the Global Compact

Migrant participation

Ensure the full and active participation of migrants as primary stakeholders, including the participation of civil society organisations and NHRIs working directly with or on behalf of migrant and diaspora populations.

The active participation of migrants as rights holders should help to guide all stages of policy making on migration, including towards developing a people-centred Global Compact for Safe, Orderly and Regular Migration and in its follow-up and implementation. This includes actively confronting and dismantling barriers that may hinder the full and effective participation of migrants themselves in policy making, including in the consultation, stocktaking, and negotiation phases of the Global Compact.

Emphasis should be on the empowerment of migrant voices, with a special focus on particularly at risk, marginalised and excluded migrants, including migrant children who suffer a double disadvantage due to their age and whose views are rarely sought and or taken into account. The commitment to migrant participation in policy development can be modelled through active local and national level consultation with migrants to inform national positions in all phases in the development of the Compact.

The active participation and involvement of civil society more broadly, and the maintenance of environments at the national level that enable such participation, should be a central tenet of the Global Compact, especially civil society organisations and NHRIs working directly with or on behalf of migrant and diaspora populations.

Non-discrimination on grounds of migratory status and countering xenophobia

Ensure respect for the principle of non-discrimination irrespective of a person's migration or residency status. Action must be taken to counter xenophobia and prevent hate crimes targeting people on the basis of their migratory or perceived migratory status.

The principles of equality and non-discrimination lie at the heart of international human rights law and are affirmed by all the core international human rights instruments and by the Charter of the United Nations. With very few narrowly defined exceptions, all migrants, including those in an irregular situation, have the same human rights, including civil, political, economic, social and cultural rights, as anyone else.

Any restrictions based on a person's legal or migration status must be consistent with human rights law, pursue a legitimate aim and be proportionate to the achievement of this aim.

States are obligated to protect migrants from all acts of xenophobia, racism and intolerance, as well as to punish the perpetrators of such crimes. National Governments should take steps to counter xenophobia, developing policies and strategies tailored to local contexts and dynamics. Neutral terminology must be used to describe migrants and factual, evidence based policies on migration should be developed, recognising the contributions of migrants to communities and States.

Criminalisation, detention and border control policies

Ensure that migration is not criminalised and prohibit all unlawful or disproportionate border measures.

Irregular migration is not a crime. Thus, irregular entry and stay should be treated solely — if at all — as administrative matters rather than as criminal offences. Disproportionate border measures, including the criminalisation of migration, arbitrary detention, arbitrary restrictions on freedom of movement, and measures which negatively impact the right of all persons to leave any country including their own, are inconsistent with international law and lead to frequent violations of migrant rights.

All border management policies and migration control agreements must be fully in line with international human rights law, including rights enshrined in the International Covenant on Civil and Political Rights. Unlawful push-back measures, arbitrary detention, and collective expulsion of migrants contravene these rights. Mandatory detention of migrants is contrary to international legal standards and arbitrary by nature. Administrative detention decisions must be

brought before a judge within the shortest time-frame. Governments should be taking active steps to end arbitrary immigration detention and to implement human rights compliant immigration control policies. Allegations of violence and ill-treatment at borders, in detention centres and in transit must be promptly and impartially investigated, and those responsible must be brought to justice. National security policies must never violate the security of the person, regardless of their migratory or residency status or lack thereof.

Children must never be detained for migration-related reasons, irrespective of their legal/migratory status or that of their parents. Detention is never in their best interests, and States must take steps to ensure that rights-based alternatives to detention—based on an ethic of care, not enforcement—are both enshrined in legislation and implemented in practice. Such alternatives must fulfil the best interests of the child, consistent with their rights to liberty and family life, by allowing children to remain with family members, guardians, or other primary care givers in non-custodial, community based contexts without being detained for migration-related reasons.



(flickr/Squat Le Monde)

Migrants in situations of particular risk

Ensure the human rights of all migrants who are particularly at risk, paying particular attention to migrants with specific needs who face multiple and intersecting forms of discrimination that heighten their vulnerability.

Around the world, many millions of migrants are in precarious situations, facing a heightened risk of human rights abuses, including torture, ill-treatment, denial of access to economic, social and cultural rights, arbitrary arrest and detention, and refoulement. While some migrants will fall outside the specific legal protections to which refugees are entitled, human rights law still applies to all human beings, including migrants in large and/or mixed movements.

Particular attention should be paid to the situation of children, women and other groups subject to discrimination on intersecting grounds (such as persons with disabilities, LGBTI migrants, or older migrants). Proactive measures are needed to respond to the specific needs of these individuals and to protect them from human rights violations by the State and human rights abuses by private actors.

The Principles and Guidelines on the human rights protection of migrants in vulnerable situations being developed by the Global Migration Group should serve as the basis for such discussions during consultations on the Global Compact for Safe, Orderly and Regular Migration. This set of principles, guidelines, and practical guidance can assist States in translating human rights principles into practical measures to protect migrants. The Human Rights Council should endorse the Principles and Guidelines and call for their incorporation in the Global Compact process. The Global Compact itself could also be an opportunity to endorse and adopt the Principles and Guidelines as part of the commitment to provide guidance on the protection and assistance to migrants in vulnerable situations.

Children

All children in the context of migration should be considered children first and foremost, irrespective of their migration or residency status, or lack thereof. All children are entitled to all the rights guaranteed by the UN Convention on the Rights of the Child, and State actions regarding children must be guided by the general principles of the Convention, namely non-discrimination, the best interests of the child, the right to life, survival and development and the right of the child to express his or her views.

The protection of the rights of the child should always take priority over State migration policy aims, and children on the move should benefit from the most protective legal and policy framework available. Relevant authorities and agencies should put in place cooperation frameworks within and across borders to protect and support children at each step of their journey to ensure that children have access to protection, care, support and learning opportunities wherever they are, at origin, in transit and at destination.

Women

Migration has a differential impact on women who move within and across borders as well as on women who remain at home when family members leave. Action is needed to ensure the human rights of women migrants and to uphold the principle of non-discrimination, including creating and maintaining gender sensitive employment policies and workers' rights protections and providing full access to public health services, including sexual and reproductive health services. Policies and programmes to prevent violence against women and provide support to women who experience gender based violence must be in place and must be accessible regardless of migration status.

Economic, social and cultural rights

Ensure that migratory status is not a bar to access to economic, social and cultural rights, particularly essential services, including healthcare.

All migrants, regardless of their migration or residency status, are entitled to economic, social and cultural rights, including under the International Covenant on Economic, Social and Cultural Rights. Under the Covenant, the requirement to guarantee all rights without discrimination imposes an immediate obligation on States parties to ensure equal access to health, education, to an adequate standard of living, to social security and to decent work.

Discriminatory barriers in law and practice that stop migrants from enjoying these rights must be removed. ‘Firewalls’ should be developed between immigration enforcement and public services. This means instructing

public service providers (teachers, doctors, etc.) not to request information on migration status unless essential and ensuring that migration enforcement do not have access to any information collected by public services on migration status. These measures are necessary to ensure that migrants have access to services, including essential healthcare services, without fear of being arrested, detained or deported.

For children and families with children, material reception conditions should also ensure a standard of living adequate for the child’s physical, mental, spiritual, moral and social development without hindrance. Quality education plays a critical protective and transformative role for children, young people on the move and their communities and should be provided as quickly as possible.

Integration and pathways to regularisation

Develop and implement accessible, regular, fair, and safe migration pathways, facilitating the regularisation of migrants in an irregular situation. Integration of migrants and their families should be promoted using social welfare policies to enable their full participation in society.

Regularisation is the most effective means to address the enhanced risk of human rights violations and abuses that migrants in irregular situations face. Migrants’ inclusion and integration should be encouraged by recognising the

value cultural diversity brings to all societies. Policies that avoid or resolve situations where migrants are in or at risk of irregular situations should be developed. A holistic, whole of Government approach should be adopted to ensure policy coherence on migration at the national, regional and international levels, in full compliance with international human rights law. Integration and regularisation should further be promoted through the exchange of best practices at community, national, and international level and with the active involvement of civil society actors.

Returns

Ensure that any returns or removals are carried out in full respect for the human rights of migrants, in safety and dignity, and in accordance with international law.

This includes upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsion, the right to family life, as well as the right to seek asylum.

Any returns of children should only take place when it is determined to be in the best interests of the child and must be on a voluntary basis, free of any coercion, fully informed and assisted by relevant mandated authorities or agencies. Return of children and families should never involve the use of immigration detention, which is never in the best interests of the child and constitutes a clear child rights violation.

Monitoring, accountability and access to justice

- **Ensure that protection of the human rights of migrants is recognised as a legal obligation of States, and not only a matter of humanitarian assistance. International standards and national laws and practices must enable judges and lawyers to play their essential role in upholding the rights of migrants and the rule of law.**

Effective protection of the human rights of migrants requires that decisions that have a substantial effect on their human rights should be made by, or subject to substantive review by competent, independent and impartial judges, and that migrants have access to independent and competent legal advice and representation in any judicial or other legal proceedings

in which they are involved. The expertise of the Special Rapporteur on Independence of Judges and Lawyers, the Special Rapporteur on Migrants, international legal professional organisations, and other civil society organisations, should be sought and incorporated as part of the process of developing the Global Compact.

As many UN human rights experts have noted, individuals and organisations working to defend of migrant rights face increasing restrictions and harassment as a result of their work. This can come in the form of legal barriers, judicial harassment, threats or violence. The Global Compact should take into account the obligation of states to create enabling environments for civil society to assist, support and defend the human rights of migrants.

Key Resources

Secretary General, [In Safety and Dignity: Addressing Large Movements of Refugees and Migrants](#)

UN General Assembly, [New York Declaration for Refugees and Migrants](#)

Special Rapporteur on the Human Rights of Migrants, [Thematic Report to the General Assembly on Developing the Global Compact on Migration](#)

OHCHR, [Recommended Principles and Guidelines on Human Rights at International Borders](#)

OHCHR, [Situation of Migrants in Transit](#)

OHCHR, [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#)

OHCHR, [The Economic, Social and Cultural Rights of Migrants in an Irregular Situation](#)

Global Migration Group, [Principles and Guidelines on the human rights protection of migrants in vulnerable situations](#)

UN Women, [Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration](#)

Committee on Economic, Social and Cultural Rights, [Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights](#)

Special Rapporteur on the Human Rights of Migrants, [Thematic Report to the Human Rights Council 2017 on A 2035 agenda for facilitating human mobility](#)

This document was prepared by a group of civil society organizations working together on the human rights of migrants, including:

ACT Alliance

International Detention Coalition

Amnesty International

International Service for Human Rights

Franciscans International

Quaker United Nations Office

*Global Alliance Against Traffic in Women
(GAATW)*

Save the Children

International Commission of Jurists

Terre des Hommes