

I Introduction

UNHCR strongly supports the achievement of a global compact for safe, orderly and regular migration (GCM) in 2018. UNHCR recognizes the positive impact the GCM can have on upholding the human rights of all migrants, providing coherence and order to the management of international migration, and paving the way for an improved system of global migration governance. UNHCR also recognizes the positive potential of the GCM for international protection, given the common risks both migrants and refugees share when travelling in irregular movements, as well as the positive effect a well-managed migration system can have on the functioning of national asylum systems.

II Structure and elements of a global compact for safe, orderly and regular migration, including its purpose, goals, challenges and opportunities

UNHCR would like to see included in the GCM those issues that are most critical to ensuring a rights-based and effective migration regime, built on a set of corresponding principles, commitments and understandings. These would include efforts to promote conditions in the country of origin that allow for migration by choice, not by necessity; put in place mechanisms to expand safe, legal and orderly migration channels; and, ensure that the fundamental rights of all are respected.

UNHCR recognizes that some large movements of people today comprise both refugees and migrants, and may thus be characterized as ‘mixed movements’. While they may move for different reasons and have different needs, they often experience the same challenges *en route*. Many of the issues common to refugees and migrants are captured in the New York Declaration on Refugees and Migrants. UNHCR’s *10-Point Plan in Action* for refugee protection and mixed migration, which was updated in December 2016, will be a valuable resource in this regard.¹ It provides practical suggestions to assist States and other partners in developing and implementing protection and migration strategies that respect international refugee and human rights law, while acknowledging legitimate sovereignty and security concerns.

III Actionable commitments that may be included in the global compact on migration

Taking into account the above, UNHCR’s inputs to the Secretary General’s report on the GCM will focus on four areas which, in our view, are critical to the GCM:

- (a) Expanding regular migration pathways;
- (b) Upholding the human rights of all migrants;
- (c) Addressing issues of relevance to refugees and migrants; and,
- (d) Addressing the drivers of migration.

Potential actions and practical elements relating to each of these areas are set out below.

(a) Expanding regular migration pathways

In UNHCR’s view, the widening of **regular migration pathways**, including expanded labour and skills mobility schemes, should be a central feature of the GCM. The more opportunities for people to migrate regularly, including through migration schemes that meet labour market needs, the less need for them to move

¹ UNHCR, *The 10-Point Plan in Action: 2016 Update* (December 2016), www.refworld.org/10pointplaninaction2016update.html.

irregularly. Regular migration maximizes opportunities and benefits for migrants and States, while mitigating the physical and security risks faced by those who move irregularly. It allows for greater management of population movements by States and helps to realize the targets set by the Sustainable Development Goals with regard to availability of decent work.

Expanded legal pathways for migration also carry indirect benefits for the global refugee regime. Too often, the lack of legal migration opportunities leads people to make use of asylum systems in countries of destination to secure a stable legal status, even if they do not have international protection needs. This affects the effectiveness of the international refugee regime and puts additional pressure and strain on asylum systems.

UNHCR also recognizes that **return and re-admission** of persons who do not meet entry requirements and who are not in need of international protection or eligible for other forms of relief must be addressed. UNHCR's Executive Committee has passed a number of conclusions to this effect, and UNHCR has issued guidance on the return of persons found not to be in need of international protection, recognizing that a functioning migration management system, and a credible asylum system, must provide outcomes for those whose asylum applications are properly rejected.² The GCM, however, should make clear that any returns be effected in accordance with human rights standards and that voluntary returns be pursued wherever possible. UNHCR also advocates that alternatives to return be made available where possible, such as regularization or options for legal onward movement.³

With regard to expanded migration pathways, UNHCR would recommend the following areas for consideration:

- Removal of legal barriers to regular migration, including through expanded criteria for labour migration programmes, in particular those which can help address temporary and longer-term labour market needs;
- Expansion of labour mobility and circular migration arrangements, including through skills partnerships between sending and receiving countries;
- Conclusion of bilateral and multilateral agreements to address labour mobility needs within a region, including the free movement of workers;
- Establishment of ethical recruitment practices, including decent work options for women;⁴ and
- Further research on labour market needs and forecasting.

With regard to return and re-admission, UNHCR would recommend the following areas for consideration:

- Establishment or strengthening of safeguards in the return process to ensure respect for the principle of *non-refoulement*;
- Promotion of opportunities for self-reliance for returned migrants in countries of origin, including through access to livelihood and training opportunities;
- Inclusion of reintegration of returning migrants in national development plans and in UN country team planning documents;

² UNHCR Executive Committee Conclusions on International Protection on return of persons found not to be in need of international protection: Conclusion No. 6 (1977), 62 (1990), 74 (1994), 77 (1995), 79 (1996), 81 (1997), 82 (1997), 85 (1998), 96 (2003), 97 (2003), 101 (2004), found in UNHCR *A Thematic Compilation of Executive Committee Conclusions*, (June 2014), p479 www.refworld.org/docid/5698c1224.html;

UNHCR Protection Policy Paper, *The return of persons found not to be in need of international protection to their countries of origin* (November 2010), www.refworld.org/docid/4cea23c62.html.

³ UNHCR, *Agenda for Protection*, (October 2003), www.unhcr.org/refworld/docid/4714a1bf2.html; UNHCR 10-Point Plan Expert Round Table N° 3: *The return of non-refugees and alternative migration options. Summary Report* (December 2009), www.refworld.org/docid/4ba9ddd22.html.

⁴ ILO, *General principles and operational guidelines for fair recruitment* (December 2016), http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm.

- Monitoring and evaluation of returns, with a focus on sustainability;
- Provision of information and counselling on return options;
- Provision of reintegration assistance;
- Development of guidelines and training for law enforcement officials to promote a better understanding of applicable legal and policy standards, as well as tools for responding to difficult situations in a manner that respects the rights and dignity of returnees.

(b) Human rights of all migrants

UNHCR believes that the **human rights of migrants**, documented or undocumented, be placed at the centre of the GCM. The GCM provides an important opportunity for Member States to operationalize existing universal and inalienable human rights obligations and principles intended to safeguard these rights.

At a time when migrants are increasingly vilified in the press, are physically and verbally attacked by anti-immigrant forces, and are forced to live on the margins of society, subject to abuse and exploitation, public statements and policies that recognize their basic humanity and human rights are particularly important. Actionable elements could be included in the GCM which build on the New York Declaration's commitment to combating **xenophobia, racism and discrimination**, including through information and advocacy campaigns that are tailored to national and regional contexts.

Immigration **detention** is also a key human rights issue. UNHCR considers commitments could be made to ensure detention is only used when it pursues a legitimate purpose and has been determined to be both necessary and proportionate in the individual case at hand. The use of detention as a deterrent is generally unlawful under international human rights law. UNHCR believes the GCM should promote practical measures for States to avoid detention, in particular of children. Alternatives to detention should be pursued wherever possible.

[With regard to detention, UNHCR would recommend the following commitments:](#)

- Twinning arrangements to explore alternatives to detention;
- Piloting of programmes that use reporting requirements in lieu of detention;
- Utilization of open or semi-open (curfew-based) reception facilities;
- Establishment of procedures, or use of existing legal review mechanisms, that allow for periodic review of detention decisions to ensure that detention is both necessary and proportionate in the individual case at hand;
- In cases where administrative detention is considered, ensure that conditions of detention meet relevant international standards.

(c) Issues of common concern to migrants and refugees

Refugees and migrants travelling irregularly experience similar risks and dangers in their journey, from voyages in unseaworthy boats, to risks of sexual and gender based violence, to exploitation and abuse in countries of arrival. The phenomenon of mixed migration is not new, with tools and policies having been advanced over the years to ensure that the rights of both refugees and migrants are met. The New York Declaration for Refugees and Migrants, and the development of a global compact on refugees and a global compact on safe, orderly and regular migration, provide important opportunities to endorse and apply good practices in these areas at a global level.

UNHCR's *10-Point Plan in Action* is particularly relevant in the context of mixed movements and includes mechanisms, tools and practical guidance for identifying and responding to the needs of people on the move, including those who are at risk or who have special needs, such as unaccompanied or separated children. It provides guidance through all stages of the refugee protection process, some of which would equally apply to migrants in a mixed migration context. Issues of common concern would include, for example:

Protection sensitive border and entry management systems: While recognizing that States have a sovereign right to determine who to admit, exclude and remove from their territory, such rights must be exercised in accordance with international law. Protection-sensitive entry systems ensure that legitimate measures to control entry are first and foremost humane and are not applied arbitrarily. They also ensure that asylum-seekers and others with specific protection needs are identified and granted access to a territory where their needs can be properly assessed and addressed. UNHCR has actively supported States in these areas in the context of refugee protection and mixed movements, and believes that the GCM provides an opportunity to strengthen border procedures in the general migration context as well.

Reception: The commitments in the New York Declaration and the Comprehensive Refugee Response Framework relating to the identification of needs and the provision of safe and dignified reception cannot be realized unless they are integrated into migration management policies and processes that apply to all persons irregularly on the move. In this context, UNHCR would propose that the relevant elements of the Comprehensive Refugee Response Framework, specifically those that relate to arrival and reception in the context of mixed flows, be similarly considered in the development of the global compact for safe, orderly and regular migration, to ensure complementarity and coherence between these two distinct processes. This would include assessing and meeting the essential needs of all refugees and migrants, including with regard to adequate and safe drinking water, sanitation, food, nutrition, shelter, psychosocial support and health care, including sexual and reproductive health.

Persons with specific needs: Both refugees and migrants may have specific needs that need to be addressed, be they unaccompanied and separated children, survivors of sexual and gender-based violence, or persons with disabilities. Policies and procedures need to be put in place to identify and attend to these needs.

UNHCR agrees with the importance of identifying and addressing the needs of ***"migrants in vulnerable situations"*** (MiVS). These may be the same needs as refugees who are often traveling alongside them. Broadly speaking, from UNHCR's perspective, there are two categories of vulnerabilities that should be considered when identifying MiVS: (1) "situational vulnerability", referring to circumstances *en route* or in countries of destination; and, (2) "individual vulnerability," referring to individual characteristics or circumstances that place someone at risk (e.g., children, elderly, persons with disabilities, or chronic illnesses). In UNHCR's view, conditions in countries of origin are relevant in that they could give rise to an international protection claim under international refugee and human rights law. As such, they are more appropriately considered in that light. In some instances, individuals outside their country of origin who are not refugees may also require international protection. Given the centrality of international protection to the global compact on refugees, and building on existing temporary protection or stay arrangements, UNHCR considers that their needs are more appropriately addressed in that context.⁵

⁵ UNHCR, *Migrants in vulnerable situations UNHCR's perspective* (June 2017), www.refworld.org/docid/596787174.html; UNHCR, *Persons in need of international protection* (June 2017), www.refworld.org/docid/596787734.html.

Persons moving irregularly, including those compelled to rely on the services of smugglers, may be particularly vulnerable to **human trafficking** and unable to seek protection to escape from situations of exploitation. Addressing trafficking in persons in the context of large movements of migrants and refugees requires close coordination between government ministries, international organizations and civil society, working across sectors such as criminal justice, rule of law, human rights and development. The GCM provides an opportunity to put in place the necessary procedures and services to meet the needs of affected migrants.

With regard to reception, UNHCR would recommend the following areas for consideration:

- Provision of emergency and life-saving services to all new arrivals;
- Provision of safe and dignified reception, including, *inter alia*, separate and safe spaces for women and children, access to medical care and counselling, and provision of family tracing;
- Prompt registration of all new arrivals;
- Establishment of necessary referral mechanisms to relevant authorities, service providers and others;
- Training of immigration and law enforcement personnel on how to manage new arrivals in a protection sensitive manner;
- Mechanisms to identify traffickers and smugglers and referral to appropriate national authorities;
- Provision of information on available rights, obligations and available services.

With regard to persons with specific needs, UNHCR would recommend the following areas for consideration:

- Development of clear guidelines for use by immigration and other entry officials on categories of people with specific vulnerabilities, their needs and the availability of services;
- Systematic collection of data on migrants, disaggregated to capture specific needs as appropriate, to inform national programmes and policies;
- Consideration of the granting of permission to remain for compassionate reasons for those who may be particularly vulnerable, where appropriate;
- Development of a common understanding of who falls within “migrants in vulnerable situations”, so as to ensure the swift identification and referrals of migrants with specific needs upon arrival; enable more predictable cooperation amongst partners on addressing their needs in a timely manner; and, avoid conflation with people identified as having international protection needs.⁶

With regard to victims of trafficking, UNHCR would recommend the following commitments:

- Prompt, comprehensive and accurate registration of all new arrivals, to facilitate the identification of victims of trafficking, including those who may be in need of international protection;
- Rapid appointment of guardians for unaccompanied and separated children in order to distance them from potential traffickers;
- Provision of information to new arrivals on how to report trafficking in a language they know, in a child and gender sensitive manner;
- Training for all stakeholders, including NGOs, cultural mediators and health workers, on the risk of trafficking faced by migrants and refugees, so that they are able to identify and refer possible victims for necessary assistance (legal, social, medical, etc);
- Minimum prevention and response services for trafficking victims.

(d) Addressing the drivers of irregular migration

It is incumbent upon the international community, through the GCM, to address the negative drivers of migration at home, so that people have a true choice when deciding to migrate abroad. Greater and more

⁶ See above, UNHCR, *Persons in need of international protection*, (June 2017)

effectively deployed **development assistance** is central to these efforts. This need not only be development assistance delivered by donor governments to national ministries, but also facilitation of the transfer of remittances from nationals abroad to their family members at home, as well as investment of human and financial capital by the private sector and members of the diaspora community. There are steps that can be taken in this regard, drawing from national and good practices that should be captured in the GCM.

Greater investments in **post-conflict recovery** should also be pursued. Human made crises, including armed conflict and generalized violence, are the primary causes of forced displacement today, with those fleeing entitled to protection as refugees. However, the socio-economic effects of conflict may persist long after the active conflict is over. Poor governance, the collapse of economies, absence of services, food insecurity, and lack of employment, can cause many to leave their countries of origin seeking opportunities elsewhere. The GCM should continue to pursue joint planning and programming by humanitarian and development actors in managing this transition period.

Finally, the issue of **climate change and natural disasters** should be addressed. While the adverse effects of climate change and disasters may result in displacement and a need for international protection, they may also act as an important driver of migration. Some people, for example, may migrate as a strategy to cope with the slow onset effects of climate change, as a means of adaptation. Preventive measures, such as climate change adaptation, disaster risk reduction, sustainable development, and planned relocation as a last resort, are actions that can be taken to mitigate the negative impact of climate change, and which can be captured in the GCM. Specific measures to further implement relevant international instruments, such as the UNFCCC Paris Agreement and the Sendai Framework on Disaster Risk Reduction, could also be included.

With regard to climate change and disasters, UNHCR would recommend the following commitments:

- Development of disaster risk reduction strategies and programmes, contingency planning, and planned relocation;
- Advancement of the work on human mobility in the UNFCCC, including through the Warsaw International Mechanism work plan and through the Task Force on Displacement;
- Implementation of the MICIC Guidelines and Sendai Framework;
- Development of mechanisms for planned relocation in appropriate contexts, drawing on available tools and guidance;⁷and,
- Increased data collection on migration related to climate change and disasters, both quantitative and qualitative, and promotion of greater collaboration between data holders, in a manner consistent with data protection principles.

IV Means of implementation and a framework for the follow-up and review of implementation

UNHCR would welcome arrangements to ensure systematic follow-up and review of implementation of actionable commitments, which could take the form of regular reports by the Secretary-General to the General Assembly.

UNHCR, 19 September 2017

⁷ UNHCR, *A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change* (July 2017), co-published with Brookings Institute, Georgetown University and IOM, www.refworld.org/docid/596f15774.html,