

OHCHR informal analysis of the Global Compact for Migration - Final Draft

In the New York Declaration for Refugees and Migrants, the General Assembly decided to develop a global compact for safe, orderly and regular migration. The process to develop this Global Compact for Migration (GCM) began in April 2017 and has consisted of a series of informal thematic consultations followed by 6 rounds of intergovernmental negotiations. On 13 July 2018, upon the completion of the 6th and final round of intergovernmental negotiations, 192 Member States agreed upon a Final Draft of the GCM text, as prepared by the Co-Facilitators Mexico and Switzerland.

General reflections

- **OHCHR welcomes the GCM final draft** as an important starting point for improved global migration governance that puts migrants and their human rights at the centre. While not perfect, the GCM is a balanced and principled human rights document that provides a significant opportunity to address the challenges associated with today's migration, and to strengthen human rights protection for migrants.
- As with the New York Declaration, **the GCM is a document that is permeated by rights-based language**, with some 90 mentions of 'human rights' and 'rights' throughout the text in addition to related language committing States to take action in accordance with their obligations under international law.
- **Some notable issues which we welcome in the text** include: a guiding principle on human rights and a commitment to non-regression; asserting that immigration detention must in all cases be a last resort and committing to work towards ending child immigration detention; a comprehensive statement of the scope of the IHRL principle of *non-refoulement*; text that can be used as a starting point to work towards the non-criminalization of irregular migration; a commitment to protect the human rights of migrants in vulnerable situations; and explicit reference to OHCHR publications and recommendations.
- **OHCHR looks forward to supporting Member States** as they consider implementation of this comprehensive document. As the leading expert on the human rights of migrants within the UN System OHCHR stands ready to provide normative and technical support to States and other stakeholders through technical advice and capacity-building on migration policy and practice, convening relevant human rights stakeholders, undertaking monitoring and providing human rights-based recommendations (including from the independent human rights mechanisms).

Informal analysis

The following is a non-exhaustive and informal analysis of selected human rights-based provisions which OHCHR welcomes in the GCM final draft.

Preamble The Preamble indicates that the Global Compact “rests upon the purposes and principles of the Charter of the United Nations” as well as the **Universal Declaration of Human Rights (UDHR)** and the **nine core international human rights instruments**.

Vision and Guiding Principles The 10 “cross-cutting and interdependent” Guiding Principles, include a standalone principle on *Human Rights*, which upholds the principles of **non-regression** and **non-discrimination**. There are also Guiding Principles for *people-centred*, *gender-responsive*, and *child-sensitive* which maintain the **human dimension** of migration, mainstream a **gender perspective**, and uphold the principle of the **best interests of the child**.

Objectives and Commitments There are twenty-three Objectives--each containing a **commitment**, followed by a **range of actions** considered “relevant policy instruments and best practices” for effective GCM implementation.

Objective 2 (adverse drivers that compel people to leave countries of origin) commits to address migration movements, such as those that may result from **sudden-onset and slow-onset natural disasters, the adverse effects of**

climate change, environmental degradation, as well as other precarious situations, while ensuring the effective respect, protection and fulfilment of the human rights of all migrants.

Objective 4 (legal identity and documentation) commits to ensure that **all migrants have proof of legal identity and adequate documentation** as a means to empower migrants to effectively exercise their human rights.

Objective 5 (pathways for regular migration) commits to develop mechanisms for admission and stay based on **compassionate, humanitarian or other considerations** for migrants compelled to leave their countries of origin, with specific mention of ‘sudden-onset natural disasters or *other precarious situations*’. The same objective also calls for cooperation on solutions for migrants **compelled to leave their countries of origin due to slow-onset natural disasters**. States are further called to facilitate access to procedures for family reunification for migrants in order to promote the realization of the right to family life and the best interests of the child.

Objective 6 (ethical recruitment and decent work) prohibits recruiters and employers from charging **recruitment fees** to migrant workers and guarantees **decent work**.

Objective 7 (address and reduce vulnerabilities) commits to protect the human rights of **migrants in vulnerable situations**, including in mixed movements, and takes into consideration relevant recommendations from the Global Migration Group **Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations**. OHCHR welcomes the recognition in Objective 7 of the **situational** aspects of the vulnerability of migrants arising from conditions at origin, in transit and destination and the commitment to **protecting the human rights of migrants in vulnerable situations**, in accordance with obligations under international law. This objective contains important actions related to child protection, access to justice and regularization of migrants in irregular situations (although OHCHR regrets that this term was not explicitly included in the final text). The actions ask States to ‘enable individual status assessments’, but do not explicitly mention that such assessment should serve to ensure protection of the rights of all migrants.

Objective 8 (save lives) commits to to **search and rescue** and calls on States to uphold the prohibition of collective expulsion, guarantee due process and individual assessments. The objective also commits to ensure **non-criminalization of humanitarian assistance** to migrants.

Objective 9 (migrant smuggling) commits to the **non-criminalization of smuggled migrants** in line with the language of the Smuggling Protocol and also to ensure that counter-smuggling measures are in full respect for human rights.

Objective 10 (trafficking) commits to protect trafficked persons in the context of migration and notes that migrants who have become **victims of trafficking in persons deserve protection and assistance**, including measures that permit them to remain in the country of destination, temporarily or permanently.

Objective 11 (border management) commits to implement **border management policies** that respect obligations under international law and the human rights of all migrants, regardless of their migration status, and takes into consideration relevant recommendations from **OHCHR’s Recommended Principles and Guidelines on Human Rights at International Borders**. While it is regrettable that the objective does not explicitly call on States to treat irregular entry and stay as an administrative, rather than criminal, offence, the actions call on States to investigate the ‘appropriateness’ of applying sanctions for irregular entry and stay, and to ensure that any such sanctions are consistent with obligations under international law. Objective 11 also calls for enhanced cooperation to ensure **appropriate protection of migrants in situations of vulnerability** at or near international borders, in compliance with international human rights law.

Objective 12 (screening, assessment and referral) commits to ensuring effective and **human rights-based mechanisms for screening and individual assessment** of all migrants in order to ensure appropriate referrals. The actions in this objective also refer to ‘available forms of protection’ on which information should be provided to migrants.

Objective 13 (immigration detention) commits to only use **immigration detention** in line with international human rights law, namely as a measure of last resort respecting due process and the prohibition of arbitrary detention. Objective 13 also commits to work to **end child immigration detention** and to prioritize non-custodial **alternatives to detention**. The actions call to develop a repository of best practices on human rights-based alternatives to detention and to ensure that detention is not promoted as a deterrent. OHCHR welcomes the continued commitment to working to end child immigration detention, and the avoidance of the language of “last resort” in this context, however we lament that there was not a stronger commitment to work to end *all* immigration detention.

Objective 15 (access to basic services) commits to ensure that **all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services**, ensuring that service delivery is non-discriminatory and that immigration enforcement efforts do not compromise migrants’ ability to access their rights. It is regrettable that a listing of such ‘basic services’ was not retained in the final text. While the principle of a ‘firewall’ has not been explicitly mentioned, the actions call for safeguards to be placed on cooperation between service providers and immigration authorities.

Objective 17 (discrimination and xenophobia) commits to condemn and counter **racism, discrimination, xenophobia and related intolerance** against all migrants and to promote a more **humane, constructive and evidence-based public discourse** on migration. The actions call for States to penalize hate crimes and to invest in ethical reporting standards and advertising, as well as to sanction media outlets that promote xenophobia.

Objective 21 (return, readmission and reintegration) commits to **prohibit collective expulsion and any return where there is a real and foreseeable risk of death, torture and other cruel, inhuman and degrading treatment or punishment, or other irreparable harm**, in accordance with obligations under international human rights law. It is regrettable that a more clear, unequivocal and explicit commitment to uphold the principle of **non-refoulement** was not included. The actions call on States to guarantee that all returns in the context of **voluntary programmes** take place on the basis of the migrant’s free, prior and informed consent, in the context of an individual assessment and only after all legal remedies to appeal the return decision have been exhausted.

Implementation OHCHR welcomes the explicit **commitment to international law**, which emphasizes that the Global Compact is to be implemented in a manner that is consistent with States’ rights and obligations under international law. Para 53 encourages States to develop ‘ambitious national responses’ for the implementation of the Global Compact, and to conduct regular and inclusive reviews of progress at the national level.

A **UN Migration Network** will be set up to coordinate the support of the UN System to the implementation of the Global Compact. The text also establishes a **capacity-building mechanism** in the United Nations, for which implementing agencies will be identified ‘in line with their comparative advantages and operational capacities’.

Follow-Up and Review Finally, the Global Compact will establish an **International Migration Review Forum** which will take place every four years beginning in 2022 and result in a negotiated declaration of progress which may be taken into consideration by the HLPF. Modalities for this Forum will be negotiated at the General Assembly in 2019. Regional processes and platforms (including the Regional Economic Commissions and State-led Regional Consultative Platforms) ‘are invited’ to hold review discussions on a periodic basis starting in 2020. The GFMD and other processes within and outside the UN System are also invited to contribute to the International Migration Review Forum.

For more information about OHCHR’s work on migration and human rights, visit:

<https://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>