

Why do human rights matter in the Global Compact for Migration?

While migration is a positive and empowering experience for many, an increasing number of people are compelled to leave their homes for a complex combination of reasons, including poverty, food insecurity, lack of access to healthcare or education as well as the consequences of environmental degradation and climate change, in addition to the more ‘traditional’ drivers of forced displacement such as persecution and conflict.

It is increasingly clear that a lack of human rights-based [migration governance](#) at the global, regional and national levels is leading to the routine violation of migrants’ rights in transit, at international borders, and in the countries to which they migrate. Due to a lack of operationalisation of international human rights standards, millions of migrants continue to face significant protection gaps. For example, those who do not qualify for refugee protection under refugee law may still have human rights protection needs under international human rights law. This is because human rights protection applies to everyone, everywhere.

Human Rights Protection

International human rights law requires States to protect the civil, political, economic, social and cultural rights of all individuals within their territory and subject to their jurisdiction, irrespective of nationality, place of residence, sex, gender identity, sexual orientation, national or ethnic origin, colour, religion, language, migration status, economic position or any other status.

International human rights law
- Universal Declaration of Human Rights
- 9 core treaties

Refugee Protection

Protection under international refugee law applies to persons who meet the refugee definition under international, regional, or domestic laws, or under the mandate of the UN High Commissioner for Refugees.

International refugee law
- UN Refugee Convention and its 1967 Protocol

Humanitarian Protection

Protection under international humanitarian law applies to situations of armed conflict.

International humanitarian law
- Geneva Conventions and their Additional Protocols

All human beings – irrespective of migration status - are equally entitled to the enjoyment of their human rights without discrimination. – The only exceptions to this principle are with respect to two categories of rights: certain political participation rights and, with certain caveats, freedom of movement. Any other differential treatment must be provided for by law, pursue a legitimate aim, and be necessary and proportionate to the aim pursued.

The Global Compact for Safe, Orderly and Regular Migration is a unique opportunity for States to create migration governance systems – based on existing rights and obligations - that benefit both migrants and host communities, so that States address human rights protection needs and fulfil their human rights obligations.

OHCHR's Key Messages

An international cooperative framework for migration governance is effective when it protects the human rights of migrants, facilitates safe, orderly and regular movement, empowers host communities and migrants, and contributes to social cohesion. The following key messages show how and why States should put human rights at the core of the Global Compact:

Establish mechanisms for identifying and assessing human rights protection needs of migrants. Millions of migrants have human rights protection needs, irrespective of whether or not they hold refugee status. Migrants at risk of torture or irreparable harm require protection from refoulement. Victims of torture, trauma, gender-based violence or trafficking require rehabilitation, physical and mental health services and access to justice. Children require best interests determination procedures to ensure their right to family life, survival and development. Such mechanisms should holistically assess and respond to vulnerabilities and human rights protection needs of all migrants.

Ensure non-discriminatory access to economic, social and cultural rights and associated services. It is often wrongly assumed that irregular migrants are not entitled to access health services, or go to school or rent housing; or, that if migrants do have such rights, then States must provide services all free of charge. International human rights law, however, requires States to ensure that these services are available to all, on a non-discriminatory basis. This can be achieved through a range of measures, such as ensuring that facilities, goods and services are available at affordable prices, and empowering migrants to access their rights.

Clearly separate the provision of services from immigration enforcement. The removal of legal, administrative and other barriers to access health care, education, justice or housing, allows the enjoyment of human rights. The providers of essential services should not be obligated to share information about migrants – this is a simple measure which will ensure that people can be treated when they are sick, children are able to continue their education, and victims of crimes can file complaints with the police, without fearing arrest or deportation. This reduces stigma against migrants and promotes social cohesion.

End the criminalisation of irregular migration and work to end all immigration detention. Security-based approaches and criminalisation of irregular migration further increase vulnerabilities and drive movement further underground. Detention increases harm and vulnerabilities, and has been shown to be an ineffective tool of migration governance. Non-custodial, community-based alternatives respect migrants' dignity and human rights while their immigration status is being resolved. Children should never be detained because of their or their parents' migration status. Their best interests should be upheld, and they should be provided with care arrangements to fully develop in a child-friendly environment.

Ensure returns take place in a safe and dignified manner and they comply with international human rights standards. No one should be returned to a country where there is a risk of torture, or cruel, inhuman or degrading treatment or punishment and other serious human rights violations. This principle, known as *the principle of non-refoulement*, is guaranteed under international human rights law, and applies to everyone, irrespective of whether or not a person has applied for refugee protection. States should also ensure respect for the prohibition of collective expulsion, as well as due process and effective remedy. They should prioritize voluntary over forced returns.

Establish mechanisms for entry and stay for migrants with protection needs. There may be cases where returns may not be possible under international human rights law, even where a person is not entitled to

asylum. This can be based on *non-refoulement*, as well as, *inter alia*, the rights to health, family life, best interests of the child, and torture rehabilitation. Such mechanisms could include administrative and legislative mechanisms to grant legal status to migrants who cannot return, in the form of temporary, long-term or permanent protection status.

Ensure regular pathways for safe and orderly migration. To address mobility needs, regular pathways for movement should be increased, including educational pathways and labour migration at all skill levels. Mechanisms for entry and stay based on discretionary grounds, as well as regularization schemes for irregular migrants should also be considered, even where returns are legally and practically possible.

Ensure full respect for human rights in reintegration policies and programmes. Migrants who return to their countries of origin face serious adaptation challenges. They may, for example, struggle with sustaining livelihood or face social stigma. Efforts to reintegrate returned migrants can take various – often complimentary – forms, such as skill-building; rehabilitation; ensuring access to justice or creating long-term job opportunities and ensuring decent work. Conducive conditions for personal safety, economic empowerment, inclusion and social cohesion in communities are essential for migrants' sustainable reintegration. All such policies and programmes should ensure full respect for all civil, political, economic, social and cultural rights. They should also ensure independent monitoring, oversight, and access to justice.

Follow-up and implement the commitments made under the Global Compact, with support of the United Nations System. It is for States, as signatories to the Global Compact and to international human rights treaties, to follow-up and implement their commitments. This can be achieved through robust national and regional implementation mechanisms, which should aim to implement the recommendations issued by UN treaty bodies, special procedures mandate holders and the Universal Periodic Review. The technical expertise and mandates of different parts of the United Nations System supports these efforts.

Human mobility has many faces, and all are entitled to the enjoyment of their civil, political, economic, social and cultural rights.



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