HUMAN RIGHTS-BASED APPROACH: ALIGNING WITH EXISTING OBLIGATIONS

The GCM is based on international human rights law and upholds the principles of non-regression and non-discrimination. Implementation of the GCM itself will ensure the effective respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle.

> The Global Compact is based on international human rights law and upholds the principles of non-regression and non-discrimination. By implementing the Global Compact, we ensure effective respect for and protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle. We also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance, against migrants and their families (GCM, para. 15 (f)).

A human rights-based approach (HRBA) is normatively based on international human rights law and standards and operationally directed to respecting, protecting and fulfilling human rights. The underlying feature of an HRBA is that it identifies "rights holders", who, by virtue of being human, have a claim to certain entitlements, and "duty bearers", who are legally bound to respect, protect and fulfil the entitlements associated with those claims. It also seeks to analyze the inequalities that lie at the heart of

policy problems and redress discriminatory practices that often result in groups of people being left behind. Thus, it is necessary to identify groups or individuals in situations of vulnerability and make their inclusion and empowerment a priority. In the context of migration, a human rights-based approach recognizes migrants as rights-holders and views the treatment of all migrants, regardless of their migration status, to the forefront of all discussions and programming on migration, guided by the fundamental principles of equality and non-discrimination, participation and inclusion, accountability and the rule of law.

A rise in xenophobia sparked by COVID-19

Since the onset of the COVID-19 pandemic, migrants have been particularly targeted by stigma and xenophobia, and often scapegoated as responsible for spreading the virus. The pandemic has exacerbated already high levels of xenophobia, racism and stigmatization against migrants and refugees and has even given rise to attacks against refugees and migrants.

In response, the UN Network on Migration has called on all authorities to make every effort to confront xenophobia, including where migrants and others are subject to discrimination or violence linked to the origin and spreading of the pandemic (see https://migrationnetwork.un.org/statements/covid-19-does-not-discriminate-nor-should-our-response). States and other relevant stakeholders must enact inclusive public health and socioeconomic responses that protect the human rights of all migrants, regardless of their legal status, and recognize migrants as an integral part of the solution.

Extract from Implementing the Global Compact for Safe Orderly and Regular Migration: Guidance for governments and all relevant stakeholders

Applying the guiding principles

For more information, including policy recommendations and best practices to combat xenophobia in the context of COVID-19, see the UN Network on Migration's COVID-19 resources at https://migrationnetwork.un.org/covid-19.

UN Network on Migration's response concerning immigration detention during COVID-19

In April 2020 during the commencement of the COVID-19 pandemic, the UN Network on Migration released practical recommendations with guidance for States and other stakeholders on preventing and responding to COVID-19 in the context of immigration detention. This guidance referenced GCM Objective 13: Use migration detention only as a measure of last resort and work towards alternatives.
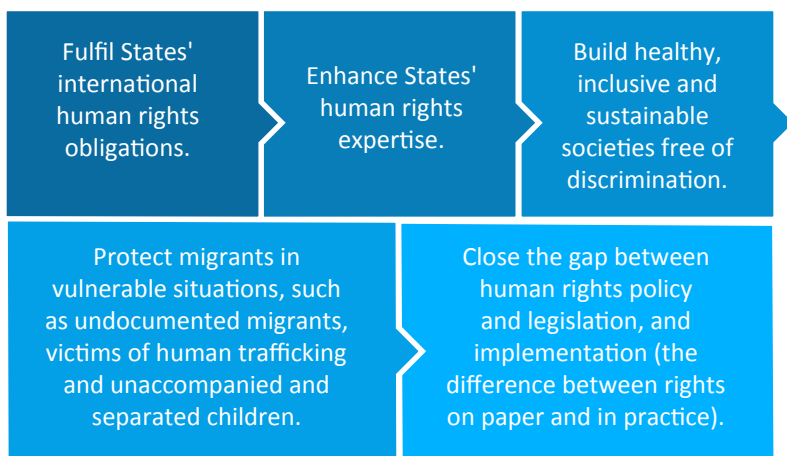
The Network called on States to:

- Introduce a moratorium on the use of immigration detention;
- Scale-up and implement non-custodial community-based alternatives;
- Release all migrants in detention into alternatives, following strict safeguards and prioritizing children, families and other migrants in vulnerable situations;
- Urgently improve overall conditions in places of immigration detention while transitioning to alternatives.

The guidance was developed by the Network's Working Group on Alternatives to Detention – co-led by UNICEF, UNHCR and the International Detention Coalition (IDC) – in partnership with UN agencies and civil society. "COVID-19 and Immigration Detention: What can governments and other stakeholders do?" is available at https://migrationnetwork.un.org.

THE IMPORTANCE OF A
HUMAN RIGHTS-BASED APPROACH

States will benefit from taking a human rights-based approach to GCM implementation, as it helps further the vision of being people-centred, one of the Compact's guiding principles and helps States meet their obligations to respect, protect and fulfil the human rights of all migrants:

Fulfil States' international human rights obligations.	Enhance States' human rights expertise.	Build healthy, inclusive and sustainable societies free of discrimination.
Protect migrants in vulnerable situations, such as undocumented migrants, victims of human trafficking and unaccompanied and separated children.	Close the gap between human rights policy and legislation, and implementation (the difference between rights on paper and in practice).	

Under a human rights-based approach, migrants are rights-holders whose dignity must always be respected. Protecting the rights of migrants is also essential to protecting members of society in general. This became particularly evident during the onset of the COVID-19 pandemic, when providing inclusive services to all migrants, regardless of status, became key to mitigating and containing the outbreak and building back better.[2]

2. Guadagno, L., "Migrants and the COVID-19 pandemic: An initial analysis" (2020).

HUMAN RIGHTS-BASED APPROACH
IN PRACTICE

See all migrants, regardless of status, as rights-holders.

▪ Focus on the most marginalized groups and individuals whose rights are regularly denied, ignored or violated.

▪ Encourage governments and other actors as duty bearers to meet the obligations they have committed to under human rights law.

▪ Seek to bring laws, policies and social practices into line with international standards, addressing structural inequalities and patterns of discrimination.

▪ Pay attention not only to the results but also to the process through the principles of participation, non-discrimination, empowerment, transparency and accountability.

Increase knowledge of international human rights law, including all nine core treaties (available at www.ohchr.org) and other treaties and agreements, such as:

▪ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);

▪ ILO Migration for Employment Convention (Revised), 1949 (No. 97);

▪ ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);

- ILO Domestic Workers Convention, 2011 (No. 189);

- ILO Violence and Harassment Convention, 2019 (No. 190).

Ensure human rights knowledge and expertise in all structures for planning and overseeing GCM implementation, including through working with relevant ministries and the National Human Rights Institution.

Actively work to promote conformity of national migration-related laws, policies and practices with international human rights law, such as through strengthening or establishing national mechanisms for reporting and follow-up. A national mechanism for reporting and follow-up is "a national public mechanism or structure that is mandated to coordinate and prepare reports to and engage with international and regional human rights mechanisms (including treaty bodies, the universal periodic review and special procedures), and to coordinate and track national follow-up and implementation of the treaty obligations and the recommendations emanating from these mechanisms."[3]

Strengthen or establish national human rights institutions and their capacity to promote and protect the human rights of migrants.

Establish or strengthen national plans of action for the promotion and protection of all human rights,

3. OHCHR, "National Mechanisms for Reporting and Follow-up: A practical guide to effective state engagement with international human rights mechanisms" (2016).

such as economic, labour, social, cultural, civil, development and political rights, paying particular attention to those most marginalized. Migrants often face situations of vulnerability arising from the circumstances under which they travel or the conditions they face in countries of origin, transit and destination. States should endeavour to assist them and protect their human rights, in accordance with obligations under international law.

Ensure that all migrants, regardless of status, have access to all human rights.

Participate in the Human Rights Council's Universal Periodic Review (UPR) to report on human rights-based implementation of the GCM, make recommendations, and incorporate the recommendations of other States.