

**Submission to the UN Committee on Migrant Workers, Draft General Comment No. 6 on the Convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration**

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\* The views expressed in this paper are those of the individual contributors and do not necessarily reflect the position of the Global Detention Project.

Response to the CMW’s call for submissions on concept paper and draft outline for its draft General Comment No. 6 on the Convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration

Introduction

Our primary concern in the present submission is to briefly highlight the risk that the widely supported Global Compact for Safe, Orderly and Regular Migration (GCM) may facilitate a reduction or reversal in the protection of migrants’ rights, and to map out steps the UN Committee on Migrant Workers may take to address that risk. It is particularly important that the CMW endeavour to ensure that the 57 states parties to the ICRMW do not diverge from the standards enshrined in the ICRMW when implementing the GCM. The proposed General Comment 6 on convergence between the GCM and the ICRMW provides the perfect opportunity for the CMW to identify the potential perils and synergies for migrants’ rights protection posed by the GCM, and the measures that may be taken to head off those risks.

Risk of Rights Dilution

There are two main ways in which the GCM creates a risk of rights dilution for international migrants.[[1]](#footnote-1)

**Firstly,** it is a soft-law document which means that it is not legally binding and states that have endorsed the GCM cannot be compelled to abide by the commitments set out in the GCM, nor sanctioned for failure to comply with those commitments. It is no doubt the soft-law nature of the GCM that largely explains its overwhelming popularity with states.[[2]](#footnote-2) Prior to adoption of the GCM, migration had often been deemed “a toxic topic by states unwilling to subject themselves to supranational [binding] norms”.[[3]](#footnote-3) The non-binding nature of the GCM further risks undermining human rights protection of migrants given “the huge resources devoted to it that enhance its visibility”[[4]](#footnote-4) compared to the scant financial means provided by the UN for the treaty monitoring bodies made up of independent experts such as the CMW.

The soft-law nature of the GCM is reflected in the process in place for review of its implementation. The state-led non-binding International Migration Review Forum (IMRF) facilitates an exchange of best practice that provides fertile ground for loose implementation standards as states may feel they can avoid their binding obligations through participation in the GCM review mechanisms.[[5]](#footnote-5)

**Secondly**, there are many areas in which the GCM falls short of the standards enshrined in the ICRMW, and international human rights and labour standards more broadly. For example:

* Objective 21 on return refers to “the obligation of States to readmit their own nationals.” The language of this commitment, supported by western countries, does not reflect international law, as there is no undisputed obligation to readmit the country’s nationals who do not wish to return. Under Art.12(4) ICCPR, no one may be arbitrarily deprived of the right to enter their own country. This provision enshrines the right to return to one’s country; however, the concomitant obligation to accept the return of nationals applies only to voluntary return.[[6]](#footnote-6)
* There is no mention in the GCM of the right to leave any country “including their State of origin” (ICRMW Art. 8), “the most truly universal rule on migration”.[[7]](#footnote-7) Its omission from the Compact could be used by states to restrict this fundamental right. Any criticism of such restriction directed at states during review of GCM implementation may be convincingly deflected by pointing to the non-inclusion of the right to leave in the Compact.
* The GCM facilitates criminalisation of migration, putting it at odds with the position taken by the CMW on this matter.
* Objective 13 on detention fails to prohibit immigration detention of children which is at odds with the complete prohibition on such detention articulated in the second of the two joint general comments adopted in 2017 by the CMW and Committee on the Rights of the Child (CRC Committee).[[8]](#footnote-8) This Joint General Comment has been characterised as the apogee of the evolution towards a complete prohibition on the immigration detention of children.[[9]](#footnote-9) The GCM therefore risks hampering the progressive development of international human rights law, squandering a valuable opportunity to crystallise the “emerging consensus on the complete prohibition of immigration detention of children,”[[10]](#footnote-10) increasing uncertainty about the norm of non-detention of children,[[11]](#footnote-11) and perpetuating fragmentation and incoherence in relation to the elaboration of protection standards for some of the most acutely vulnerable individuals.

Ways in which the GCM may be read in light of the ICRMW to ensure convergence with ICRMW standards

Immigration detention of children

Among the implementing actions under Objective 13, states commit to ensure the availability and accessibility of a viable range of alternatives to detention and are merely expected to work to end child immigration detention (para. 29(h)) rather than forbid it completely. Despite the language in Objective 13 reflecting the traditional approach towards child detention based on the last resort principle, the Objective may however be interpreted as prohibiting child immigration detention when read in light of the principle of the best interests of the child. In fact, the GCM explicitly promotes existing international legal obligations in relation to the rights of the child and upholds the principle of the best interests of the child as a primary consideration in all situations concerning children in the context of international migration (para. 15(h)). In combination with the principle of non-regression, explicitly affirmed by the GCM (para. 15(f)), this means that the GCM cannot be used as a justification for states to set aside the non-detention rule under the ICRMW and CRC Committee, as articulated in the Joint General Comment. Rather, to paraphrase the text of the relevant implementing action under Objective 13, states should end child immigration detention immediately and place children in community-based care arrangements (which would then not be alternatives to detention).[[12]](#footnote-12)

Regularisation

The draft outline of GC6 notes that the GCM could complement the ICRMW on major issues such as regularisation of migrant workers and members of their families. This is arguably an area in which implementation of the GCM has more to learn from the ICRMW the work of the CMW. Art. 69(1) ICRMW obliges states parties to take “appropriate measures” to eliminate situations of irregular presence. The two main ways for states to ensure that migrants are not unlawfully present in their territory is to either expel them or confer a lawful status upon them. Art. 69, however, is explicitly concerned with the latter option. Art. 69(2) provides that whenever states “consider the possibility” of regularisation, they must give due consideration to circumstances surrounding migrants’ entry, the duration of their stay and “other relevant considerations, in particular those relating to their family situation”.

Despite the absence of any strict regularisation obligation, the CMW has drawn on Art. 69 to highlight the importance and possibilities for states to consider regularisation as a response to the presence of migrants in an irregular situation.

In four of the General Comments it has adopted so far, the CMW has highlighted the role regularisation may play in allowing protection of migrants’ rights to be secured in practice. In its first General Comment, concerning migrants employed in private homes, the Committee highlighted the potential of regularisation as a way of addressing the “extreme vulnerability” of irregular migrant domestic workers.[[13]](#footnote-13) General Comment 2, on the rights of irregular migrants, repeats the Committee’s encouragement to states parties to consider regularisation, it being “the most effective measure to address the extreme vulnerability of migrant workers and members of their families in an irregular situation.”[[14]](#footnote-14) The CMW’s third and fourth General Comments, adopted jointly with the CRC Committee, concern the rights of children and obligations of states in the context of international migration. The Committees invoke the principle of the best interests of the child to recommend that states put in place avenues for regularisation.[[15]](#footnote-15)

Since the CMW first addressed the issue of regularisation in a Concluding Observation in 2007,[[16]](#footnote-16) it has expressed concern to individual states parties at a lack of regularisation options[[17]](#footnote-17) and has recommended states to deploy regularisation as a means of addressing the situation of specific cohorts of irregular migrants[[18]](#footnote-18) and high numbers of irregular migrants.[[19]](#footnote-19) It has commended states that have adopted regularisation measures,[[20]](#footnote-20) and identified shortcomings in the regularisations undertaken by some states parties, along with recommendations for addressing such shortcomings.[[21]](#footnote-21)

The promotion of regularisation by the CMW is in keeping with the object and purpose of the ICRMW. The Convention is clearly animated by a particular concern for the human rights of irregular migrants. The Preamble notes that “the human problems involved in migration are even more serious in the case of irregular migration” with irregular migrants “frequently employed under less favourable conditions of work than other workers”. The ICRMW thus in Part III explicitly stipulates a catalogue of safeguards to be enjoyed by all migrants regardless of status. In practice, however, the limited list of rights set out in Part III is difficult to secure for irregular migrants: their very lack of legal migration status often precludes any attempt by migrants to enforce their rights for fear that such a course of action may trigger their expulsion. Regularisation removes the risk of imminent deportation and puts migrants in a position to assert the rights they enjoy under the ICRMW. In this context, the CMW’s promotion of regularisation[[22]](#footnote-22) is entirely consistent with the spirit of the treaty and with the reality of migration in a world where global inequality and a demand for migrant labour in states with restrictive immigration policies produces tens of millions of irregular migrants.

By contrast, the term regularisation is absent from the GCM. The Zero Draft did state that in order to achieve inclusion and social cohesion, as articulated in Objective 16, instrumental actions included facilitation of access to regularisation options “as a means to promote migrants’ integration into society and fully harness their contributions to sustainable development, as well as to reduce the stigmas that may be associated with irregular status”.[[23]](#footnote-23) This action was omitted from the final draft of the Compact due to its politically sensitive nature,[[24]](#footnote-24) notwithstanding the view of the Africa Group during regional consultations that regularisation should be included.[[25]](#footnote-25) Nonetheless, strong support for regularisation may be deduced from the text of the GCM.

The ultimate goal of the GCM, to bring about migration that is safe, orderly and regular, cannot be achieved without recourse to regularisation. Continued presence of populations of irregular migrants in states around the world will, by definition, defeat the objective of ensuring regular migration: irregular migrants are, for self-evident reasons, in an unsafe situation. Beyond the bare title and aim of the GCM, the text of the document itself clearly encourages recourse to regularisation to achieve effective protection of “the human rights of all migrants, regardless of their migration status” (para. 15). This is most sharply illustrated by Objective 7 on addressing and reducing vulnerabilities in migration. The non-exhaustive list of 12 actions guiding states’ response to the needs of vulnerable migrants includes two key items that will underpin GCM-based policies around regularisation.

Firstly, states should develop “procedures that facilitate transitions from one status to another … so as to prevent migrants from falling into an irregular status”. Secondly, states should provide irregular migrants with “an individual assessment that may lead to regular status, on a case by case basis and with clear and transparent criteria” especially where questions of family life are involved (para. 23(h) & (i)). States’ implementation of these elements of the GCM will be helpfully informed by reference to the guidance on regularisation provided by the CMW in its General Comments and Concluding Observations.

Firewalls

A further important issue of particular relevance to irregular migrants where there is broad concordance between the ICRMW and GCM is that of firewalls. Use of a firewall in the context of irregular migration entails a guarantee that information concerning the immigration status of persons accessing public or social services will not be shared with those responsible for immigration law enforcement.[[26]](#footnote-26) The aim here is to avoid situations where irregular migrants are in practice prevented from accessing rights to which they are formally entitled through fear that contact with public authorities or service providers may ultimately lead to their deportation. Meaningful implementation of firewalls between public services and immigration enforcement would, for example, allow irregular migrants to access health care and to enforce their labour rights without fear of detention and deportation.

While the ICRMW is silent on the issue of firewalls, the CMW has recognised that such a device is necessary in order to ensure that the rights set out in the treaty are practical and effective for irregular migrants, and not simply theoretical. In its second General Comment, on the rights of irregular migrants, the CMW explicitly prohibited any requirement for public health institutions, health care providers, schools and labour inspectorates to report or otherwise share data on service users’ migration status with immigration authorities.[[27]](#footnote-27) Similarly, it prohibited the conduct of immigration enforcement operations on or near school premises or facilities providing medical care.[[28]](#footnote-28) In the same vein, the CMW’s Joint General Comments with the CRC Committee call for the development of effective firewalls between public or private service providers and immigration enforcement authorities to ensure that irregular migration status does not operate to limit enjoyment of children’s rights.[[29]](#footnote-29)

More recently, the CMW has begun to address the issue of firewalls in its Concluding Observations. Since 2018 the Committee has recommended three states parties to put in place firewalls so as to remove the fear of arrest, detention and deportation that prevents irregular migrants from accessing basic services such as housing, health care and education.[[30]](#footnote-30)

Despite the increasing support for firewalls amongst the UN’s human rights mechanisms[[31]](#footnote-31) and other bodies concerned with human rights and labour standards,[[32]](#footnote-32) the GCM is prima facie silent on this matter. The term firewall is mentioned three times in the Zero Draft, but such references were deleted before adoption of the final document.[[33]](#footnote-33) There is, however, no inevitable incompatibility between use of firewalls and implementation of the GCM. Indeed, use of such a mechanism is arguably necessary to achieve the Compact’s aim of reducing “the risks and vulnerabilities migrants face at different stages of migration by respecting, protecting and fulfilling their human rights” (para. 12). More specifically, certain actions included in the Compact seem to necessitate firewalls. Ensuring that migrants exploited in the informal economy have access to reporting mechanisms “in a manner that does not exacerbate vulnerabilities of migrants that denounce such incidents” is a case in point (para. 22(j)). Objective 7 on reducing vulnerabilities in migration essentially invites all states to consider firewalls by reviewing “labour laws and work conditions to identify and effectively address workplace-related vulnerabilities and abuses of migrant workers” (para. 23(d)).

Read in light of the evolving international standards articulated in the work of the CMW, states’ implementation of the GCM should clearly include appropriate use of firewalls to ensure the rights afforded to irregular migrants on paper are also available to them in practice. States parties to the ICRMW, when implementing the GCM and its implicit requirement of firewalls, should be guided by the CMW’s more explicitly articulated position on firewalls than the euphemistic language in the GCM

Criminalisation

Briefly stated, criminalisation is a broad concept that involves both the application of criminal law sanctions to immigration law breaches such as irregular entry and stay, as well as deployment against irregular migrants of administrative measures which mimic criminal ones, such as detention.[[34]](#footnote-34) More recently, it has extended to include the application of criminal law against persons and organisations engaged in providing humanitarian assistance to irregular migrants.[[35]](#footnote-35)

While the adoption of the ICRMW predates the emergence of criminalisation as a central feature of the contemporary international migration landscape, opposition to the criminalisation of migration is encoded in the treaty’s DNA: it requires that persons detained for immigration violations be held, “in so far as practicable”, separately from those in the criminal justice system (Art. 17(3)) and promotes a migrant-friendly approach to the legitimate application of criminal law by encouraging states to take into account humanitarian considerations in imposing a sentence for a criminal offence committed by a migrant (Art. 19).

The CMW has been forthright in its denunciation of the criminalisation of migration.[[36]](#footnote-36) In its Concluding Observations it has recommended the decriminalisation of irregular entry[[37]](#footnote-37) and irregular migration status[[38]](#footnote-38) in specific states parties. In its General Comments, the CMW has been particularly trenchant in its opposition to criminalisation. In its General Comment 2, on irregular migrants’ rights, the CMW spotlighted criminalisation as fuel for public perceptions of irregular migrants as “second-class individuals, or unfair competitors for jobs and social benefits” and consequent discrimination and xenophobia.[[39]](#footnote-39) In a similar vein, the CMW takes the view that irregular entry or residence does not constitute a crime. While they “may constitute administrative offences, they are not crimes *per se* against persons, property or national security” and criminalisation of irregular entry therefore exceeds states parties’ legitimate interest in controlling irregular migration.[[40]](#footnote-40)

In the second of their joint general comments with the CRC Committee, the Committees emphasise that children should not be criminalised because of their or their parents’ migration status.[[41]](#footnote-41) They call on states to refrain from criminalising irregular migrant children who exercise their right to housing and private actors who facilitate exercise of this right.[[42]](#footnote-42) Much of the CMW’s criticism of criminalisation is repeated and distilled in its General Comment on immigration detention,[[43]](#footnote-43) which notes that states parties to the ICRMW “have an obligation not to criminalize migration”.[[44]](#footnote-44)

The GCM, on the other hand, takes a less clear-cut approach to criminalisation. While it explicitly calls for migrant victims of trafficking and for provision of assistance “of an exclusively humanitarian nature” not to be criminalised (paras. 26(g) & 24(a)), its call for non-criminalisation of migrants who are “the object of smuggling” allows “potential prosecution for other violations of national law” (para. 25).[[45]](#footnote-45) Similarly, while the Zero Draft committed states to ensuring that “national legislation reflects irregular entry as an administrative, not a criminal offence”,[[46]](#footnote-46) the GCM as adopted facilitates continued criminalisation by making the much vaguer commitment to “review and revise relevant laws and regulations to determine whether sanctions are appropriate to address irregular entry or stay” (para. 27(f)).

The failure of the GCM to oppose criminalisation of migration *per se* is inconsistent with the spirit of much of the document. The Compact celebrates migration as “part of the human experience throughout history” and “a source of prosperity, innovation and sustainable development in our globalized world” (para. 8). A central consequence of criminalisation is an increase in migration that is classified as irregular. The guidance provided by the CMW on criminalisation can be usefully employed by states in their implementation of the GCM, and should guide the CMW as it evaluates the reports of states parties on their compliance with the ICRMW to ensure GCM-implementation is not leading to outcomes incompatible with the ICRMW.

Practical measures CMW may take to ensure ICRMW-compliant implementation of the GCM

In order to remove the rights-dilution risks posed by the GCM, implementation of the Compact should be conducted in a manner that is compatible with the standards set out in the ICRMW, as developed by the CMW. The CMW can adopt four measures:

1. The CMW must be alert to any attempts by states parties to employ implementation of the GCM as a means of eschewing or lowering ICRMW standards. To mitigate this risk, the Committee should include as a **standing item in its Concluding Observations a recommendation** that states parties engage with the GCM implementation process in a manner that is consistent with their ICRMW obligations and to include information on this point in their periodic reports to the Committee.
2. Where there is evidence of states parties implementing the GCM in a way that is inconsistent with the ICRMW, the CMW in its Concluding Observations should employ the **GCM’s non-regression clause** (para. 15) as one of its tools for requiring effective and good faith compliance with the ICRMW.
3. Furthermore, the CMW might recommend that states parties themselves **promote wider ratification of the ICRMW** during the GCM implementation review process as a complement to their obligation to report to the CMW on their efforts to disseminate and promote the Convention.[[47]](#footnote-47) Such efforts by the CMW would be consistent with long-standing and ongoing promotion endeavours on the part of the Committee.[[48]](#footnote-48) Greater reference to the ICRMW, even in the absence of wider ratification, is necessary in order to ensure coherence in the interpretation and application of international human rights and labour standards vis-à-vis non-citizens.
4. The Committee can seek further engagement with the GCM review and implementation processes.[[49]](#footnote-49) The CMW should be part of the **Executive Committee of the UN Network on Migration**, the group established to “ensure effective and coherent” support for implementation and review of the GCM (para. 45). Given the position of the CMW as the guardian of the UN human rights treaty customised for the protection of migrants, and given the mandate of the Network to “fully draw from the technical expertise and experience of relevant entities within the United Nations system” (para. 45(b)), it is difficult to understand the CMW’s absence from the Network’s eight-member Executive Committee that sets strategic priorities to support states to effectively implement the GCM.[[50]](#footnote-50) It is equally difficult to understand the CMW’s non-membership of the **Network’s three Core and six Thematic Working Groups**. These Working Groups support states and other stakeholders in the implementation, follow-up and review of the GCM in key defined areas including the development of alternatives to detention, elaboration of national GCM implementation plans, and access to public services for all migrants regardless of status. While CMW participation in meetings organised by the Network is important,[[51]](#footnote-51) it cannot compensate for lack of CMW membership in the Network’s Executive Committee and Working Groups. Non-membership creates space for implementation of the GCM that diverges with the standards elaborated in the ICRMW, as interpreted by the CMW.
1. Many of the arguments made in the present submission are elaborated upon in *Alan Desmond*, From Complementarity to Convergence: the UN Global Compact for Migration and the UN Migrant

Workers Convention, World Comparative Law 55(1) (2022), pp. 83-104. [↑](#footnote-ref-1)
2. The GCM was endorsed by 152 of the UN’s 193 member states, with five voting against it, 12 abstaining and 24 not turning up for the vote. Amongst those who failed to vote, seven subsequently informed the UN Secretariat they had intended to vote in favour. Three of the states parties to the ICRMW – Algeria, Chile and Libya – were amongst the 12 states that abstained from the vote in the UN General Assembly. UN General Assembly, 60th plenary meeting, 19 December 2018, UN Doc A/73/PV.60, pp. 14–15. [↑](#footnote-ref-2)
3. *Mariette Grange and Izabella Majcher,* Using detention to talk about the elephant in the room: the Global Compact for Migration and the significance of its neglect of the UN Migrant Workers Convention, International Journal of Law in Context 16(3) (2020), p. 14. [↑](#footnote-ref-3)
4. ibid. [↑](#footnote-ref-4)
5. For discussion of the first IMRF, see *Izabella Majcher*, GCM Objective 13: In Search of Synergies with the UN Human Rights Regime to Foster the Rule of Law in the Area of Immigration Detention, Laws 11(4) (2022), pp. 13-16, <https://www.mdpi.com/2075-471X/11/4/52> [↑](#footnote-ref-5)
6. For discussion, see *Izabella Majcher*, “Implementation of GCM Objective 21 in the UNECE Region: Selective Interpretation of the Return, Readmission, and Reintegration Commitments,” Refugee Law Initiative (RLI) Blog, 2021, <https://bit.ly/3AZShcV> and *Izabella Majcher*, “GCM Commentary: Objective 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration,” Refugee Law Initiative (RLI) Blog, 2018, <https://bit.ly/3L00Poy> [↑](#footnote-ref-6)
7. *Vincent Chetail*, The Global Compact for Safe, Orderly and Regular Migration: a kaleidoscope of international law, International Journal of Law in Context 16(3) (2020), p. 255. [↑](#footnote-ref-7)
8. Joint GC 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and 23 of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return (2017) CMW/C/GC/4-CRC/C/GC/23., para. 5. [↑](#footnote-ref-8)
9. *Ciara Smyth*, Towards a Complete Prohibition on the Immigration Detention of Children, Human Rights Law

Review 19 (2019), p. 21. [↑](#footnote-ref-9)
10. UN Special Rapporteur on the human rights of migrants, Ending immigration detention of children and providing adequate care and reception for them, 20 July 2020, UN Doc A/75/183, para. 79. [↑](#footnote-ref-10)
11. *Izabella Majcher*, Immigration Detention under the Global Compacts in the Light of Refugee and Human Rights Law Standards, International Migration 57(6) (2019), pp. 97 and 107. [↑](#footnote-ref-11)
12. *Izabella Majcher* (note 5), pp. 5-6, <https://www.mdpi.com/2075-471X/11/4/52> [↑](#footnote-ref-12)
13. GC 1 on migrant domestic workers, CMW, 23 February 2011, CMW/C/GC/1, para. 52. [↑](#footnote-ref-13)
14. GC 2 on the rights of migrant workers in an irregular situation and members of their families, CMW, 28 August 2013, CMW/C/CG/2, pp. 17–18, para. 16. [↑](#footnote-ref-14)
15. Joint GC 3 (2017) of the Committee on the Protection of the Rights of All Migrant

Workers and Members of Their Families and 22 (2017) of the Committee on the Rights of the

Child on the general principles regarding the human rights of children in the context of international

migration (2017) CMW/C/GC/3-CRC/C/GC/22, para. 44; Joint GC 4 (note 8), paras. 29 and 35. [↑](#footnote-ref-15)
16. Concluding Observations on the initial report of Ecuador, 5 Dec 2007, CMW/C/ECU/CO/1, para. 6(c). [↑](#footnote-ref-16)
17. Eg, Concluding Observations on the initial report of Turkey, 31 May 2016, CMW/C/TUR/CO/1, para. 85. [↑](#footnote-ref-17)
18. Eg, Concluding observations on the second periodic report of Tajikistan, 9 May 2019, CMW/C/TJK/CO/2, para. 35(b). [↑](#footnote-ref-18)
19. Eg, Concluding Observations on the initial report of Azerbaijan, 19 May 2009, CMW/C/AZE/CO/1, paras. 44–45. [↑](#footnote-ref-19)
20. Eg, Concluding Observations on the second report of Ecuador, 15 Dec 2010, CMW/C/ECU/CO/2, paras. 6–7. [↑](#footnote-ref-20)
21. Eg, Concluding Observations on the second periodic report of Argentina, 4 Feb 2020, CMW/C/ARG/CO/2, paras. 52–53. [↑](#footnote-ref-21)
22. Other treaty bodies have also recommended regularisation as a way of ensuring that rights set out in the core international human rights instruments are available, not only in theory but also in practice, to irregular migrants. Eg, CESCR, Concluding Observations on the seventh periodic report of Ukraine, 2 April 2020, E/C.12/UKR/CO/7, para. 25(a). [↑](#footnote-ref-22)
23. Global Compact for Safe Orderly and Regular Migration, Zero Draft, 5 February 2018, https://refugeesmigrants.un.or/ite/efaul/ile/80205\_gcm\_zero\_draft\_final.pdf [↑](#footnote-ref-23)
24. *François Crépeau*, Towards a Mobile and Diverse World: “Facilitating mobility” as a central objective of the Global Compact on Migration, International Journal of Refugee Law 30 (2018), p. 652. [↑](#footnote-ref-24)
25. *Olawale Maiyegun*, Role of Regional Consultative Processes in the lead up to the Negotiations of

Global Compact on Migration: The Case of Africa, International Migration 57 (2019). [↑](#footnote-ref-25)
26. Eg, *Joseph Carens*, The Ethics of Immigration, Oxford 2013, pp. 132–135; PICUM, Data Protection and the Firewall, Brussels 2020. [↑](#footnote-ref-26)
27. GC 2 (note 14), paras. 63, 74 and 77. [↑](#footnote-ref-27)
28. ibid, paras. 74 and 77. [↑](#footnote-ref-28)
29. Joint GC 3 (note 15), para. 17; Joint GC 4 (note 8), paras. 42, 46, 52, 56 and 60. [↑](#footnote-ref-29)
30. Eg, Concluding Observations on the second periodic report of Guatemala, 2 May 2019, CMW/C/GTM/CO/2, para. 29(f). A similar recommendation was made to Germany by the CESCR: Concluding Observations on the sixth periodic report of Germany, 27 November 2018, E/C.12/DEU/CO/6, para. 27. [↑](#footnote-ref-30)
31. Eg, UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Visit to France, 3 March 2020, UN Doc A/HRC/43/43/Add.2, paras. 70 and 93(f). [↑](#footnote-ref-31)
32. Eg, European Commission against Racism and Intolerance, General Policy Recommendation 16 on Safeguarding Irregularly Present Migrants from Discrimination, Strasbourg 2016, pp. 7, 13, 15 and 19; ILO, Promoting Fair Migration, Geneva 2016, paras. 481–482. [↑](#footnote-ref-32)
33. For discussion of the EU’s desire to omit any firewall-related commitments from the GCM, see *Tamás Molnár*, The EU shaping the Global Compact for Safe, Orderly and Regular Migration: the glass half full or half empty?, International Journal of Law in Context 16(3) (2020), p. 335. [↑](#footnote-ref-33)
34. *Mariette Grange*, The Migrant Workers Convention: A legal tool to safeguard migrants against

arbitrary detention, in: Alan Desmond (ed.), Shining New Light on the UN Migrant Workers

Convention, Pretoria 2017, pp. 75–76. [↑](#footnote-ref-34)
35. *Sergio Carrera et al*, Fit for purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants: 2018 Update, Brussels 2018. [↑](#footnote-ref-35)
36. This approach has been supported by the UN High Commissioner for Human Rights. See OHCHR, Opening Statement by Mr. Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights to a Panel to mark the 25th Anniversary of the Adoption of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 8 September 2015. [↑](#footnote-ref-36)
37. Eg, Concluding Observations on the initial report of Bangladesh, 22 May 2017, CMW/C/BGD/CO/1, paras. 29–30. [↑](#footnote-ref-37)
38. Eg, Concluding Observations on the initial report of Algeria, 19 May 2010, CMW/C/DZA/CO/1, paras. 18 and 21; Concluding observations on the second periodic report of Tajikistan, 9 May 2019, CMW/C/TJK/CO/2, paras. 34 and 35(b). [↑](#footnote-ref-38)
39. GC 2 (note 14), p. 3, para. 2. [↑](#footnote-ref-39)
40. ibid, p. 9, para. 24. [↑](#footnote-ref-40)
41. Joint GC 4 (note 8), p. 3, para. 7. [↑](#footnote-ref-41)
42. ibid, p. 13, para. 52. [↑](#footnote-ref-42)
43. GC 5 on migrants’ rights to liberty, freedom from arbitrary detention and their connection

with other human rights, CMW, 23 September 2021, CMW/C/GC/5.. [↑](#footnote-ref-43)
44. ibid, para. 4. [↑](#footnote-ref-44)
45. It is clear from the explanations of vote in the General Assembly that many states which endorsed the GCM view it as their right to deal with irregular border crossings as criminal rather than administrative offences. See, eg, UN Doc A/73/PV.60 (note 2), pp. 22 and 25. [↑](#footnote-ref-45)
46. Zero Draft (note 23), para. 23(d). [↑](#footnote-ref-46)
47. See Provisional Guidelines regarding the form and contents of initial reports to be submitted by states parties under article 73 of the ICRMW, 6 May 2005, HRI/GEN/2/Rev.2/Add.1, para. 3(d); and Guidelines for the periodic reports to be submitted by states parties under Article 73 of the Convention, 22 May 2008, CMW/C/2008/1, para. 3(c). [↑](#footnote-ref-47)
48. Eg, CMW Informal Meeting Geneva, 11 to 15 October 2004, CMW/C/2004/L.4, paras. 7–11; Report of the CMW Thirty-first session, 2–11 September 2019, UN Doc A/75/48, paras. 26–48. [↑](#footnote-ref-48)
49. For broader possibilities of engagement with the UN Migration Network, see *Izabella Majcher* (note 5), pp. 8-9, <https://www.mdpi.com/2075-471X/11/4/52> [↑](#footnote-ref-49)
50. United Nations Network on Migration https://migrationnetwork.un.org/executive-committee. [↑](#footnote-ref-50)
51. Report of CMW, Thirty-first session (note 48), paras. 26 and 48. [↑](#footnote-ref-51)