



Global Alliance Against Traffic in Women

Migrants' Rights are Human Rights: The basis of the Global Compact on migration

Global Compact for safe, orderly and regular migration: Thematic consultation on the human rights of all migrants, social inclusion, cohesion, and all forms of discrimination, including racism, xenophobia and intolerance, 8 and 9 May 2017, Geneva

Position paper by the **Global Alliance Against Traffic in Women (GAATW)**

1. Commit to realising the human rights of all migrants

The Global Compact should:

- Affirm and re-commit to **respecting, protecting and fulfilling the human rights of migrants without discrimination** and across the international human rights framework of civil, political, economic, social and cultural rights.¹
- Urge states who have not yet done so to **ratify and implement all international and regional human rights instruments**, withdraw any reservations, and reaffirm in policy and practice the human rights of all migrants, regardless of their migratory status.

The Global Alliance Against Traffic in Women (GAATW) welcomes the first thematic meeting of the process for the Global Compact for safe, orderly and regular migration being focused on the human rights of migrants. Though this is a standalone meeting, human rights must not be treated as a standalone issue. For the Global Compact to be people-centred and gender-responsive it needs to be rights-based, thus it is essential to centre human rights in the process from the outset: ensuring respect for, protection and fulfilment of the human rights of migrants and human rights-based governance of migration, in keeping with states' existing obligations under international human rights law.² States have committed and repeatedly reaffirmed to fully protect the human rights of all migrants, regardless of their migratory status, most recently at the UN Summit for Refugees and

Migrants that established this process.³ The Global Compact must not undermine these existing obligations.

We must never lose sight of the simple fact that migrants are people and as such are rights-bearers, enjoying all human rights. The international bill of rights (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) applies to both nationals and non-nationals, making exceptions in respect of only two rights, and only in limited circumstances.⁴ The international human rights framework sets out a comprehensive set of minimum standards of civil, political, economic, social and cultural rights: universal, inalienable, indivisible and interdependent. The fundamental principle of non-discrimination that lies at the heart of the international human rights law is essential to the exercise and enjoyment of human rights for everyone, including migrants, irrespective of status.⁵ Human rights must be enforceable: the Global Compact should include a monitoring process and ensure accountability between duty-bearers and rights-holders with mechanisms to hold state and non-state actors accountable and ensure remedies in the case of human rights abuses against migrants.

2. Counter all forms of discrimination against migrants

The Global Compact should:

- Ensure that **non-discrimination provisions in legislation address multiple and intersecting forms of discrimination** and are applicable to all migrants and migration contexts, in line with international human rights standards.
- Condemn and **take effective measures against populist rhetoric, racism and other forms of discrimination against migrants**, including that made by politicians, other leaders, and the media.

Migrants – or anyone perceived to be – are targeted for multiple and intersecting forms of discrimination throughout their migration. Discrimination on the basis of their status as migrant or being a non-national is often overt, but other discriminations interact with and change migrants' experiences including on the basis of their actual or assumed gender, age, sexual orientation, gender identity or expression, religion, ethnicity, nationality, class, and/or disability. Women's rights are instrumentalised to demonise migrants.⁶ Migrants are also targeted for discrimination on the basis of occupation, with those in low-paid work often treated with particular contempt, even though policy and practice often limit migrants to precarious work in the informal economy.

As we work to develop the Global Compact on migration, we are in the midst of an increase in populist politics, authoritarian movements and governments, often linked with nationalism and its associated racial and gender supremacist ideologies and various kinds of fundamentalisms. We are seeing how this renders acceptable anti-migrant discourse and policies, and how these movements are characterised by attacks on expertise and evidence. This is a dangerous time for migrants' rights. The Global Compact must stand against these threats.

3. Ensure a gender analysis that affirms women's rights and autonomy

The Global Compact should:

- Recognise and **respect the agency and human rights of women migrants** and not use victimising rhetoric that positions women as inherently vulnerable to harms, which limits their enjoyment of their rights.
- Commit states to **migration policies and laws that are gender-responsive and respect, protect and fulfil women's rights.**

Almost half of all international migrants are women.⁷ However, migration is often described in gendered terms and through the lens of male experiences, while migration policies often ignore women's migration and rights. Men who migrate are understood to be exercising agency and acting on economic imperatives in their migration, which is usually conceived as labour migration. The understanding of women migrants is often limited to a simplistic view of family migration as a largely feminised flow bringing dependents to the private sphere. When women migrants are conceived of as workers it is typically focused on the care economy. This is a major driver of women's migration, but it is not the only labour sector in which women migrants work. The language used about women migrants often assumes a lack of choice, capacity or autonomy, assuming an inherent vulnerability and positioning women only as victims in need of protection. Far from supporting women migrants, this framing is often the basis of restricting women's rights and mobility in law or in practice. Migration will have different impacts across all genders and there needs to be a gender analysis on migration laws and policies to ensure migrants' rights, gender equity and respect for migrants' autonomy. Just as human rights must be cross-cutting through the thematic consultations and the final Global Compact, so must a rights-based gender analysis.

4. Promote people-centred migration policies

The Global Compact should:

- In concert with the Global Compact on Refugees, seek to **avoid creating hierarchies of rights holders**, which would ignore the complex realities of migrants' lives, and exacerbate damaging and discriminatory discourse around migrants' and refugee rights.
- Commit states to making **evidence- and rights-based policy** on migration.
- Acknowledge the responsibilities of states in reducing vulnerable situations for migrants, and encourage states to **open safe pathways for regular migration**, in line with commitments in the 2030 Agenda for Sustainable Development.
- **Distinguish smuggling of migrants from trafficking in persons** in order to better protect the rights of all migrants, and ensure that any laws, policies or programmes implemented in the name of addressing either issue are not used as a justification for limiting migrants' rights.

Human rights apply across the migration experience from country of origin, through all stages of transit, in the country of destination, and in any travel back to and in the migrant's country of origin. Migration realities are complex and do not easily fit the categories we refer to when describing migration and migrants' rights: through linear, intentional stages of migration of individuals whose protection status is clear and stable through their migration. Compared to refugees, people who migrate are assumed to have made a choice to do so, which means they are assumed to be to blame for any consequences of their action, even human rights abuses perpetrated against them. However, increasingly we recognise that the concept of 'voluntariness' in this respect is not adequate to the diverse lived realities of migrants, including those who move in large movements.⁸ Migrants have different reasons for undertaking their journey. Many migrants do not set out with or follow a pre-planned route, or may change routes and intended destination as they travel. Transit countries may become destination countries. Migrants do not stop being migrants when they stop moving. Child migrants do not lose rights when they stop being children. What migrants share is a resilience to undertake the migration, and hope for better conditions from their efforts. Increasingly we are seeing mixed migratory flows, which bring people with different protection needs together in the same journey, sharing many of the same risks. It remains important to uphold existing protections for specific groups established in international law, but it is crucial to recognise that these statuses are not fixed from the outset of the migration and migrants often pass in and out of various legal categories during the course of their journey.⁹

Although care needs to be taken to address the needs of all migrants who are in vulnerable situations, the focus should be on reducing incidences of such situations. Most of the time migrants exhibit considerable resilience but they can be put in vulnerable situations, including those to which trafficked persons are exposed, because of inadequate access to regular pathways to migration and legislation and policy that does not respect, protect and fulfil the rights of migrants, regardless of status, among other factors.¹⁰ Tightening migration restrictions increases the danger for migrants as it creates opportunities and incentives for abusing migrants' rights. Preventing trafficking in persons can never be a justification for limiting the human rights of migrants. Situational vulnerability can be addressed by state action on the drivers of migration, facilitating migration as affirmed in the New York Declaration and the 2030 Agenda for Sustainable Development and elsewhere,¹¹ and respecting, protecting, and fulfilling migrants' human rights including at borders. Action against embodied vulnerability must also be led by states: leading efforts to eliminate all forms of discrimination.

5. Ensure migration policies are consistent with social inclusion and cohesion

The Global Compact should:

- **Move away from models of temporary migration** including circular migration, which undermine migrants' human rights and are contrary to social inclusion and cohesion.
- **Commit to establishing firewalls** between public health service providers, law enforcement and criminal justice actors, labour inspectors, and immigration enforcement authorities, and ensure their implementation in practice.

The emphasis on circular migration and temporary migration schemes in many state policies prevent and restrict the movement of migrant workers and increases the risk of abusive and irregular situations where they can be exploited by recruiters, employers and others. Furthermore, such policies are counterproductive to addressing one of the key public concerns regularly voiced about migration: the lack of integration of migrants. Keeping migrants on temporary contracts and insisting that they do not put down roots in the countries of destination undermines social inclusion and cohesion.

Another barrier to cohesion is the regular vilification of migrants in the public discourse, including by politicians and the media. States called on the UN, over 40 years ago, not to use terminology of "illegal" migration/migrants, regardless of their migratory status.¹² However we still see such

discriminatory terminology and attitudes widely expressed with impunity, including by politicians, opinion-leaders and the media. As well as being discriminatory, this misrepresents the reality of migration, which sees the majority of migrants in irregular situations migrate using regular channels to their countries of destination and later move in to irregular status – for example by leaving the employer to whom their papers were issued, moving outside the zone covered by their permit, overstaying their permits, etc., indicating the inadequacies of many migrant documentation schemes for migrant realities. It is only a small minority of migrants who cross borders without authorisation.¹³ The politicisation of migration and use of discriminatory discourse positions people migrating to improve their lives and contribute to new societies as some sort of threat to social service provision, and job security. In reality, this populist rhetoric only serves to drive social tensions and prevent inclusion.

Without the security of being able to use public services and access criminal justice without fear of arrest, detention and deportation, migrants cannot live full lives outside of their countries of origin. Firewalls keep public services and the criminal justice system separate from immigration enforcement, allowing migrants who are in irregular status, or who have family members who are, to access healthcare, education and other social services, report crimes against them or act as witnesses to crimes, and access remedies.¹⁴

6. Ensure meaningful, multistakeholder participation

The Global Compact should:

- Commit to the **meaningful participation of civil society and migrants** themselves in the implementation of the Global Compact at local, national, regional and international levels to ensure rights-based and people-centred practice.

A human rights-based approach to the Global Compact would include the meaningful participation of migrants and civil society in its development, and is crucial to achieving a Compact in line with the 2030 Agenda for Sustainable Development.¹⁵ The UN has repeatedly emphasised the importance of the experience and expertise that that civil society organisations bring to UN processes¹⁶ and the indispensable role that civil society brings in the effective promotion and protection of human rights.¹⁷

-
- ¹ The Global Compact would need to ensure the application of all the core international human rights instruments to the range of migration contexts and to migrants in all their diversity. This would *include*: ending discrimination including multiple and intersecting forms of discrimination; recognising border crossings and the management of residence and work permits are administrative issues and ensuring people are not criminalised for irregular entry, stay, or work; ensuring access to justice; implementing rights-based border governance measures; protecting migrants' lives and safety and providing immediate assistance to those facing risks to life or safety; ensuring security of person; guaranteeing protection against torture and cruel, inhuman or degrading treatment or punishment; upholding the principle of non-refoulement; making all efforts to end all forms immigration detention and ensuring adherence to the UN Standard Minimum Rules on the Treatment of Prisoners and all other relevant international standards in the meantime; protecting migrants from all forms of violence and exploitation; ensuring the right to remedy; ensuring migrants can seek, receive and impart information and ideas of all kinds through any media of their choice; ensuring migrants can participate freely in cultural life; preventing arbitrary or unlawful interference in private and family life and protecting family unity, recognising diverse forms of family; guaranteeing freedom of religion or belief; ensuring the enjoyment of the highest attainable standard of physical and mental health, including sexual and reproductive health; safeguarding the right of migrants to an adequate standard of living; guaranteeing the right to work in just and favourable conditions; ensuring freedom of association, including the right to form and join trade unions; providing access to quality education throughout their lives; guaranteeing the right to privacy; ensuring any return processes are voluntary with free and fully informed consent and with adequate procedural safeguards; guaranteeing the right to seek asylum, and supporting the activities of human rights defenders working with migrants. Additionally, for child migrants and the children of migrant parents or guardians, the Global Compact would need to address human rights concerns including: acting in the best interests of the child; guaranteeing they are treated as children first and foremost; ensuring they can express their views freely in all matters affecting them and to have their views taken into account in accordance with their age and maturity; making a presumption in favour of the child in situations of ambiguity regarding the age of a migrant; ensuring they are never detained on account of their migration status or that of their parents.
- ² States' obligations to migrants under other parts of international law, including international labour and criminal law, also apply but are considered primarily in other thematic consultations in this process.
- ³ UN New York Declaration for Refugees and Migrants, outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paragraphs 5 and 41
- ⁴ The ICCPR in Article 25 reserves to citizens the right to vote and take part in public affairs, and in Article 12 reserves the right to freedom of movement within a country to foreigners who are lawfully present within the country. However, in its General Comment No. 15, the Human Rights Committee has guided that a foreigner may enjoy the protection of ICCPR Article 12 even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.
- ⁵ As well as the non-discrimination provisions of the international standards themselves, the international human rights treaty bodies have repeatedly affirmed that the rights set out in each treaty apply equally to migrants (*cf.* note 3)
- ⁶ Women in Migration Network, On International Women's Day 2016, End Violence Against All Women Regardless of Status, 7 March 2016, <http://womeninmigration.org/2016/03/on-international-womens-day-end-violence-against-all-women-regardless-of-migration-status/>
- ⁷ United Nations, Department of Economic and Social Affairs, Population Division, *International Migration Report 2015: Highlights*, ST/ESA/SER.A/375, 2016, available at http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf
- ⁸ UN High Commissioner for Human Rights, "Callous" EU politics on migrants costing lives – Zeid, OHCHR, 20 April 2015; UN High Commissioner for Human Rights, Looking Ahead to the General Assembly and US Presidential Summits on Addressing Large Movements of People (19-20 September 2016), *Quartet High Level Side Event "Pathways for admission of Syrian refugees"*.
- ⁹ Refugees are entitled to specific protection under international refugee law but in the Global Compact process are considered separately. The particular needs of trafficked persons are recognised in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add. 1, addendum) and will be considered in a later thematic consultation.
- ¹⁰ See, General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, paragraphs 59, 60
- ¹¹ UN New York Declaration for Refugees and Migrants, paras.16, 41, 54, 57, Annex II para.8 (e); Agenda 2030 for Sustainable Development, A/RES/70/1, para.29, SDG target 10.7.
- ¹² General Assembly, Measures to ensure the human rights and dignity of all migrant workers, Resolution 30/3449 (1975)

-
- ¹³ For example, though there is regional variation, the Global Commission on International Migration estimated that in 2005 only 2.5 to 4 million migrants crossed international borders without authorisation each year, out of a global total of around 200 million at the time, available at <http://web.mnstate.edu/robertsb/308/Migration%20at%20a%20glance.pdf>
- ¹⁴ Firewalls are advocated within the European Union and recommended by international human rights bodies: EU Fundamental Rights Agency (2013), *Apprehension of migrants in an irregular situation*, available online at http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf, preamble; European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, Strasbourg, CRI(2016)16, available at http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf; Committee on Economic, Social and Cultural Rights, General Comment No. 23 on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 8 March 2016, para.54; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.63, 64, 74, 77; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, paras.58(c),(d); ILO Committee of Experts, 2006 General Survey on the labour inspection instruments, paras.78 and 161, available at [http://www.ilo.ch/public/libdoc/ilo/P/09661/09661\(2006\)1B.pdf](http://www.ilo.ch/public/libdoc/ilo/P/09661/09661(2006)1B.pdf); ILO Committee of Experts, Promoting fair migration: General Survey concerning the migrant workers instruments, ILC.105/III(1B), 2016, paras.480-482.
- ¹⁵ UN, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1 – see for example, para.6; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, A/HRC/35/25, 28 April 2017, para.85
- ¹⁶ See for example, Human Rights Council, Civil Society Space, A/HRC/RES/32/31, para.10: “Emphasizes the essential role of civil society in subregional, regional and international organizations, including in support of the organizations’ work, and in sharing experience and expertise through effective participation in meetings in accordance with relevant rules and modalities, and in this regard reaffirms the right of everyone, individually and in association with others, to unhindered access to and communication with subregional, regional and international bodies, and their representatives and mechanisms”.
- ¹⁷ See Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned - Report of the United Nations High Commissioner for Human Rights, A/HRC/32/20, para.8.

The Global Alliance Against Traffic in Women (GAATW)

GAATW is an Alliance of non-governmental organisations from Africa, Asia, Europe, Latin America and the Caribbean, and North America, that situates trafficking in persons in the contexts of women’s rights, migrants’ rights, and labour rights. GAATW is committed to work for changes in the political, economic, social and legal systems and structures which contribute to the persistence of trafficking in persons and other human rights violations in the context of migratory movements for diverse purposes, including security of labour and livelihood.

GAATW International Secretariat

191/41, Sivalai Condominium, Soi 33 Itsaraphap Road, Bangkok-Yai, Bangkok 10600, Thailand
gaatw@gaatw.org | <http://www.gaatw.org>