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# Foundations for Implementation

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A reference tool containing guidance drawn from the UN's Special Procedures and Treaty Bodies to support States in human rights based implementation of the Global Compact for Safe, Orderly and Regular Migration.

**Objective 1 I: Manage borders in an integrated, secure and coordinated manner**

## What This Reference Tool Contains

This compilation draws on recommendations from:

- Special Procedure thematic reports that relate specifically to migrants
- Treaty Body General Comments and General Recommendations that relate specifically to migrants

This practical tool emphasises recommendations for individual State action rather than observations, and includes those recommendations that assist in turning the objectives into practical actions rather than echoing the principles and standards agreed in the Compact.

December 2018

## Objective 11: Manage borders in an integrated, secure and coordinated manner

### Guidance from Special Procedures

Source	Guidance
Special Rapporteur on the human rights of migrants (2013), A/HRC/23/46 (para.82)	Further implement a human rights-based approach to migration and border management, ensuring that the rights of migrants, including irregular migrants, are always the first consideration
SR migrants (2013), A/HRC/23/46 (para.89)	Avoid criminalization of irregular migrants in language, policies and practice, and refrain from using incorrect terminology such as “illegal migrant”
SR migrants (2010), A/65/222 (para.75(a))	Adopt integrated and protective approaches, instead of approaches that are punitive and based solely on security and border control concerns;
SR migrants (2010), A/65/222 (para.79)	States should ensure that their border control and anti-smuggling efforts are carried out in a manner that respects and protects human rights, does not interfere with search and rescue obligations, and does not block access to asylum procedures and the identification of trafficked victims
SR migrants (2010), A/65/222 (para.85)	States that continue to punish irregular migration with imprisonment should revise and reform their immigration laws and decriminalize irregular migration. States should not deprive migrants of their right to liberty because of their migratory status
SR migrants (2009), A/HRC/11/7 (para.102)	The Special Rapporteur recommends that migration officials be trained, including on the rights of the child and cultural sensitivities. States should ensure that age-assessment processes comply with international standards and that the persons concerned are allowed access to effective remedies to challenge age-assessment decisions. States should also consider according the benefit of the doubt in age-determination procedures
SR migrants (2008), A/HRC/7/12 (para.66)	States should further develop and implement training and awareness-raising programmes for border authorities, officials at detention centres, police and military officers, and government officials on the human rights afforded to irregular migrants during all phases of the migration stage including, inter alia, interception and rescue at sea, detention and expulsion, and smuggling and trafficking, where applicable
SR migrants (2001), E/CN.4/2001/83 (para.116)	States are strongly urged to provide their border officials with training in the international human rights conventions which prohibit racism, xenophobia and discrimination. States must, in all circumstances, and in order to combat organized crime, refrain from claiming that all nationals of particular countries or regions have the same patterns of behaviour
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2018), A/73/216 (para.83(h))	Establish individual screening and assessment procedures for people on the move, to identify survivors of sexual and gender-based violence and torture, people with intellectual, cognitive and psychosocial disabilities and other people on the move with mental health and well-being needs;

<p><b>Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2018), A/HRC/37/50 (para.65(a))</b></p>	<p>National laws, policies and practices: In order to protect migrants from exploitation and abuse at the hands of criminals, corrupt officials and private citizens, States should refrain from basing their migration laws, policies and practices, their public communication, and their agreements with other States or non-State actors, including corporate actors, on deterrence, criminalization and discrimination. Instead, States should focus on developing sustainable pathways for safe, orderly and regular migration based on protection, human rights and non-discrimination</p>
<p><b>Working Group on Arbitrary Detention (2018), A/HRC/39/45 Annex (para.10)</b></p>	<p>The irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the legitimate interests of States in protecting their territories and regulating irregular migration flows. Migrants must not be qualified or treated as criminals, or viewed only from the perspective of national or public security and/or health</p>
<p><b>Special Rapporteur on extrajudicial, summary or arbitrary executions (2017), A/72/335 (para.96)</b></p>	<p>[States] should adopt or amend legislation to ensure that irregular entry, the attempt to enter in an irregular manner or irregular stay is not considered a criminal offence, and ensure that administrative sanctions applied to irregular entry are proportionate and reasonable</p>
<p><b>SR extrajudicial executions (2017), A/72/335 (para.97)</b></p>	<p>[States] should ensure that the use of force and use and possession of firearms and other weapons by border authorities is strictly regulated, in accordance with international human rights law, and any misuse or excess thereof is appropriately sanctioned</p>
<p><b>SR extrajudicial executions (2017), A/72/335 (para.105)</b></p>	<p>States should monitor entry systems in place for their compliance with international human rights and refugee law, in collaboration with civil society</p>
<p><b>Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2010), A/65/295 (para.99)</b></p>	<p>The Special Rapporteur also recommends that human rights training be provided to law enforcement officials, especially immigration officials and border police, so that they may act in conformity with international human rights law when dealing with migrants, refugees and asylum-seekers</p>
<p><b>SR racism (2005), A/60/283 (para.56)</b></p>	<p>The General Assembly is also invited to give particular attention to the discriminatory treatment of groups in waiting and holding areas at airports, ports and borders, and to recommend that Member States consider taking the necessary measures to prevent such areas from becoming so-called no rights zones. In this context, the Special Rapporteur: Recommends that training courses for border police include training on national and international standards relating to the prohibition of racial discrimination and xenophobia. Encourages Governments to refrain from adopting measures motivated by “security threats” which could result in discrimination, in particular discrimination based on race, colour, language, religion, nationality, or national or ethnic origin. Also encourages Governments to take urgent measures to ensure that any person who is in a waiting area and could be expelled is given basic guarantees. Such guarantees must include respect for fundamental human rights, including the right to obtain legal assistance. Reminds Governments of their obligation to ensure that no person is sent back to a country where they could be subject to fundamental human rights violations. Draws attention to the specific situation of minors in waiting areas. The Special Rapporteur considers that they must be given specific attention in order to remedy the problems that have been noted, whether they be the application of legal procedures, administrative practices or the poor functioning of procedures relating to caring for unaccompanied minors</p>



<p><b>Independent Expert on human rights and international solidarity (2018), A/73/206 (para.50(g))</b></p>	<p>End or modify efforts to externalize continental borders: efforts to externalize the borders of continental or regional arrangements to other continents and regions, through the adoption of international agreements of the sort that tend to undermine rather than bolster the human rights and dignity of migrants, should be strongly discouraged. Such agreements tend to lead to significant human rights violations, offend the spirit of human rights-based international solidarity and run contrary to the letter of the draft declaration on the right to international solidarity</p>
<p><b>Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2007), A/62/263 (para.80(a))</b></p>	<p>Analyse the impact of pre-entry immigration control measures on the institution of asylum and the protection of refugees and other persons seeking international protection;</p>
<p><b>SR counter terrorism (2007), A/62/263 (para.80(b))</b></p>	<p>Ensure that guidelines and practices in all military and border control operations involving interception or other pre-entry mechanisms are clear and fully respect the pertinent principles and obligations under international law, particularly refugee law and human rights law, towards persons seeking international protection;</p>
<p><b>Working Group of Experts on People of African Descent (2003), E/CN.4/2004/21 (para.111(3))</b></p>	<p>A review should be undertaken of training programmes for immigration officials with a view to identifying and avoiding discriminatory practices against people of African descent or other national or ethnic groups and determining whether legislation or bad practice is the source of any discrimination</p>

## Guidance from Treaty Bodies

Source	Guidance
<p><b>CMW General comment No.2: on the rights of migrant workers in an irregular situation and members of their families (2013), CMW/C/GC/2 (para III.C.2.24)</b></p>	<p>Criminalizing irregular entry into a country exceeds the legitimate interest of States parties to control and regulate irregular migration, and leads to unnecessary detention. While irregular entry and stay may constitute administrative offences, they are not crimes per se against persons, property or national security</p>
<p><b>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.VII.a.96)</b></p>	<p>Such training [for officials working with separated and unaccompanied children and dealing with their cases] should be specifically tailored to the needs and rights of the groups concerned. Nevertheless, certain key elements should be included in all training programmes, including: – Principles and provisions of the Convention; – Knowledge of the country of origin of separated and unaccompanied children; – Appropriate interview techniques; – Child development and psychology; – Cultural sensitivity and intercultural communication</p>

<p><b>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.VII.a.97)</b></p>	<p>Initial training programmes should also be followed up regularly, including through on-the-job learning and professional networks</p>
<p><b>CMW / CRC Joint general comment No.3 / No.22: 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.II.12)</b></p>	<p>The obligations of States parties under the Conventions apply to each child within their jurisdictions, including the jurisdiction arising from a State exercising effective control outside its borders. Those obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from the territory of a State or by defining particular zones or areas as not or only partly under the jurisdiction of the State, including in international waters or other transit zones where States put in place migration control mechanisms. The obligations apply within the borders of the State, including with respect to those children who come under its jurisdiction while attempting to enter its territory</p>
<p><b>CMW / CRC Joint general comment No.3 / No.22: 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.III.B.32)</b></p>	<p>Ensure that children are identified promptly in border controls and other migration-control procedures within the State’s jurisdiction, and that anyone claiming to be a child is treated as such, promptly referred to child protection authorities and other relevant services, and appointed a guardian, if unaccompanied or separated</p>
<p><b>CMW / CRC Joint general comment No.3 / No.22: 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.III.E.46)</b></p>	<p>The Committees have already pointed out that States shall not reject a child at a border or return him or her to a country where there are substantial grounds for believing that he or she is at real risk of irreparable harm, such as, but by no means limited to, those contemplated under articles 6 (1) and 37 of the Convention on the Rights of the Child, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such nonrefoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of States parties’ action or inaction</p>

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This reference tool is part of a larger document that contains guidance for all 23 objectives of the Global Compact for Safe, Orderly and Regular Migration. It is available online at: [quno.org/resource/2018/11/foundations-implementation](https://quno.org/resource/2018/11/foundations-implementation)

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