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Quaker United Nations Office

Foundations for Implementation

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 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration

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 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration

Guidance from Special Procedures

Source	Guidance
Special Rapporteur on the human rights of migrants (2018), A/73/178/Rev.1 (para.75(j))	Establish bilateral agreements to ensure that migrants who return to their country of origin have access to justice in the country of employment, in particular to report abuse and claim unpaid wages and benefits
SR migrants (2018), A/HRC/38/41 (para.87)	The return of migrants who do not meet international or national legal standards to remain in their host country should be conducted in safety, with due regard for dignity, humanity and respect for human rights, and in compliance with international law, on the basis of the primacy of voluntary returns; cooperation between States of origin and reception; and enhanced reception and reintegration assistance for those who are returned. Given the potentially dramatic consequences, including rights violations, of forced or coerced returns, priority should be given to independent and voluntary returns at all times
SR migrants (2018), A/HRC/38/41 (para.88)	States should facilitate the voluntarily return of migrants — fully informed, free of coercion and with sufficient valid alternatives, such as effective access to temporary permits for work, family unity, study or humanitarian purposes, and opportunities for permanent residency and citizenship — to their countries of origin or citizenship, including through cooperation on consular assistance and issuance of the necessary travel documents. A return cannot be considered voluntary if a migrant decides to return in order to, inter alia, avoid deportation or detention, flee from abusive or exploitative situations in destination or transit countries, or avoid the deprivation of socioeconomic rights in the destination country
SR migrants (2018), A/HRC/38/41 (para.89)	Forced returns should always be a measure of last resort, and only follow a fair and efficient process guaranteeing that all legal safeguards have been provided. No return should be implemented without due process of law, in a legal procedure where the migrant is effectively and properly represented and has access to effective remedies. All appeals and remedies, and procedural guarantees, should have a suspensive effect on deportation. Furthermore, no one should be returned without proper oversight by an independent post-return human rights monitoring mechanism
SR migrants (2018), A/HRC/38/41 (para.91)	Long-term solutions and safe, regular, accessible and affordable channels, rather than “quick fixes” (such as readmission agreements), are needed so as to ensure the protection of the human rights of migrants. Liability for human rights violations or other breaches of international law resulting from the actions of international or regional organizations during return procedures should be subject to investigation, and such stakeholders should be held accountable

<p>SR migrants (2018), A/HRC/38/41 (para.92(b))</p>	<p>In order to ensure the respect for human rights of migrants in the context of returns, States and other stakeholders should: Ensure that returns are decided on the basis of a procedure that ensures the confidentiality of information and during which the migrant is duly represented, has access to appropriate legal assistance and interpretation services, and has an effective opportunity to explain why a return would not be in respect of his or her rights; appeal procedures should have a suspensive effect;</p>
<p>SR migrants (2018), A/HRC/38/41 (para.92(d))</p>	<p>In order to ensure the respect for human rights of migrants in the context of returns, States and other stakeholders should: Children, whether unaccompanied, separated or accompanied by their parents or other caregivers, should be returned only when the return has been determined to be in their best interests through an appropriate procedure before a competent institution that includes the proper representation of the child. Families should never be separated unless separation is necessary to ensure the best interests of the child; children should never be detained on the basis of their or their family’s migration status, and alternatives to deprivation of liberty, such as family-based solutions, should be adopted instead;</p>
<p>SR migrants (2018), A/HRC/38/41 (para.92(e))</p>	<p>In order to ensure the respect for human rights of migrants in the context of returns, States and other stakeholders should: Ensure and facilitate, including as part of any readmission agreement, independent monitoring of pre-removal processes, return, reception and reintegration of migrants in countries of origin to guarantee compliance with international human rights;</p>
<p>SR migrants (2018), A/HRC/38/41 (para.92(f))</p>	<p>In order to ensure the respect for human rights of migrants in the context of returns, States and other stakeholders should: Ensure that readmission agreements or clauses comply with international law, including the principle of non-refoulement, and guarantee transparency, monitoring, oversight and accountability. All stakeholders, including United Nations agencies, international organizations, non-governmental organizations of all States involved, national human rights institutions and ombudspersons, and migrants themselves, should be consulted prior to any conclusion of a readmission agreement;</p>
<p>SR migrants (2018), A/HRC/38/41 (para.92(h))</p>	<p>In order to ensure the respect for human rights of migrants in the context of returns, States and other stakeholders should: Provide and publicize accessible complaint mechanisms that migrants may use without fear of retribution; and ensure prompt, impartial and independent investigation of violations of human rights against migrants; and bring States, international and regional organizations and other non-State actors found to be responsible of human rights violations to justice through a fair trial;</p>
<p>SR migrants (2018), A/HRC/38/41 (para.92(i))</p>	<p>In order to ensure the respect for human rights of migrants in the context of returns, States and other stakeholders should: Ensure that reintegration programmes are provided for migrants who are returned to their countries of origin</p>

<p>SR migrants (2018), A/HRC/38/41 (para.93(b))</p>	<p>In order to ensure reintegration that is human rights-centred and effective, States and other stakeholders should: Ensure that economic, sociocultural and psychosocial support is provided to returnee migrants and communities in the country of origin prior, during and after the return;</p>
<p>SR migrants (2018), A/HRC/38/41 (para.93(e))</p>	<p>In order to ensure reintegration that is human rights-centred and effective, States and other stakeholders should: In cases of forced return, conduct human rights risks assessments upon arrival in order to determine and provide the protection and assistance necessary to prevent human rights violations of migrants in returning countries; and decriminalize illegal border crossings and combat stigma and discrimination associated with irregular migration;</p>
<p>SR migrants (2018), A/HRC/38/41 (para.93(h))</p>	<p>In order to ensure reintegration that is human rights-centred and effective, States and other stakeholders should: Collect and analyse disaggregated data, and conduct research on all aspects of the return of migrants in order to inform effective migration policies that respect the human rights of migrants, including in the context of returns</p>
<p>SR migrants (2010), A/65/222 (para.78)</p>	<p>States should not resort to collective deportations, which are contrary to international law and human rights standards. States should have regular monitoring mechanisms to prevent collective deportations and ensure that all removal or deportation orders and decisions comply with the safeguards recognized in article 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</p>
<p>SR migrants (2003), A/58/275 (para.27)</p>	<p>The Special Rapporteur reiterates that repatriation assistance in cases where migrants lose their jobs, wish to escape from abusive situations, or wish to be repatriated for health reasons should also be provided. Consulates and embassies should be financially empowered to assume these cases, as well as to assist in the repatriation of victims of trafficking at their express request. In particular, specific attention should be devoted and protection granted to unaccompanied minors</p>
<p>SR migrants (2003), A/58/275 (para.41)</p>	<p>The Special Rapporteur has documented numerous incidents that occurred in the process of deportation, some resulting in the death of the migrants involved. In this connection, the Special Rapporteur stresses that officials dealing with deportations must be trained to carry out their duties in a way that respects the rights and dignity of the persons involved. It should be stressed that migrants subjected to deportation procedures have most of the time only committed administrative infractions, but there is often a tendency to treat them like dangerous criminals</p>

<p>SR migrants (2003), A/58/275 (para.45)</p>	<p>The Special Rapporteur recommends the development of comprehensive reintegration programmes involving migrants, their families, Governments and civil society at large. Migrants and their families should be assisted to form organizations such as support groups and cooperatives. Migrants' communities should help in establishing business ventures and social enterprises that would generate long-term employment. Governments should help migrants to invest their savings by, for example, providing incentives for business development and business and management training. If migrants were provided with incentives to return to their countries of origin upon completion of their contracts, the chances of their overstaying their visas or work permits — thus becoming irregular migrants vulnerable to exploitation — would decrease</p>
<p>SR migrants (2002), A/57/292 (para.80)</p>	<p>It is recommended that all States should guarantee the right of everyone to leave any country, including his own, and to return to his country. Any obstacles to the right to exit and return, legitimately and with dignity, should be removed</p>
<p>Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2018), A/HRC/37/50 (para.65(g))</p>	<p>Training of officials: Officials or other persons tasked with the determination of refugee status and/or entitlement to subsidiary international protection should be appropriately trained in the conduct of the relevant assessments and the identification and documentation of signs of torture and ill-treatment, and should be aware that non-refoulement protection specifically against the risk of torture and ill-treatment is absolute and non-derogable and applies to all migrants regardless of their entitlement to refugee status, or of considerations of national or public security</p>
<p>SR torture (2018), A/HRC/37/50 (para.65(h))</p>	<p>Non-refoulement: States should refrain from any individual or collective deportation, transfer, or summary rejection of migrants without individualized risk assessment, including through extradition or readmission agreements, diplomatic assurances, border closures or "pushback" operations. Similarly, States should refrain from instigating, encouraging, supporting or otherwise facilitating or participating in "pullback" operations conducted by other States or non-State actors in violation of the right of migrants to seek international protection</p>
<p>Special Rapporteur on the situation of human rights defenders (2018), A/HRC/37/51 (para.66(f))</p>	<p>Ensure that all human rights defenders in exile benefit from the prohibition of refoulement to persecution, as articulated in the Convention relating to the status of refugees and other international instruments and customary international law;</p>
<p>Special Rapporteur on extrajudicial, summary or arbitrary executions (2017), A/72/335 (para.92)</p>	<p>[States] should abide at all times with the principle of non-refoulement, including on the high seas and at borders</p>
<p>SR extrajudicial executions (2017), A/HRC/35/23 (para.115)</p>	<p>States should include violence and killings against women and girls, and on the basis of gender identity and gender expression, as an integral part of refugee status determination and of the implementation of their non-refoulement obligations</p>

<p>Working Group on Enforced or Involuntary Disappearances (2017), A/HRC/36/39/Add.2 (para.87)</p>	<p>In accordance with article 8 of the Declaration, States should prohibit, in both legislation and practice: (a) The expulsion, return (refoulement) or extradition of migrants to another State where there are substantial grounds to believe that they would be in danger of enforced disappearance. Any return must be the subject of careful individual assessment and follow due process, including the right to challenge the decision to expel/return. For the purpose of determining whether there are grounds for such challenges, the competent authorities should take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, in accordance with article 8 (2) of the Declaration; (b) The pushback of migrants to any country where they would be in danger of enforced disappearance</p>
<p>WG Disappearances (2017), A/HRC/36/39/Add.2 (para.88(f))</p>	<p>Formally document — and monitor, when possible — all returns of migrants and ensure that they are carried out in accordance with international standards in order to avoid disappearances during those processes, including temporary disappearances;</p>
<p>Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2016), A/71/384 (para.55(d))</p>	<p>The absolute prohibition of refoulement under international human rights law must always be respected, wherever a State exercises its jurisdiction, even on the high seas: States must respect their non-refoulement obligations even when the risk of ill-treatment emanates from non-State armed groups, including terrorist groups; and all decisions must be taken on a case-by-case basis, respect the prohibition of collective expulsions and comply with due process guarantees;</p>
<p>SR counter terrorism (2007), A/62/263 (para.84(b))</p>	<p>Urges States not to include in their national immigration and asylum legislation definitions relating to exclusion from international protection that would go beyond the recommendations of UNHCR, such as through the erroneous application of the exception to non-refoulement contained in article 33(2) of the 1951 Refugee Convention as an additional exclusion clause, which may effectively hinder persons in need of protection from obtaining asylum or some other protection status</p>
<p>Special Rapporteur on the right to food (2007), A/HRC/4/30 (para.69(f))</p>	<p>States should refrain from deporting people who have fled from their own countries as a result of hunger and violations of the right to food. States should institute legal protection for people forced to flee for reasons related to severe violations of economic and social rights into account, including violations of the right to food, either by revising existing international instruments on refugee protection, or through the adoption of new instruments;</p>

<p>SR food (2007), A/HRC/4/30 (para.69(g))</p>	<p>All Governments have a responsibility to respect the right to food. Article 11 of the International Covenant on Economic, Social and Cultural Rights and general comment No. 12 of the Committee on Economic, Social and Cultural Rights create the extraterritorial obligation of all Member States to respect the right to food of all human beings, regardless of their citizenship. This responsibility must include the principle of non-refoulement for people whose lives will be at risk if they are deported. Governments should not expel, return or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of suffering from hunger, chronic undernutrition or violations of the right to food. Governments should recognize that refugees from hunger have the right to seek asylum and the right to temporary refuge during famine</p>
<p>Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2013), A/HRC/23/41 (para.76(l))</p>	<p>At minimum, States should ensure that migrant workers are not deported without referral for treatment or to States where the required treatment is not available and accessible;</p>
<p>Special Rapporteur on trafficking in persons, especially women and children (2011), A/HRC/17/35 (para.76)</p>	<p>States should also provide trafficked persons with temporary or permanent residence permits on social and humanitarian grounds, where a safe return to the country of origin is not guaranteed or a return would not otherwise be in the best interests of the trafficked person for reasons related to his or her personal circumstances, such as the loss of citizenship or cultural and social identity in the country of origin. States should also independently consider trafficked persons' claims for asylum, giving due consideration to any risks of reprisals and retaliation by traffickers which could constitute persecution within the meaning of the 1951 Convention relating to the Status of Refugees</p>
<p>Special Rapporteur on the sale and sexual exploitation of children (1999), E/CN.4/1999/71 (para.152(h))</p>	<p>All law enforcement agents, border police, customs and immigration officials, relevant governmental ministers, and members of the judiciary in the countries affected should be trained on and sensitized to issues of trafficking and the rights and needs of the victims. Immigration and deportation policies of the receiving countries should be revised to prevent further marginalization and traumatization of trafficked children;</p>

Guidance from Treaty Bodies

Source	Guidance
<p>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.4.52)</p>	<p>Article 22, paragraph 3, provides for the decision on expulsion to be communicated to the migrant worker concerned in a language he or she understands and, upon his or her request where not otherwise mandatory, in writing and with reasons, save in exceptional circumstances on grounds of national security. These rights are important to ensure due process, by enabling migrant workers to prepare their arguments with regard to such a decision. The right of the persons concerned to be informed of these rights before, or, at the latest, at the time the decision is rendered, serves the same purpose</p>

<p>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.4.53)</p>	<p>The right of a person to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority (art. 22, para. 4), includes the right to seek a stay of the decision of expulsion pending review of the said decision. While a stay of decision does not regularize the status of the person concerned for the time of the proceedings, it prevents the State party from expelling him or her before a final decision is rendered. In accordance with article 83 of the Convention, States parties are obliged to provide an effective remedy, including the right to review by a competent authority for migrant workers and their family members, whose rights and freedoms as recognized in the Convention have been violated. The Committee notes that migrant workers and members of their families must be given adequate time and facilities to pursue such a remedy against expulsion so as to ensure the effectiveness of their right to review. Such facilities should include the right to legal assistance and the assistance of an interpreter, if necessary, and be free of charge, if the circumstances of the case so require. The competent authority reviewing the decision of expulsion should ideally be a court. The right to appeal expulsion under article 22, paragraph 4, of the Convention may only be restricted for “compelling reasons of national security”</p>
<p>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.4.54)</p>	<p>Article 22, paragraph 5, states that if an expulsion decision that has already been executed is subsequently annulled, the person concerned has the right to seek compensation according to law. The expelling State shall ensure that the expelled person has the necessary facilities to pursue his or her compensation claim from abroad, for example, by appointing a legal representative. Furthermore, the expelling State may not invoke the earlier (annulled) decision to deny the person concerned re-entry into its territory</p>
<p>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.4.55)</p>	<p>States parties should, whenever possible, grant migrant workers and their family members a reasonable period of time prior to their expulsion to claim wages and benefits. States parties should also consider time-bound or expedited legal proceedings to address such claims by migrant workers. In addition, States parties should conclude bilateral agreements so that migrant workers who return to their State of origin may have access to justice in the State of employment to file complaints about abuse and to claim unpaid wages and benefits</p>
<p>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)</p>	<p>If determined that it is in the best interests of the child to be returned, an individual plan should be prepared, together with the child where possible, for his or her sustainable reintegration. The Committees stress that countries of origin, transit, destination and return should develop comprehensive frameworks with dedicated resources for the implementation of policies and comprehensive inter-institutional coordination mechanisms. Such frameworks should ensure, in cases of children returning to their countries of origin or third countries, their effective reintegration through a rights-based approach, including immediate protection measures and long-term solutions, in particular effective access to education, health, psychosocial support, family life, social inclusion, access to justice and protection from all forms of violence. In all such situations, a quality rights-based follow-up by all involved authorities, including independent monitoring and evaluation, should be ensured. The Committees highlight that return and reintegration measures should be sustainable from the perspective of the child’s right to life, survival and development</p>

<p>CMW / CRC Joint general comment No.4 / No.23: 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.II.E.2.35)</p>	<p>Measures for parents to reunify with their children and/or regularize their status on the basis of their children’s best interests should be put in place. Countries should facilitate family reunification procedures in order to complete them in an expeditious manner, in line with the best interests of the child. It is recommended that States apply best interest determination procedures in finalizing family reunification</p>
<p>CEDAW General recommendation No.26: on women migrant workers (2009), CEDAW/C/2009/WP.1/R (para.24)</p>	<p>States parties should design or oversee comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned. They should monitor service providers to ensure that they do not take advantage of the vulnerable position of women returning from work abroad, and should have complaint mechanisms to protect the women against reprisals by recruiters, employers or former spouses (articles 2 (c) and 3);</p>
<p>HRC General comment No.28: the equality of rights between men and women (2000), CCPR/C/21/Rev.1/Add.10 (para.17)</p>	<p>States parties should ensure that alien women are accorded on an equal basis the right to submit arguments against their expulsion and to have their case reviewed...In this regard, they should be entitled to submit arguments based on gender-specific violations</p>
<p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.IV.f.27)</p>	<p>Furthermore, in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child...The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services</p>
<p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.IV.f.28)</p>	<p>States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties</p>
<p>CRC General comment No.6: treatment of unaccompanied and separated children outside their country of origin (2005), CRC/GC/2005/6 (para.VII.c.84)</p>	<p>Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child. Such a determination shall, inter alia, take into account: – The safety, security and other conditions, including socio-economic conditions, awaiting the child upon return, including through home study, where appropriate, conducted by social network organizations; – The availability of care arrangements for that particular child; – The views of the child expressed in exercise of his or her right to do so under article 12 and those of the caretakers; – The child’s level of integration in the host country and the duration of absence from the home country; – The child’s right “to preserve his or her identity, including nationality, name and family relations” (art. 8); – The “desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background” (art. 20)</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

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