



QUNO

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 4: Ensure that all migrants have proof of legal identity and adequate documentation

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 4: Ensure that all migrants have proof of legal identity and adequate documentation

Guidance from Special Procedures

Source	Guidance
Special Rapporteur on the human rights of migrants (2001), E/CN.4/2001/83 (para.114)	The Special Rapporteur recommends that States should develop documentation programmes for its citizens, adults and children alike, not only for national purposes but, above all, for when they are outside their countries as migrants, since the possession of documents gives them access to fundamental rights. Such documents include birth certificates, identity papers and records, needed to work, study and have access to health facilities in the countries to which they are migrating
Special Rapporteur on trafficking in persons, especially women and children (2018), A/73/171 (para.73(d))	In relation to the prevention of trafficking in persons: Ensure birth and marriage registration free of charge, especially in refugee, internally displaced persons camps and host communities, as well as any other registration system which facilitates early warnings on missing and/or trafficked people, in cooperation with United Nations agencies and programmes;
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2018): List of additional recommendations in relation to report, A/HRC/38/52 (p.2)	Facilitate effective and non-discriminatory access to civil registration and adequate documentation, including birth certificates and documents needed to prove nationality or the entitlement to nationality. Pay particular attention to ensuring registration and access to adequate documentation for the following individuals: persons living in remote areas; children born outside of health facilities; persons belonging to minorities and marginalized groups, including Gypsy, Roma and Traveller communities, indigenous peoples, refugees, asylum seekers, internally displaced persons, and migrants living in irregular situations
Special Rapporteur on minority issues (2018), A/73/205 (para.59)	States must grant nationality to all children born on their territory if the child would otherwise be stateless, regardless of the immigration status of the parents
Special Rapporteur on extreme poverty and human rights (2012), A/HRC/21/39 (para.70(d))	Identify and remove barriers that impede access to birth registration of disadvantaged groups at particular risk of poverty, such as asylum seekers, stateless persons, persons with disabilities and undocumented migrants;
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2018): List of additional recommendations in relation to report, A/HRC/38/52 (p.2)	Grant nationality to children born in their territory who would otherwise be stateless, regardless of their parents' immigration status. In this context, facilitate the automatic conferral of nationality at birth, without additional application procedures

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.D.4.79)</p>	<p>States parties are obliged to ensure that children of migrant workers are registered soon after birth, irrespective of the migration status of their parents, and provided with birth certificates and other identity documents (art. 29). States parties shall not require migrant workers to present a residence permit in order to register a child, as this would effectively deprive migrant children in an irregular situation of their right to birth registration, which can also deny them access to education, health services, employment and other rights</p>
<p>CMW General comment No.1: on migrant domestic workers (2011), CMW/C/GC/1 (para.C.58)</p>	<p>Children of migrant domestic workers shall be registered soon after birth, independently of the migration status of their parents, and be provided with birth certificates and other identity documents States should take all appropriate measures to ensure that children are not deprived of a nationality (article 29)</p>
<p>CEDAW General recommendation No.32: on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014), CEDAW/C/GC/32 (para.V.A.55)</p>	<p>Naturalization requirements may also indirectly discriminate against women because they may require the fulfilment of conditions or criteria that may be more difficult to meet for women than for men, such as acquiring proficiency in a host State's language, which may be more difficult for women, including stateless women, who have suffered prior or current impediment of their right of access to formal education. Other requirements such as economic self-sufficiency or property ownership may also be more difficult for women to meet as individuals. Situations of statelessness following marriage to a foreigner and naturalization requirements can lead to women being dependent on men economically, socially, culturally and linguistically and, in turn, expose women to an increased risk of exploitation</p>
<p>CEDAW General recommendation No.26: on women migrant workers (2009), CEDAW/C/2009/WP.1/R (para.24)</p>	<p>Countries of origin must respect and protect the human rights of their female nationals who migrate for purposes of work. Measures that may be required include, but are not limited to, the following:..States parties should ensure that women have equal and independent access to travel documents</p>
<p>CEDAW General recommendation No.26: on women migrant workers (2009), CEDAW/C/2009/WP.1/R (para.26)</p>	<p>Legal protection for the freedom of movement: States parties should ensure that employers and recruiters do not confiscate or destroy travel or identity documents belonging to women migrants</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.D.1.21)</p>	<p>The Committees urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration. Children who have not been registered should be ensured equal access to health care, protection, education and other social services</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.D.1.22)</p>	<p>Should a child's identity documents have been procured irregularly on his or her behalf and the child requests the restoration of his or her identity documents, States parties are encouraged to adopt flexible measures in the best interests of the child, specifically by issuing corrected documents and avoiding prosecution where falsification has been committed</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.D.2.24)</p>	<p>While States are not obliged to grant their nationality to every child born in their territory, they are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born. A key measure is the conferral of nationality to a child born on the territory of the State, at birth or as early as possible after birth, if the child would otherwise be stateless</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.D.2.25)</p>	<p>Nationality laws that discriminate with regard to the transmission or acquisition of nationality on the basis of prohibited grounds, including in relation to the child and/or his or her parents' race, ethnicity, religion, gender, disability and migration status, should be repealed. Furthermore, all nationality laws should be implemented in a non-discriminatory manner, including with regard to residence status in relation to the length of residency requirements, to ensure that every child's right to a nationality is respected, protected and fulfilled</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.D.2.26)</p>	<p>States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. When the law of a mother's country of nationality does not recognize a woman's right to confer nationality on her children and/or spouse, children may face the risk of statelessness. Likewise, where nationality laws do not guarantee women's autonomous right to acquire, change or retain their nationality in marriage, girls in the situation of international migration who married under the age of 18 years may face the risk of being stateless, or be confined in abusive marriages out of fear of being stateless. States should take immediate steps to reform nationality laws that discriminate against women by granting equal rights to men and women to confer nationality on their children and spouses and regarding the acquisition, change or retention of their nationality</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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