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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 5: Enhance availability and flexibility of pathways for regular migration

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.

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Objective 5: Enhance availability and flexibility of pathways for regular migration

Guidance from Special Procedures

Source	Guidance
Special Rapporteur on the human rights of migrants (2018), A/73/178/Rev.1 (para.75(a))	Ensure equal access for migrants and provide them with reliable legal information, competent and affordable legal representation, effective legal aid, and competent translation and interpretation services; waive legal fees for all migrants who cannot afford them; and protect migrants by regularizing their status, giving them special visas or taking other protective measures for victims of trafficking and forced labour;
SR migrants (2018), A/HRC/38/4 (para.90)	When migrants in an irregular situation are long established in a host country, lack ties to their country of origin or would otherwise face violations of their human rights upon return, alternatives to forced returns, such as regularization, temporary or long-term options for entry and stay, access to citizenship or the facilitation of family reunifications, are preferable. States should offer migrants in need of human rights protection but who do not qualify for refugee status temporary or long-term protection from return
SR migrants (2016), A/HRC/32/40 (para.92(c))	To address the direct impact of international trade on the human right of migrants, the Special Rapporteur recommends that: States ensure that trade and mobility agreements do not erode existing social and mobility protections granted through commitments in other agreements;
SR migrants (2015), A/70/310 (section A (p.18))	Develop whole-system, human-rights-based frameworks for overall migration and border management that take into account the rights and needs of migrant workers, and the benefits of organized mobility, and incentivize regular, open and facilitated labour migration
SR migrants (2015), A/70/310 (section A (p.21))	Develop bilateral agreements on labour migration between countries of destination and origin, which are based on international standards and prioritize the full implementation of the human rights and labour rights of migrants and fully incorporate the voices of both migrants and civil society
Special Rapporteur on the human rights of migrants (2015), A/70/310 (section A (p.23))	Develop mechanisms whereby longer-term migrant workers, who make a valuable contribution to the economies of destination countries, whatever their skill level, are able to access opportunities for permanent residency and citizenship

<p>SR migrants (2014), A/HRC/26/35 (para.70)</p>	<p>Establish coherent and comprehensive gender-sensitive national migration policies addressing all stages of the migration process, coordinated across government and developed in widespread consultation with national human rights institutions, the private sector, employers' and workers' organizations, civil society and migrants themselves, and with the support of international organizations. Ministries responsible for, inter alia, health, education, employment, children and social policies should be fully involved in the elaboration of such migration policies. The policies should have a human rights-based approach, and should include ethical recruitment practices, effective implementation of labour standards for all migrant workers, meeting labour needs at all skills levels, and more effective matching of labour supply and demand</p>
<p>Special Rapporteur on the human rights of migrants (2014), A/HRC/26/35 (para.92)</p>	<p>Provide temporary migrant workers who are filling permanent labour needs with long-term residence permits, and provide permanent residence permits to circular migrants after a certain period. Ensure that temporary migrant workers have access to economic and social rights and protection from exploitation</p>
<p>SR migrants (2015), A/70/310 (section A (pp.23-4))</p>	<p>Work with the private sector to ensure that a full understanding of the real needs and gaps with the labour market is reflected in the development of overall migration management systems, based on human rights standards</p>
<p>SR migrants (2015), A/HRC/29/36 (para.101)</p>	<p>Develop and incentivize other regular and safe migration channels, including for workers with varying skills levels, including for low-wage workers. Look at a variety of options for legal migration, such as humanitarian admission, humanitarian visas, temporary protection, family reunification, economic admissions at all skills levels, as well as for job seeking, student mobility and medical evacuation</p>
<p>SR migrants (2014), A/HRC/26/35 (para.71)</p>	<p>Address the pull factors for irregular migration, namely the unrecognized need for migrant labour in destination States, including for low-skilled workers, and the corresponding need to open up a greater number of regular migration channels and effectively sanction exploitative employers of irregular migrants, which would lead to fewer instances of irregular migration, and less exploitation of irregular migrants</p>
<p>SR migrants (2014), A/HRC/26/35 (para.94)</p>	<p>Repeal sex-specific bans and discriminatory restrictions on women's migration on the basis of age, marital status, pregnancy or maternity status. Prohibit by law mandatory pregnancy testing and deportation of women migrants who are pregnant. Take all the necessary measures to combat gender-based violence</p>
<p>SR migrants (2014), A/HRC/26/35 (para.96)</p>	<p>Combat abuse against irregular migrants, and implement sanctions against employers who exploit them. Countries of destination should establish regular migration channels based on the demand and recognized labour needs. They should consider regularization processes in order to avoid, or resolve, situations in which migrants are in, or at risk at becoming, in an irregular situation</p>

<p>SR migrants (2012), A/67/299 (para.93(f))</p>	<p>States should devise and implement regional migration policies and strategies to facilitate international climate-change-induced migration, where needed, including through the negotiation, conclusion and implementation of regional migration agreements. Such policies and strategies should be elaborated by all States concerned within the region, with the support and assistance of donor States. Such policies and strategies should also be elaborated with the support and collaboration of regional intergovernmental organizations, international organizations, international financial institutions, international NGOs and civil society organizations. Such policies and strategies should fully respect the international and regional human rights frameworks, including appropriate human rights guarantees for all migrants, the political participation of the vulnerable populations concerned in all decisions regarding their migration, as well as means of redress available to all migrants against human rights violations;</p>
<p>SR migrants (2009), A/HRC/11/7 (para.87)</p>	<p>Migration policies, programmes and bilateral agreements should preserve family unity, including by facilitating family reunification and interaction among family members</p>
<p>SR migrants (2008), A/HRC/7/12 (para.61)</p>	<p>States should incorporate the applicable human rights framework into their bilateral and regional arrangements for managing migration flows and protecting national security interests. Specific attention should be paid to detainees, smuggled migrants, victims of trafficking, children, women, asylum-seekers and other vulnerable groups. Policies designed for the readmission and reintegration of returnees should ensure that migrants seeking international protection are not forcibly returned without guaranteeing their rights to seek asylum</p>
<p>SR migrants (2008), A/HRC/7/12 (para.74)</p>	<p>States should devise plans for policymakers to explore the relationship between labour supply and demand and xenophobia at the institutional and community levels. Further consideration needs to be given to better integrating statistics into flexible, inclusive, and sustainable decision-making processes to govern admission, employment and residence status of migrants, as well as communication/education campaigns on the benefits of migration to the local and national economy</p>
<p>SR migrants (2003), A/58/275 (para.48)</p>	<p>The Special Rapporteur believes that the social and psychological impact of migration on migrants and their families should also be cushioned. To this end, both States of origin and States of destination should undertake efforts to ensure better communication and contacts between migrants and their families, including by facilitating visits</p>
<p>Special Rapporteur on the right to food (2018), A/73/164 (para.10(w))</p>	<p>Issue more non-restrictive residential and work permits to seasonal workers and condemn seasonal migration schemes that expel workers from countries after the season lapses</p>
<p>SR food (2008), A/HRC/7/5 (para.77(f))</p>	<p>States should strengthen international and national protection mechanisms for people forced to leave their homes and lands because of hunger or other severe violations of their right to food. They should elaborate a new international legal instrument that will provide protection for all people fleeing from hunger who are not currently protected under international human rights, humanitarian or refugee law. The Special Rapporteur suggests that the Human Rights Council mandate its new Advisory Committee to draw up a new norm of temporary non-refoulement of refugees from hunger</p>

<p>Special Rapporteur on the situation of human rights defenders (2018), A/HRC/37/51 (para.66(h))</p>	<p>Ensure that visa regimes and other policies and practices do not undermine temporary international relocation initiatives for human rights defenders, and more fully operationalize policies that provide for humanitarian visas for human rights defenders at risk</p>
<p>Special Rapporteur on the rights to freedom of peaceful assembly and of association (2016), A/71/385 (para.98(v)(b))</p>	<p>Removing impediments to freedom of movement and access to justice (for example, provide temporary immigration status while rights violations are being investigated);</p>
<p>Special Rapporteur on trafficking in persons, especially women and children (2016), A/71/303 (para.69(b))</p>	<p>All States, particularly those hosting potential victims of trafficking among persons fleeing conflict, should: Identify measures to prevent exploitation of the labour of nationals and non-nationals fleeing conflict, including by establishing safe and legal channels of migration, respecting the principle of non-refoulement and ensuring that migrants have regular access to the labour market in the host country, in cooperation with United Nations agencies and programmes and international organizations;</p>
<p>SR trafficking (2010), A/65/288 (para.71)</p>	<p>States should recognize that creating opportunities for regular labour migration that respond realistically to the economic and societal demand for such migration rather than artificially restricting legal migration channels is the key to preventing trafficking in persons. Among other measures, States should actively seek to adopt bilateral and multilateral agreements providing for legal labour migration, particularly for low- and semi-skilled labour. This should be designed, implemented and monitored with the active participation of migrant workers themselves to ensure their effectiveness in promoting safe migration</p>
<p>Special Rapporteur on contemporary forms of slavery, including its causes and consequences (2018), A/HRC/39/52 (para.82(s))</p>	<p>To effectively prevent and combat domestic servitude, to ensure the protection of migrant women and their access to decent work, the Special Rapporteur recommends that States: Ensure that national migration policies are in compliance with international obligations to respect, protect and fulfil the human rights of all persons within the jurisdiction of a State, irrespective of the migration status of individuals. On that basis, adopt gender-responsive migration policies, programmes and services, and safe, orderly and regular migration pathways, including for women and girls, as a means of preventing domestic servitude and other types of contemporary forms of slavery. Women should actively participate in decision-making regarding their safety and protection;</p>
<p>Independent expert on human rights and international solidarity (2018), A/73/206 (para.50(d))</p>	<p>The expansion of existing regular migration pathways: States that have already created pathways for regular migration into their territories are strongly encouraged to enact laws and take other measures to ensure a significant expansion of the numbers of global migrants accommodated through such avenues</p>

Guidance from Treaty Bodies

Source	Guidance
CMW General comment No.1: on migrant domestic workers (2011), CMW/C/GC/1 (para.C.52)	States parties should take appropriate measures to address the extreme vulnerability of undocumented migrant domestic workers, especially women and children. In particular, States parties should consider policies, including regularization programmes, to avoid or resolve situations in which migrant domestic workers are undocumented or are at risk of falling into irregular status (article 69)
CEDAW General recommendation No.26: on women migrant workers (2009), CEDAW/C/2009/WP/1/R (para.24)	State parties should repeal sex-specific bans and discriminatory restrictions on women's migration on the basis of age, marital status, pregnancy or maternity status. They should lift restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel
CEDAW General recommendation No.26: on women domestic workers (2009), CEDAW/C/2009/WP/1/R (para.26)	States parties should repeal outright bans and discriminatory restrictions on women's immigration. They should ensure that their visa schemes do not indirectly discriminate against women by restricting permission to women migrant workers to be employed in certain job categories where men predominate, or by excluding certain female-dominated occupations from visa schemes. Further, they should lift bans that prohibit women migrant workers from getting married to nationals or permanent residents, becoming pregnant or securing independent housing (article 2 (f))...State parties should ensure that family reunification schemes for migrant workers are not directly or indirectly discriminatory on the basis of sex...when residency permits of women migrant workers are premised on the sponsorship of an employer or spouse, States parties should enact provisions relating to independent residency status. Regulations should be made to allow for the legal stay of a woman who flees her abusive employer or spouse or is fired for complaining about abuse (article 2 (f))
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.D.44)	Children's right to development, and their best interests, should be taken into consideration when States address, in general or individually, the situation of migrants residing irregularly, including through the implementation of regularization mechanisms as a means to promote integration and prevent exploitation and marginalization of migrant children and their families

<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.1.29)</p>	<p>The Committees recommend that States provide avenues for status regularization for migrants in an irregular situation residing with their children, particularly when a child has been born or has lived in the country of destination for an extended period of time, or when return to the parent's country of origin would be against the child's best interests</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.1.31)</p>	<p>The Committees are also of the opinion that based on article 18 of the Convention on the Rights of the Child, a comprehensive approach to the child's right to a family environment in the context of migration should contemplate measures directed at enabling parents to fulfil their duties with regard to child development. Considering that irregular migration status of children and/or their parents may obstruct such goals, States should make available regular and non-discriminatory migration channels, as well as provide permanent and accessible mechanisms for children and their families to access long-term regular migration status or residency permits based on grounds such as family unity, labour relations, social integration and others</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.2.37)</p>	<p>Children that remain in their countries of origin may end up migrating irregularly and unsafely, seeking to be reunited with their parents and/or older siblings in destination countries. States should develop effective and accessible family reunification procedures that allow children to migrate in a regular manner, including children remaining in countries of origin who may migrate irregularly. States are encouraged to develop policies that enable migrants to regularly be accompanied by their families in order to avoid separation. Procedures should seek to facilitate family life and ensure that any restrictions are legitimate, necessary and proportionate. While this duty is primarily for receiving and transit countries, States of origin should also take measures to facilitate family reunification</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.b.83)</p>	<p>Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return or whether the best-interests-based balancing test has decided against return, the obligations under article 9 and 10 of the Convention come into effect and should govern the host country's decisions on family reunification therein. In this context, States parties are particularly reminded that "applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner" and "shall entail no adverse consequences for the applicants and for the members of their family" (art. 10 (1)). Countries of origin must respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country" (art. 10 (2))</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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