



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 9: Strengthen the transnational response to smuggling of migrants

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 9: Strengthen the transnational response to smuggling of migrants

Guidance from Special Procedures

Source	Guidance
Special Rapporteur on the human rights of migrants (2018), A/73/178/Rev.1 (para.75(g))	Adopt effective measures to reduce crime and violence against migrants during their journeys and in destination countries, and ensure effective protection and assistance to victims of exploitation and abuse;
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 (2008), A/HRC/7/12 (para.71)	States should take measures to further understand and inform border officials, detention centre officials, and police and military officers about the distinctions between smuggled migrants, victims of trafficking, and other irregular migrants who potentially fall into both categories. All efforts should be made to fully and without prejudice investigate cases on an individual basis, provide due process guarantees and consular assistance, and to provide assistance to irregular migrants in their safe return, where applicable
SR migrants (2003), E/CN.4/2003/85 (para.75(b))	Ensuring that the legislation prevents trafficked and smuggled persons from being prosecuted, detained or punished for illegal entry or residence in the country or for the activities they are involved in as a consequence of their situation as trafficked persons. In this respect, the Special Rapporteur invites States to consider ratifying the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime;
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2018), A/HRC/37/50 (para.65(i))	Duty to prevent, investigate and prosecute: States should take effective legislative, administrative, judicial or other measures to prevent any act of torture and ill-treatment in any territory under their jurisdiction, including in connection with migrant smuggling or trafficking, regardless of whether the perpetrators are State officials, or criminals, or both. To that effect, States should investigate, prosecute and punish any act of torture or ill-treatment, including attempts, complicity or other participation, and should cooperate to that effect with other States and with relevant international mechanisms and organizations
Special Rapporteur on extrajudicial, summary or arbitrary executions (2018), A/73/314 (para.89(c))	Adopt or revise national legislation on smuggling to explicitly exempt humanitarian action from its provisions, covering the facilitation of irregular entry, transit and residence, and ensure that no investigation is opened and no prosecution pursued against private individuals and organizations assisting migrants for humanitarian reasons;
Working Group on Enforced or Involuntary Disappearances (2017), A/HRC/36/39/Add.2 (para.88(a))	Carefully consider, when designing them, the impact that migration regulations, policies and practices may have, and in particular assess the possible consequence of compelling migrants to resort to smuggling networks and thereby falling prey to trafficking networks, thus contributing to heightened risks of becoming victims of human rights violations, including enforced disappearances;

Guidance from Treaty Bodies

There is currently no explicit guidance from the Treaty Bodies on this objective



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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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