The Global Compact for Safe, Orderly, and Regular Migration: The Implementation Phase

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On July 13, 2018, Ambassadors Juan José Gómez Camacho of Mexico and Jürg Lauber of Switzerland, the skilled co-facilitators for the consultation and negotiation phases of the Global Compact for Safe, Orderly, and Regular Migration ("GCM," or "the Compact"), gaveled the GCM negotiations to a close, signaling the final draft of the document. Assuming the document is adopted in Marrakech, Morocco in December, the most difficult phase of the process, the GCM's implementation, will begin.

There are several challenges confronting the implementation of the GCM. First, the document is nonbinding and is written in a way as to give member states maximum flexibility in how they implement it. The member states that have tentatively agreed to the GCM have committed to 23 objectives, each followed by several policy options for achieving each objective, but not requiring them to implement any of them. In other words, the document and the process require a nominal political commitment by member states.

Second, the document does not require financial contributions from member states for implementation efforts or establish a monitoring and compliance mechanism to effectively measure progress in meeting the GCM's objectives. National "responses" are recommended, but are not based upon objective measures of achievement. A formal international conference to gauge progress will be held only once every four years. The International Organization for Migration (IOM) has been appointed to play a coordinating role with other UN agencies to help implement the Compact, but will serve in a support capacity, not as a watchdog.

Lastly, and perhaps the most difficult challenge, is how member states interpret certain language in the text, specifically around the most controversial issues in the negotiations. Some of the language surrounding difficult issues was necessarily left vague, as specific language could not be agreed upon. Other areas could be construed as approving the status quo, or in some cases, providing member States the license to continue current practices which undermine the human rights of migrants.[1]

Notwithstanding these challenges, the GCM is groundbreaking in the sense that it represents the first multilateral framework for international cooperation on migration governance. Even more significant, the agreement was forged in a difficult global political environment, marked by a rise in xenophobia and nationalism.

As such, the GCM provides a repository from which UN member states can draw to initiate and implement programs which serve both national and global interests and advance the human

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[1] Non-regression language, which prevents member states from violating international law and practice, is contained in the preamble to the GCM: "The Global Compact is based on international human rights law and upholds the principle of non-regression and non-discrimination" (Preamble, paragraph 15).

rights and dignity of migrants. Its success or failure will depend upon global leadership, not simply from the United Nations but from governments around the world.

The purpose of this paper is to examine some of the more controversial issues in the Compact, propose how it should be implemented, and detail best policies and practices.

Regularization of Irregular Migrants

A defining issue for many immigration debates is the regularization of undocumented immigrants. Immigrants can be regularized by either by providing them legal status after arriving at a destination (regularization or legalization program) or providing to them pathways to migrate legally.

At the core of the disagreement on this issue, often unstated in the open negotiations, was the prospect of a UN document requiring a general "amnesty" globally, thus violating the discretion, independence, and political sentiment of individual member states. Another source of tension was that some member states argued that providing legal status to irregular migrants marked the best way to manage migration, while other member states saw enforcement as the key to regulating migration. As such, the language around the regularization of migration was less pointed than immigrant advocates may have wanted.

For example, the chapeau[2] of Objective 5, which deals with legal pathways for regular migration, commits member states "to adapt options and pathways for regular migration…with the view to expanding and diversifying availability of pathways for safe, orderly, and regular migration" (Objective 5, para 21). Such language could have been made stronger, but it does include "expanding" and "diversifying" pathways, which can be interpreted as increasing legal pathways in different visa categories, including employment and family-based visas.

The GCM places emphasis on labor migration pathways, but generally leaves up to member states how those pathways are designed.[3] In Objective 5, paragraph 21(c), the document urges member states to "review and revise existing options and pathways for regular migration, with a view to optimize skills matching in labor markets." The word "increase" is notably absent, while the word "existing" is notably present. Thus, the GCM does not commit to increased legal pathways or new options for legal migration.

The document goes a bit further in paragraph 21(d) to include permanent work: "Develop flexible, rights-based, gender-responsive labor mobility schemes…by providing flexible, convertible, and non-discriminatory visa and permit options, such as for permanent and temporary work." Again, the language is broad and can vary in interpretation, not necessarily requiring permanent status for migrant workers. Experts have argued that allowing workers to achieve permanent status over time is crucial to their economic contributions and to protecting their human and civil rights (Carciotto 2018).

However, the Compact contains language that encourages member states to allow migrant workers to change jobs and employers, despite requests from member states to eliminate the language (Objective 6, paragraph 21[g]). It also recommends the extension of the same rights to

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[2] The chapeau is the introductory paragraph of each objective which details the commitments being made by member states.

[3] The use of temporary ("guest worker") programs and the rights attached to immigrant workers were points of contention in the GCM negotiations.

migrant workers that all workers enjoy, including wage protections, the right to organize, and privacy protections (Objective 6, paragraph 21[i]).

Family-based immigration was insufficiently addressed in the GCM as well, perhaps because it has been characterized by some as "chain migration."[4] Objective 5, paragraph 21 (i) urges member states to "facilitate access to procedures for family reunification" by "reviewing and revising applicable requirements," but does not call specifically for an expansion of family visas. In multiple parts of the text, the term "family unity" was replaced by "a right to family life," a broader and more ambiguous term. Such moderate language belies the benefits of family-based immigration, which include greater social cohesion and economic contributions (Gubernshaya and Dreby 2017).

With regard to regularization, or providing legal status to undocumented immigrants already residing in a host nation, the language is weaker. In Objective 7, titled "Address and reduce vulnerabilities in migration," paragraph 23(i) recommends that member states "[b]uild upon existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case-by-case basis and with clear and transparent criteria…especially in cases where children, youth, and family are involved." Paragraph 23(h) encourages states to "[d]evelop accessible and expedient procedures that facilitate transitions from one status to another….so as to prevent migrants from falling into an irregular status in the country of destination…"

Such language does not specifically endorse a regularization program for large groups, but it does not discourage it either, particularly not for vulnerable groups such as children and families. Moreover, a regularization program for a large population features clear criteria and transparency and is normally adjudicated on a case-by-case basis in order to determine who qualifies. As such, member states can pursue different models, including a broad-based legalization program, in achieving this goal.

Best policies for the regularization of irregular migrants. There are numerous models for providing legal status to irregular migrants. The most effective and humane are those that are based on certain objective criteria, protect human rights, and facilitate the economic or humanitarian goals of the host nation. Regularization programs have been shown to provide benefits to a host nation, including increased productivity by migrants and more efficient and seamless integration into the country (CBO 2013).

Similarly, creating legal pathways for migration can have the effect of ensuring a sufficient number of laborers, while protecting national security, as immigrants can be screened before entering the country. In order to prevent the exploitation of migrants and allow them to contribute fully to a nation's economy, such avenues should, at a minimum, lead to permanent status, and allow migrants to assert their rights in the workplace. Studies have shown that legal migration increases the gross domestic product of a nation as well as the amount of remittances sent back to source countries (National Academies of Science, Engineering, and Medicine 2016).

The creation of legal avenues for migration, both employment-based and family-based, can help reduce irregular migration, as long as they are part of a broader immigration system which

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[4] Chain migration is a phrase used by immigration opponents to characterize family-based immigration, which leads to the admission of additional family members over time.

contains enforcement elements. This is a vastly superior model to an enforcement-only approach, which in the end can erode due process protections without significantly stemming irregular migration flows (Frelick, Kysel, and Podkul 2016).

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Regularization of Migrants: A Public-Private Partnership

The Scalabrini International Migration Network (SIMN) works in 34 countries on five continents, providing shelter and community services to migrants. SIMN has developed an employment, entrepreneurship, and social innovation model which provides migrants, including returnees, with training and skill certification, employment referrals, micro-entrepreneurship, and technical support. This program provides migrants with the skills and credentials many need to obtain legal status and work authorization.

This public-private partnership operates in Mexico, Brazil, Chile, Colombia, Guatemala, Italy, South Africa, and the Philippines, placing 15,000 migrants a year into jobs. In Mexico between May 2016 and October 2017, SIMN "placed in different jobs 1,527 deportees in Tijuana, 3,387 migrants and refugees in Tapachula, and 3,488 deportees in Nuevo Laredo" (SIMN 2017).

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Migrants in Vulnerable Situations

Perhaps the most complex and challenging issue during the GCM negotiations was how to address migrants in vulnerable situations — migrants who may have valid protection concerns but do not meet the criteria for refugee status.

Large movements of migrants include persons who fall into this category and require measures to prevent their immediate return to dangerous situations. This group could include persons fleeing natural disasters or slow onset environmental degradation, situations of generalized violence, or forms of domestic or sexual violence, among other threats.

During the negotiations, it became clear that the Global Compact on Refugees was not going to address this population in a substantive manner for fear of opening up the internationally accepted refugee definition to debate. However, the GCM debate also was fraught with dangers in this regard, as many member states argued for clear distinctions between regular and irregular migrants and opposed providing any new rights to migrants.

Objective 7 of the GCM addresses the plight of migrants in vulnerable situations, although other parts of the document also reference this issue. Essentially, the member states applied a human rights legal standard to the group, although it is not clear from the language if that would prevent their deportations or preserve the principle of *non-refoulement*.

However, the document does encourage the adoption of proactive protection measures that would preclude the return of migrants in vulnerable situations to dangerous situations, at least until the danger has subsided. It endorses a child-sensitive, gender- and disability-responsive approach, and recommends the provision of services to vulnerable groups, including legal representation. It also recommends "devising planned relocation and visa options, in cases

where adaptation in or return to the country of origin is not possible" (Objective 5, paragraph 21[h]).

To protect migrants who are forcibly displaced by sudden or slow onset environmental change, Objective 2 recommends the guidelines set forth in state-led initiatives like the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change and the Migrants in Countries in Crisis (MICIC) Guidelines. Paragraph 18(j) of Objective 2 recommends "humanitarian assistance" to climate change victims and promotes "sustainable outcomes" to increase their self-reliance, subject to the capacities of the member states involved.

As mentioned in the regularization section, Objective 7, paragraph 23(h) recommends the development of "accessible and expedient procedures that facilitate transitions from one status to another" to enable "individual status assessments for migrants." 23(i) goes further, encouraging member states to "facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status."

Taken together, these paragraphs provide options for member states to grant some sort of legal status to migrants in vulnerable situations. There are examples of this policy already in practice that member states should consider adopting as part of their legal tool box.

Best Policies for protecting migrants in vulnerable situations. Perhaps the model law for assisting migrants in vulnerable situations is the Temporary Protected Status (TPS) law applied in the United States. Under the statute, TPS is granted to the nationals of countries which are experiencing natural disaster, armed conflict, or other extraordinary and temporary conditions that make it unsafe for their nationals to return. TPS provides legal status and work authorization to undocumented nationals of the designated country for up to 18 months and can be renewed by the host country without limit if country conditions remain perilous.

The benefit of TPS is that it prevents the deportation of irregular migrants back to a destabilized country, giving the country time to recover from conflict or natural disaster. By granting work authorization to the population in the host country, it allows beneficiaries to support themselves and increases the amount of remittances sent back to a country of origin, helping it to recover from the natural disaster or conflict. As mentioned, research shows that legal status and work authorization increases labor mobility and earnings by previously undocumented residents, thus increasing the amount sent back to family and friends in the stricken nation (Baran and Magaña-Salgado 2017).

The limitations of TPS, at least from a migrant perspective, is that it does not in itself lead to permanent status,[5] and it normally has been applied only to migrants already residing in the United States. However, TPS can be re-designated to include persons who arrive at a later date.[6] Only legislation adopted by the US Congress and signed by the president can make TPS recipients permanent residents.

Immigration opponents have argued that the protection is not "temporary," as several US administrations have extended it multiple times for select national groups, with the result that

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[5] With the Trump administration having revoked TPS for many countries, more than 300,000 TPS recipients with strong equities in the United States could soon become subject to deportation.
[6] The US executive branch can set and amend the date by which a migrant must be present in the United States in order to be eligible for TPS (Kerwin 2014).

some nationals have had TPS for 20 years or more. When TPS is not renewed, it can leave long-term residents subject to deportation.[7] Nevertheless, TPS has proven to be an effective means of assisting a nation beset by war or natural disaster to recover expeditiously, while also offering protection to migrants in vulnerable situations.

Another mechanism for protecting migrants in vulnerable situations is the humanitarian visa, whereby a nation can provide entry and protection to a migrant or migrants fleeing danger or persecution. Mexico deploys such a visa for migrants fleeing gang violence in Central America, for example, and the United States has the legal authority to parole persons into the country if they are fleeing certain conditions. The benefit of a humanitarian visa program is that it can be used immediately, usually upon the discretion of local immigration officials, in emergency situations.

Member states, of course, can tailor temporary protection measures in different ways, dependent on political realities and a nation's capacity to host migrant populations. It is important to have a variety of tools in a nation's legal tool box which can address the plight of migrants who fall through the protection cracks.

Migrants in Vulnerable Situations Can Contribute to Host Nation

The Center for Migration Studies of New York (CMS) issued a study of nearly 300,000 nationals from El Salvador, Honduras, and Haiti who received TPS from the United States. CMS found that 81 to 88 percent participated in the US labor force, 87 percent spoke at least some English, and they had 273,000 US-citizen children. Thirty percent held mortgages and 11 percent were self-employed (Warren and Kerwin 2017).

Enforcement Measures

The GCM covers several enforcement issues, including the use of detention, the return of irregular migrants, and border management. While enforcement is a necessary element of any immigration system, how laws are enforced is crucial, as due process and human rights must be protected.

Detention. Perhaps the most progressive and groundbreaking part of the GCM is Objective 13, titled "Use immigration detention only as a measure of last resort and work towards alternatives." Detention is increasingly being used by nations to control and deter migration movements.[8]

Recognizing this expansion, member states, to their credit, agreed to language that provides that detention can be used only as a last resort. It also holds law enforcement personally responsible for "violations and abuses of [the] human rights" of migrants (Objective 13, paragraph 29[g]). In addition, it recommends free legal representation for detainees and calls for access to justice.

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[7] With the Trump administration having revoked TPS for many countries, more than 300,000 TPS recipients with strong equities in the United States could soon become subject to deportation.
[8] See the work of the International Detention Coalition, www.idcoalition.org.

Significantly, it states that member states should be "working to end the practice of child detention in the context of international migration" (Objective 13, paragraph 29h), an improvement from language contained in the New York Declaration on Large Movements of Migrants and Refugees, which concluded that child detention could be used as a "last resort" (UNGA 2016, paragraph 2.12).

Perhaps most important is its emphasis on alternatives to detention (ATDs) favoring non-custodial measures and community-based care arrangements. Studies have shown that ATDs are more humane and less expensive than immigrant detention and are effective in ensuring that an asylum seeker appears at an immigration hearing (CLINIC n.d.).

The Compact's emphasis on community-based care highlights a model which provides comprehensive services to immigrants, including housing, legal representation, and other community services, all necessary for upholding their human rights. This model minimizes the use of dehumanizing ankle bracelets and other forms of electronic monitoring and control.

Best policies for alternatives to detention. There have been several successful models of alternatives to detention programs employed by nations. The most effective have been public-private partnerships in which local nongovernmental organizations (NGOs) use a "case management" system to provide services and support to immigrants, including preparing them for their asylum cases. The model helps ensure that migrants do not abscond and appear at their court proceedings (International Detention Coalition 2015).

Alternatives to Detention: Less Costly and More Humane

The Family Case Management Program, initiated by the Obama administration in 2015 had a 99 percent appearance rate at asylum hearings and cost $36 a day, compared to $178 a day for detention. Local community groups provided housing, legal representation, and employment training for asylum-seekers in the program. Unfortunately, the Trump administration ended the program in 2017, preferring to use detention and family separation as a deterrence tactic (Acer 2018).

ATD pilot programs in Bulgaria, Cyprus, and Poland follow a community-based model of support to migrants. 97 percent of migrants in the programs have not absconded (ATD Network 2018).

Safe Return and Reintegration. Another contentious issue during the GCM negotiations was whether the document should include the term *non-refoulement*, a recognized term in refugee law which prevents the return of persons to the likely danger of persecution. Member states disagreed whether the term applied to non-refugee populations, despite clear international guidance that it should apply to persons regardless of their legal status.[9]

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[9] The UN High Commissioner for Refugees (UNHCR) briefing to member states on migrants in vulnerable situations and the Global Compacts, United Nations, April 13, 2018.

In the end, the definition of the term, but not the term itself, was included in Objective 21, titled "Cooperating in facilitating safe and dignified return and readmission, as well as sustainable re-integration." It is not clear if the absence of the term gives some member states the cover to return migrants in vulnerable situations to danger.

Positively, the objective encourages sustainable reintegration programs, which is in the interest of both the source and destination nations. Paragraph 37(h) of Objective 21 outlines services which should be provided to returnees, including "social protection and services, justice, psycho-social assistance, vocational training, and employment services and decent work," among other support programs.

Objective 21 also outlines special services for children who are returned and directs resources to local communities for reintegration purposes. It also provides that reintegration programs should be gender-responsive and child-sensitive, feature effective partnerships with civil society, and ensure that migrants do not become displaced upon their return (Objective 21, paragraph 37[b]).

Comprehensive reintegration services would help returnees to better reintegrate, make it more likely they would stay at home, and would help to stabilize the source country (Battistella 2018). In fact, destination countries should help pay for such programs, as they are much more cost-efficient than the detention and deportation of return migrants.

Best policies for sustainable reintegration programs. In many countries, migrants are given basic services upon their return, such as food, water, an information briefing, and bus fare. Once they leave the reception center, they are on their own.

A successful reintegration program would include 1) the involvement of migrants in their own return, if practicable; 2) agreement among all actors, including source nations, that return would be safe and voluntary; 3) the use of international monitors to monitor returns, where possible; 4) sustainability and access to services for migrants; and 5) private sector and NGO involvement in providing support.

The preferred model would include a case management system that ensures the security of migrants and that facilitates their access to housing, training, and employment, plus reunification with their families. It should extend six months or longer, depending on each case. Successful reintegration programs serve the interests of destination countries, as it enables persons to remain in their home countries and not attempt to migrate again.

Sustainable Reintegration and Prevention Programs Help Youth Find a Future

Kids in Need of Defense (KIND), a US-based NGO, operates the Child Migrant Return and Reintegration Project (CMRRP) in Guatemala and Honduras. KIND and its partners, in cooperation with the national governments, ensure that children are returned to their communities safely and receive reintegration support such as family reunification, skills training, counseling, and school enrollment.

Another program operated in El Salvador by Catholic Relief Services has focused upon youth, including those who have attempted to migrate. By providing education and training, plus group support, young people have been dissuaded from migrating to the United States. The program provided them hope that they could build a future in their country. As a result, nearly 100 percent of the participating youth chose not to migrate north.

Border Management. Objective 11, titled "Manage borders in an integrated, secure and coordinated manner," focuses upon policies concerning the entry of immigrants at national borders. The objective can be applied to many enforcement policies, such as interdiction and return, pushbacks, the closing of borders, and the externalization of enforcement regionally.

The chapeau commits member states to work in a "coordinated manner" to facilitate "safe and regular cross-border movements of people *while preventing irregular migration.*" The phrase "preventing irregular migration" can be interpreted to license enforcement policies which deter large movements of migrants and undermine their right to due process.

However, the chapeau also commits member states to implement border management policies that respect "obligations under international law, the human rights of all migrants, regardless of their migration status, and are non-discriminatory, gender-responsive and child-sensitive." (Objective 11, paragraph 27). Thus, the phrase *preventing irregular migration* is qualified in a way that requires enforcement policies to ensure the right to protection and due process, which often is violated by deterrence schemes (Frelick, Kysel, and Podkul 2016).

Paragraph 27 (a) reaffirms this commitment to protection and describes it more clearly, encouraging international, regional, and cross-regional border cooperation which includes "proper identification, timely and efficient referral, assistance and appropriate protection of migrants in situations of vulnerability at or near international borders, in compliance with international human rights law." This paragraph sets out protection policies which should be incorporated into any border management system, including in situations in which countries are working together. This is a significant commitment by member states, which heretofore generally have not specified protection mechanisms in multilateral enforcement agreements (Frelick, Kysel, and Podkul 2016).

Objective 11 also recommends border screening procedures that ensure due process, best interest of the child determinations, and the revision of laws that criminalize illegal entry, making them "proportionate, equitable, non-discriminatory, and fully consistent with due process and other obligations under international law" (Objective 11, paragraph 27[f]). Unfortunately, the list does not include making illegal entry a civil, rather than criminal offense, when language doing so was removed from the final draft.

In total, Objective 11 adds positive practices in the area of border management which should increase the protection of human rights and respect for international law in border management, including regional border cooperation initiatives. Given the language, this Objective cannot be construed to sanction deterrence schemes which undermine human rights and international law.

Best Policies on Border Management. It is important to consider that enforcement policies should always be coupled with protection measures to ensure that the human rights of all migrants are preserved. Often deterrence policies weaken international protection by blocking access to asylum. As such, protection measures should be built into border management policies, including enforcement initiatives.

There are numerous models in which these rights can be honored while maintaining the integrity of international borders. The Comprehensive Refugee Response Framework (CRRF), born out of the New York Declaration on Refugees and Migrants, is one model in which a UN entity, the UN High Commissioner for Refugees in this case, can help process asylum seekers while countries in a region, as well as worldwide, share responsibility in accepting them for residency

or supporting them financially. While specifically intended for refugee flows, it also can be an effective model for addressing large mixed movements.[10]

A second option would be in-country processing, in which vulnerable populations at risk could apply within their country for a humanitarian visa to another nation, allowing them to legally travel instead of taking a long, dangerous journey illegally.[11]

Another best practice is screening of populations at a border, particularly children. US law, for example, requires the screening of unaccompanied children as victims of human trafficking at the US border, offering them protection and permanent residency in the country. Such screenings should be done by child welfare experts rather than enforcement personnel.

A second US law provides that unaccompanied children from noncontiguous countries are allowed to reunite with their families and pursue their asylum claims in the immigration court system, without being subject to expedited removal. This law addresses the particular vulnerabilities of children, who often cannot navigate a nation's immigration system on their own.[12]

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[10] See https://www.unhcr.org/comprehensive-refugee-response-framework-crrf.html.
[11] The Central American Minor (CAP) program, based in El Salvador, permitted over 16,000 youth to join family in the United States legally. It was eliminated by the Trump administration in 2017.
[12] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

> **The Human Cost of Deportation**
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> A study by the Center for Migration Studies of New York, the Kino Border Initiative, and the Jesuit Conference of the USA and Canada measured the devastating impact on deportation on families. The study found that, of the 133 deportees interviewed, 78 percent had US citizen children; 96 percent were employed; and 56 percent came to the United States as minors (Kerwin, Alulema, and Nicholson 2018).
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> Nearly 40 percent had legal status, 42 percent had spouses, and 26 percent were homeowners. 73 percent said they would try to return to the United States and over half said that family members depended upon them for survival. The average stay of each deportee in the United States was 19.9 years (ibid.).

The Integration of Migrants. Objective 16 of the Compact, titled "Empower migrants and societies to realize full inclusion and social cohesion," focuses upon policies which foster immigrant integration. The member states commit to "strengthen the welfare of all members of societies by minimizing disparities, avoiding polarization and increasing public confidence in policies and institutions related to migration, in line with the acknowledgment that fully integrated migrants are better positioned to contribute to prosperity" (Objective 16, paragraph 32).

Paragraph 32(c) represents the crux of the objective, calling upon member states to develop integration policies: "Develop national short, medium and long-term policy goals regarding the inclusion of migrants in societies, including on labor market integration, family reunification, education, non-discrimination and health, including by fostering partnerships with relevant stakeholders" (Objective 16, paragraph 32[c]). This language can be used by civil society to push their governments to develop national immigrant integration plans. The remainder of Objective 16 offers best practices for advocates to push and governments to adopt.

A point of controversy on immigrant integration was whether and how it would be applied to irregular migrants. Like other objectives, Objective 16 did not make any distinction between regular and irregular migrants.

The first question was whether migrants in irregular status were eligible to receive basic services, defined as housing, health care, and education. While the Holy See and others argued that irregular migrants should receive these basic necessities under human rights standards, other member states disagreed, calling for a clear distinction between regular and irregular migrants in the provision of services.

In the end, the GCM called for irregular migrants to receive "basic services" but did not list the services to which they would have access, leaving it to the discretion of the Member State. This represents a large loophole which could adversely impact irregular migrants in nations that define such services in a restrictive manner.

A second area of dispute regarded "firewalls," or a ban on the use of irregular migrant's personal information — which is obtained by states through applications for immigration benefits or through information-gathering — for enforcement purposes. Some member states objected to

the firewall term as too restrictive and it was eventually replaced with the phrase, "respecting the right of privacy" of individuals, which can be interpreted more broadly.

Such language should not be interpreted to allow enforcement authorities to use personal information to apprehend and deport an individual. Without a strict line forbidding the use of personal information for enforcement and deportation purposes, irregular migrants would choose not to participate in benefit programs or national surveys for fear this could lead to their deportation.

Best Policies on the Integration of Migrants. The area of immigrant integration is best advanced through a whole-of-society approach, in which civil society, including faith-based organizations partner with governments to provide integration services to immigrant families. Local churches, for example, often provide language or civic integration instruction, while nonprofit organizations can help migrant children enroll in school and find their parents employment.

It is unrealistic to deport all migrants who are out of status. It is wise, if sometimes politically unpalatable, to invest in undocumented populations in part for humanitarian reasons and in part because many of these residents may become legal residents and citizens over time. This practice also minimizes social breakdown and comports with international human rights standards.

Again, civil society organizations, particularly faith-based organizations, can play a partnership role in providing basic necessities to these migrants, as long as they are not subject to penalties for doing so. Language which would have criminalized meeting the basic needs of irregular migrants was removed from the final draft of the GCM.[13]

With regard to the issue of firewalls and the sharing of personal information with law enforcement officials, exceptions can be made when there is sufficient evidence that a migrant is a danger to the community or to national security. Such exceptions must meet evidentiary standards. It must be clear to migrants who may qualify for immigration benefits that the information they provide to the government will not be used for deportation purposes, absent these circumstances.

For the purpose of a census or other forms of information gathering, the personal information of a migrant should not be used for enforcement purposes and a compromising question — such as asking someone their country of citizenship — should be avoided. [14] Otherwise, governments would be unable to adequately calculate the number of undocumented persons in their nations and their situations.

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[13] See GCM draft, revision 6, Objective 12, paragraph 25.
[14] The Trump administration has proposed adding a question to the 2020 Census on a person's country of citizenship, generating much controversy.

Implementation of the Global Compact on Migration. While the GCM's adoption is an achievement, its implementation will ultimately determine its success or failure. The Compact contains implementation and follow up and review sections that provide support to member states to robustly implement the commitments in the Compact, but lack the authority to mandate compliance, or to monitor its implementation adequately.

The creation of a UN network devoted to the implementation, led by IOM, is a good first step. The network would provide technical support to member states on migration projects and help foster a capacity-building mechanism created in the Compact to which member states can voluntarily contribute (Implementation, paragraph 43). As of this writing, it is unclear how any funding would be distributed.

However, the UN network does not hold authority under the Compact to monitor and rate how individual member states are complying with the Compact. The UN Secretary General can report twice a year to the UN General Assembly on the UN network and the progress made in the implementation of the Compact (Implementation, paragraph 46).

A positive aspect of the implementation section of the Compact is that civil society members, including faith-based organizations, are identified as partners in the implementation process (Implementation, paragraph 44). The inclusion of civil society in the process is vital, as NGOs, particularly faith-based organizations, can help reach migrant populations that governments cannot reach. Public-private partnerships aimed at innovative programming and service-delivery have proven to be a successful model over time, and can be used again to help make a difference on the ground (Appleby and Kerwin 2018).

In terms of follow-up and review, the Compact establishes a forum held once every four years, titled the International Migration Review Forum, in which member states will update each other on the progress made in the implementation of the Compact (Follow-up and Review, paragraph 49[a-e]). The Compact urges regional processes and the Global Forum on Migration and Development, held annually, to focus upon implementation issues (Follow-up and Review, paragraph 51).

In perhaps the closest the GCM comes to accountability, it encourages member states to "develop, as soon as practicable, ambitious national responses for implementation…and to conduct regular and inclusive review of progress at the national level, such as through the voluntary elaboration and use of a national implementation plan" (Follow-up and Review, paragraph 53). This is positive language, as it encourages strategic and methodical planning by member states, as opposed ad hoc initiatives based upon political considerations or emergency

situations. NGOs can play a vital role in helping to fashion such national plans and promote their achievement.[15]

Notwithstanding these positive provisions, the Compact does not require real accountability in which member states would be evaluated by the concrete steps they take toward implementation. Moreover, there is no mechanism to point out when member states are violating the letter and spirit of the Compact in their policy choices. In other words, nations can still deploy deterrence policies with impunity, even policies that violate international law standards.

What the Compact does do, however, is provide goals and best practices which member states can work to achieve over time. It also provides an advocacy tool that civil society and the public can use to push their governments to improve their migration policies, consistent with the principles of the Compact.

Conclusion

The GCM is a real achievement: it represents the first real framework for migration governance globally. Despite its shortcomings, it provides a blueprint for nations to create a multilateral migration system that protects the rights of persons who are compelled to leave their countries in search of a better life. While some member states have chosen not to participate in the Compact,[16] the vast majority have chosen to commit to it and attempt to realize its goals.

It is important that the member states who do adopt the Compact show leadership by implementing best policies and practices in their own countries. Over time, such best practices and policies should prevail over the enforcement paradigm that many nations are now pursuing and can hopefully lead to a tipping point in which all nations are working together toward a global migration governance model based upon the protection of human rights.

At the end of the day, the ultimate solution to forced migration is sustainable development in sending countries, which provide migrants with the ability to remain in their countries and raise their families in dignity and security. Member states should continue to pursue this long-term solution through the 2030 Sustainable Development Goals,[17] now armed with a major instrument for incorporating migration into their efforts. Properly implemented, the GCM should mark another step toward a world in which migration is a choice, not a necessity.

REFERENCES

Acer, Eleanor. 2018. "Studies: Mass Detention of Migrant Families is Unnecessary, Inefficient." *Just Security*, July 5. https://www.justsecurity.org/58897/studies-show-mass-detention-family-migrants-unnecessary-inefficient/.

Appleby, J. Kevin, and Donald Kerwin, eds. 2018. *2018 International Migration Policy Report: Perspectives on the Content and Implementation of the Global Compact for Safe, Orderly, and Regular Migration.* New York: Scalabrini Migration Studies Centers. https://doi.org/10.14240/internationalmigrationrpt2018.

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[15] Civil society is in a unique position to hold member states accountable for their national responses by influencing their content and by providing scorecards on progress made.
[16] As of this writing, the United States and Hungary have officially pulled out of the Compact, and other member states are considering their positions.
[17] See UNGA (2015).

ATD Network. 2018. "Evaluation of alternative to detention pilot projects shows positive impact of case management." https://www.atdnetwork.org/news/evaluation-of-alternative-to-detention-pilot-projects-shows-positive-impact-of-case-management/.

Battistella, Graziano. 2018. "Return Migration: A Conceptual and Policy Framework." New York: Center for Migration Studies. https://doi.org/10.14240/cmsesy030818.

Carciotto, Sergio. 2018. "The Regularization of Zimbabwean Migrants: The Case of Permanent Temporariness." New York: Center for Migration Studies. https://doi.org/10.14240/cmsesy031418.

CLINIC (Catholic Legal Immigration Network, Inc). n.d. "Alternative to Detention Programs." Washington, DC: CLINIC. https://cliniclegal.org/sites/default/files/cara/Alternatives-to-Detention-Backgrounder.pdf.

CBO (US Congressional Budget Office). 2013. *The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act. Washington, DC: Congressional Budget Office.* Washington, DC: CBO. https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44346-immigration.pdf.

Frelick, Bill, Ian Kysel, and Jennifer Podkul. 2016. "The impact of Externalization of Migration Controls on the Rights of Asylum-Seekers and other Migrants." *Journal on Migration and Human Security* 4(4): 190-220. https://doi.org/ 10.1177/233150241600400402.

Gubernshaya, Zoya, and Joanna Dreby. 2017. "US Immigration Policy and the Case for Family Unity." *Journal on Migration and Human Security* 5(2): 417-30. https://doi.org/ 10.1177/233150241700500210 .

Baran, Amanda, and Jose Magaña-Salgado. 2017. *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders.* San Francisco and Washington, DC: Immigrant Legal Resource Center. https://www.ilrc.org/report-tps-economic-cost/.

International Detention Coalition. 2015. *There Are Alternatives: Handbook for preventing unnecessary immigration detention.* Melbourne: International Detention Coalition. https://idcoalition.org/publication/there-are-alternatives-revised-edition/.

Liechtenstein Languages. n.d. "Liechtenstein Languages — Information in English." https://liela.li/liechtenstein-languages-information-in-englisch/.

Kerwin, Donald. 2014. "Creating a More Responsive and Seamless Refugee Protection System: The Scope, Promise and Limitations of US Temporary Protection Programs." Journal on Migration and Human Security 2(1): 44-72. https://doi.org/10.1177/233150241400200104.

Kerwin, Donald, Daniela Alulema, and Mike Nicholson. 2018. *Communities in Crisis: Interior Removals and Their Human Consequences.* Nogales, AZ, New York, NY, and Washington, DC: Kino Border Initiative, Center for Migration Studies, and Office of Justice and Ecology. https://doi.org/10.14240/rpt1118.

National Academies of Science, Engineering, and Medicine. 2016. *The Economic and Fiscal Consequences of Immigration.* Washington, DC: National Academies of Sciences, Engineering, and Medicine.

SIMN (Scalabrini International Migration Network). 2017. "Employment, Entrepreneurship and Social Innovation of Migrants and Refugees Model." https://refugeesmigrants.un.org/sites/default/files/simn-esip-112117.pdf.

UNGA (UN General Assembly). 2015. "Sustainable Development Goals 2030." UN Doc. A/RES/70/1. https://sustainabledevelopment.un.org/post2015/transformingourworld.

———. 2016. "New York Declaration on Refugees and Migrants." UN Doc. A/RES/71/1. New York: UNGA. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1.

Warren, Robert, and Don Kerwin. 2017. "A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti." *Journal on Migration and Human Security* 5(3): 577-92. https://doi.org/10.1177/233150241700500302.