

## WHITE PAPER

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# Incorporating Protection of Civic Freedom and Civic Space into the Global Compact for Safe, Orderly and Regular Migration

In 2018, the Global Compact for Safe, Orderly and Regular Migration (GCM) was adopted by the UN General Assembly after 152 UN Member States voted in favor of the agreement. The GCM is the first-ever global cooperation framework on migration and addresses issues affecting the world's 272 million international migrants<sup>1</sup> and their countries of origin, transit, and destination. The compact sets forth 23 key objectives for migration management at national, regional and global levels; in sum these objectives aim to mitigate the adverse drivers and structural factors that propel international migration; reduce the vulnerabilities that migrants face at different stages of their journey; address concerns related to the impact of migration on states and communities; and create conducive conditions that enable migrants to enrich their societies and contribute to sustainable development.<sup>2</sup>

The negotiation of the GCM was controversial, marked on the one hand by right-wing protests<sup>3</sup> over the fear that the compact would encourage greater migration flows and, on the other hand, by migration activists' concern that the text fell short of international standards and best practices.<sup>4</sup> However, despite the defection of key states during the negotiation process, the GCM was adopted with significant UN Member State support. Upon its signing, the compact was heralded by many in civil society as "a historic achievement" with "real potential to make a positive impact on the

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<sup>1</sup> Charlotte Edmond, *Global Migration, By the Numbers: Who Migrates, Where They Go and Why*, WORLD ECONOMIC FORUM, (10 January 2020), <https://www.weforum.org/agenda/2020/01/iom-global-migration-report-international-migrants-2020/>.

<sup>2</sup> *Global Compact for Migration*, <https://refugeemigrants.un.org/migration-compact>.

<sup>3</sup> *Brussels Protest over UN Migration Pact Turns Violent*, BBC (16 December 2018), <https://www.bbc.com/news/world-europe-46585237>.

<sup>4</sup> *Joint Civil Society Statement at the Conclusion of the Negotiations of the Global Compact for Safe, Orderly, and Regular Migration*, (13 July 2018), [https://gallery.mailchimp.com/8093208e6abb2fb927fe1267f/files/a77311a8-e77b-4106-a806-0e637ae0e1b8/Statement\\_of\\_Civil\\_Society\\_at\\_the\\_Conclusion\\_of\\_Negotiations\\_on\\_the\\_GCM\\_Friday\\_Statement\\_w\\_signatories\\_upto\\_10\\_August.pdf](https://gallery.mailchimp.com/8093208e6abb2fb927fe1267f/files/a77311a8-e77b-4106-a806-0e637ae0e1b8/Statement_of_Civil_Society_at_the_Conclusion_of_Negotiations_on_the_GCM_Friday_Statement_w_signatories_upto_10_August.pdf).

lives of millions of our fellow human beings who move in search of a life of dignity and security for themselves and their families.”<sup>5</sup>

## The Role of Human Rights and Civic Freedoms in the GCM

As a young instrument, the first few years of the GCM’s operationalization will be critical in setting forth a rights-respecting implementation framework that will allow the GCM to live up to the optimism of civil society. The first International Migration Review Forum (IMRF), to be held in spring 2022 and organized by the UN Network on Migration, represents a crucial opportunity to ensure that a rights-respecting interpretation of the GCM’s objectives is solidified into practice. However, currently there is a textual gap in the GCM relating to the protection and promotion of migrants’ rights and the rights of civil society organizations that provide voice, humanitarian assistance or other services to migrants (migrant-allied CSOs).

Human rights considerations are not absent from the GCM; rather the preamble confirms that the compact rests squarely on human rights principles<sup>6</sup> and highlights the importance of safeguarding the rights of all migrants, regardless of migration status.<sup>7</sup> However, the promotion and protection of migrants’ rights is not among the 23 enumerated objectives. As one commentator has noted, “The absence of a specific objective on human rights is all the more visible because other objectives address aspects of immigration policy that have human rights implications, like immigration detention (obj. 13) and return/readmission (obj. 21).”<sup>8</sup> By incorporating human rights as guiding principles rather than objectives, the GCM exempts the support for migrant’s rights from practical attention and in-depth policy recommendations.<sup>9</sup>

In addition to the GCM’s failure to articulate how States should cooperate over migration policy while simultaneously upholding human rights,<sup>10</sup> the compact neglects to specifically address issues of migrants’ civic freedoms—particularly, their right to freedom of association, assembly, and expression. Likewise, although the GCM stipulates that it is to be implemented in cooperation with civil society and migrant and diaspora organizations,<sup>11</sup> it contains no language encouraging the creation of a conducive environment for such civil society cooperation. The GCM also does not

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<sup>5</sup> *Joint Civil Society Message to the Member States and the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly, and Regular Migration*, (10 December 2018), <https://csactioncommittee.org/wp-content/uploads/2020/02/Joint-Civil-Society-statement-at-the-UN-Conference-to-Adopt-the-Global-Compact-for-Safe-Orderly-and-Regular-Migration-English-10-December-2018-Marrakesh..pdf>.

<sup>6</sup> *Global Compact for Safe, Orderly and Regular Migration* (13 July 2018), paras. 2 and 3, [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf) [hereinafter, GCM].

<sup>7</sup> *Id.*, at para. 11 and 15.

<sup>8</sup> Antoine Pécoud, *Narrating an Ideal Migration World? An Analysis of the Global Compact for Safe, Orderly and Regular Migration*, *THIRD WORLD QUARTERLY*, Vol. 42, Issue 1 (12 June 2020), <https://www.tandfonline.com/doi/full/10.1080/01436597.2020.1768065>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> GCM, para. 44.

elucidate how the underlying human rights principles will be used during the IMRF periodic reviews to meaningfully inform evaluation of State progress.

## Civic Freedoms of Migrants and Migrant-Allied CSOs Under Threat

The failure to incorporate considerations of migrants' civic freedoms and civic space into the compact is a critical omission. As detailed in a recent report by the UN Special Rapporteur on the human rights of migrants (the Special Rapporteur), migrants' ability to exercise their civic freedoms is increasingly under threat around the world.<sup>12</sup> Migrants face both legal and practical barriers to their exercise of rights, including discriminatory laws and policies, difficulty in accessing information, insecure migration statuses, employer blockages and community stigmatization.<sup>13</sup> These barriers increase when States take a security-oriented approach to migration<sup>14</sup> and are often even more formidable for migrant women or migrants with additional vulnerabilities.<sup>15</sup> Moreover, the COVID-19 crisis has served to further restrict migrants' exercise of their civic freedoms. Many governments have used the pandemic as an excuse to impose excessive new legal restrictions on their peoples' rights.<sup>16</sup> This opportunistic response—coupled with extreme pressures that the pandemic put on migrants—has had significant negative consequences on migrants' ability to exercise their freedoms of assembly, association, and expression.<sup>17</sup>

In addition to the civic freedoms of migrants' themselves, the rights of migrant-allied CSOs are also under attack. As detailed by the Special Rapporteur's report, migrant-allied CSOs have been increasingly criminalized for their humanitarian work, often after being smeared by a toxic narrative painting their assistance to migrants as akin to criminal smuggling or trafficking.<sup>18</sup> In recent years, migrant-allied CSOs have also faced the imposition of onerous administrative or financial burdens on their operations.<sup>19</sup> These criminalization or toxic narrative campaigns and increased obstacles to operation often lead to *de jure* or *de facto* harassment of migrant-allied CSOs, and complicate their ability to carry out their work—much of which is crucial to the accomplishment of GCM objectives. As one commentator has pointed out, the GCM emphasizes the importance of a whole-of-society approach, with civil society, States and the UN Network on Migration representing the three pillars required for successful

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<sup>12</sup> *Report of the Special Rapporteur on the Human Rights of Migrants: Right to Freedom of Association of Migrants and Their Defenders*, UN Doc. No. A/HRC/44/42 (13 May 2020), para. 26 [hereinafter, Special Rapporteur's Report].

<sup>13</sup> *Id.*, at paras. 38-43.

<sup>14</sup> *Id.*, at paras. 63-65.

<sup>15</sup> *Id.*, at paras. 60-62.

<sup>16</sup> See e.g., *COVID-19 Civic Freedom Tracker* at, <https://www.icnl.org/covid19tracker/> (showing 585 COVID-19 response related measures restricting civic freedoms as of 22 December 2021).

<sup>17</sup> See e.g., *Protecting Migrants' Civic Freedoms Amid COVID-19*, (31 August 2020), <https://www.interaction.org/blog/protecting-migrants-civic-freedoms-amid-covid-19/>.

<sup>18</sup> Special Rapporteur's Report, at paras. 66-73.

<sup>19</sup> *Id.*, at para. 76-78.

implementation.<sup>20</sup> However, with migrant-allied CSOs increasingly under attack, “like a three-legged stool, one weak leg could destabilize the effort.”<sup>21</sup>

## Migrant Civic Freedoms and GCM Objective 16

By not including the promotion of civic freedoms as an objective in and of itself, the GCM fails to address a key threat to safe, orderly, and regular migration—that migrants and migrant-allied CSOs are increasingly constrained from speaking and acting on their own behalf. Where migrants and migrant-allied CSOs are unable to organize in their own interests, migration policies will suffer from a lack of key stakeholder knowledge and input, resulting in more perilous and irregular migration pathways. By this same token, failure to include support for civic freedoms as a key objective wastes an opportunity to galvanize States to address this issue through coordinated action.

However, although the GCM has not clearly articulated the promotion and protection of civic freedoms as its own objective, this goal could be easily housed under Objective 16 (Empower migrants and societies to realize full inclusion and social cohesion). The aim of “foster[ing] inclusive and cohesive societies by empowering migrants to become active members of society and promoting the reciprocal engagement of receiving communities and migrants in the exercise of their rights and obligations towards each other” could be understood as a call to support migrant agency so that migrants can fully participate in their host communities. Such increased participation would necessitate the promotion of expression, association, and assembly rights so migrants can act in their own interests, as well as the expansion of participation opportunities for migrants to weigh in on the policies that affect their lives. As suggested in the Special Rapporteur’s report, support for migrant civic freedoms in their host communities is of particular importance because migrants are often denuded of electoral rights in their country of residence and therefore have few ways other than exercising their right to organize and protest in which to influence their communities.<sup>22</sup>

In discussing Objective 16 some civil society commentators have suggested that it should be understood to incorporate progress towards migrants’ access to economic, social and cultural rights.<sup>23</sup> To date, however, there has not been civil society or State consensus that Objective 16 should be understood to incorporate support for migrant civic freedoms.

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<sup>20</sup> J. Kevin Appleby, *Implementation of the Global Compact on Safe, Orderly, and Regular Migration: A Whole of Society Approach*, JOURNAL ON MIGRATION AND HUMAN SECURITY, (27 April 2020), p. 214, <https://journals.sagepub.com/doi/full/10.1177/2331502420907377>.

<sup>21</sup> *Id.*

<sup>22</sup> Special Rapporteur’s Report, at para. 25.

<sup>23</sup> See e.g., Ulrike Brandl, *GCM Indicators: Objective 16: Empower Migrants and Societies to Realise Full Inclusion and Social Cohesion*, REFUGEE LAW INITIATIVE BLOG ON REFUGEE LAW AND FORCED MIGRATION (10 May 2019), <https://rli.blogs.sas.ac.uk/2019/05/10/gcm-indicators-objective-16-empower-migrants-and-societies-to-realise-full-inclusion-and-social-cohesion/>.

## No Human Rights Based Evaluation of State Implementation

Neither the GCM nor UN General Assembly (UNGA) Resolution 73/326, which set forth the format and the organizational aspects of the IMRF, specifies how State implementation will be evaluated for human rights compliance.<sup>24</sup> By emphasizing only “that the Global Compact is to be implemented in a matter that is consistent with our rights and obligations under international law”,<sup>25</sup> the GCM appears to leave open for interpretation the methods by which its objectives are to be realized. This leeway could empower States to pursue GCM objectives through actions that restrict civic freedoms and civic space.

The GCM lists supportive actions that States should undertake to realize each objective. A few of these listed actions do necessitate support for civic freedoms and civic space. For example, section 22 of the GCM recommends “provid[ing] migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to [...] freedom of peaceful assembly and association . . . .” in order to realize Objective 6 (facilitate fair and ethical recruitment and safeguard conditions that ensure decent work).<sup>26</sup> However, many of the GCM objectives are not supported by actions that necessarily promote human rights and, to the contrary, could be pursued in ways that are restrictive of migrant freedoms and civic space. For instance, States have already used the goal of countering migrant smuggling and trafficking (Objectives 9 and 10) as justification for cracking down on migrant-allied CSOs providing humanitarian services at the borders or at sea.<sup>27</sup>

The danger inherent in an international instrument failing to specify how human rights principles will meaningfully be used to evaluate implementation is not mere speculation. A similar contest has played out over the past few decades in the field of counter-terrorism. Although UN Security Council Resolutions and other UN instruments have generally required States to ensure that any measures taken to combat terrorism comply with human rights law,<sup>28</sup> they have persistently lacked “a comprehensive assessment of the human rights impact of the required measures.”<sup>29</sup> As

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<sup>24</sup> *UN General Assembly Resolution 73/326*, UN Doc. No. A/RES/73/326 (29 July 2019). Resolution 73/326 does invite the participation of certain CSOs in the IMRF (paras. 4, 5 and 6) and provides space for informal exchanges and civil society input leading up to the forum (paras 11, 15, 21(d)). However, given that all of civil society is represented by a single rapporteur, to be shared with the private sector, migrant-allied CSOs have expressed doubt that civil society participation at the IMRF will be meaningful. See e.g., Civil Society Action Committee, *Global Civil Society Priorities Towards the International Migration Review Forum: 12 Key Ways for States to Get Back on Track*, p.10, (November 2021), p.15, [FINAL Global Civil Society Priorities \(mcusercontent.com\)](https://www.mcsusercontent.com/).

<sup>25</sup> GCM, at para. 41.

<sup>26</sup> *Id.*, at para. 22(i).

<sup>27</sup> Special Rapporteur’s Report, at para. 69.

<sup>28</sup> *UN Security Council Res. 1456*, UN Doc. No. S/RES/1456 (2003) (20 January 2003), para. 6.

<sup>29</sup> See e.g., Fionnuala Ní Aoláin and Anne Charbord, *The Role of Measures to Address Terrorism and Violent Extremism on Closing Civic Space: Report Prepared under the Aegis of the Mandate of the United Nations Special Rapporteur on the*

a result, States have continued to use their counter-terrorism obligations under international instruments as justification to restrict individuals' rights to the freedoms of association, assembly and expression and civic space. State pursuit of GCM objectives could follow a similar trajectory if a proper rights-respecting framework for evaluating implementation is not put into place at the first IMRF.

Unfortunately, there is currently no indication that State implementation of the GCM will be specifically evaluated for its human rights impact during the IMRF. As part of its proposed roadmap for supporting the IMRF,<sup>30</sup> the UN Network on Migration has prepared an indicative template for States to use when reviewing GCM implementation at the national level.<sup>31</sup> However, while this template encourages States to discuss how the GCM guiding principles are reflected in their policies, it does not contain any specific section prompting States to report on their methodology's compliance with human rights obligations.<sup>32</sup> The roadmap contains no other prompt that might return information on the human rights implications of State policies and actions in pursuit of the GCM objectives.

## Respect for Migrant Civic Freedoms and Civic Space a Prerequisite to Successful GCM Implementation

Should States pursue GCM objectives through restrictive measures, such actions would be self-defeating and undermine successful GCM implementation. The successful pursuit of GCM objectives requires migrant input and participation, which will be impossible to obtain if migrants are unable to freely organize, assemble and speak on their own behalf. It would be difficult, for instance, to achieve Objective 6 (facilitate fair and ethical recruitment and safeguard conditions that ensure decent work) without the assistance of labor unions representing migrant workers' collective interests. Likewise, migrants' ability to freely access, transmit and receive information underlies the objectives relating to better data and documentation provision (Objectives 1, 3 and 4). Objectives 7 (address and reduce vulnerabilities in migration) and 17 (eliminate all forms of discrimination and promote evidence based public discourse to shape perceptions of migration) require migrant participation in identifying vulnerabilities and creating effective solutions. In effect, migrants' ability to securely exercise their civic freedoms is a pre-condition to the fulfilment of the GCM objectives.

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*Protection and Promotion of Human Rights While Countering Terrorism* (2018), University of Michigan (2019), p.4, [www.icnl.org/wp-content/uploads/civil\\_society\\_report\\_-\\_final\\_april\\_2019.pdf](http://www.icnl.org/wp-content/uploads/civil_society_report_-_final_april_2019.pdf).

<sup>30</sup> UN Network on Migration, *Proposed Roadmap for the UN Network on Migration's Support to the IMRF*, (8 October 2021), [https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/resources\\_files/imrf\\_roadmap\\_3\\_pages.pdf](https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/resources_files/imrf_roadmap_3_pages.pdf).

<sup>31</sup> UN Network on Migration, *Annex 1 Indicative Template for Member States to Review the Status of Implementation of the GCM at National Level, in Preparing for the IMRF*, (8 October 2021), [https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/resources\\_files/annex\\_1\\_-\\_imrf\\_roadmap.pdf](https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/resources_files/annex_1_-_imrf_roadmap.pdf).

<sup>32</sup> *Id.*

A robust civic space enabling the free operation of migrant-allied CSOs is also crucial to achieving GCM objectives. Migrant-allied CSOs are often in a better position than authorities to deliver services to migrants because they are viewed as independent from law enforcement and political pressures, because they can reach migrants at different points in their journey and because they may have capacity to support migrants in particular ways (such as by providing legal support) that governments struggle with.<sup>33</sup> Migrant-allied CSOs can also serve as effective advocates for migrants, especially those in irregular situations, because they can safely and publicly relay information or negotiate agreements between government and migrant populations without putting the spokesperson at risk.<sup>34</sup> Finally, migrant-allied CSOs may also have additional credibility with government actors on account of their experience in migration matters.<sup>35</sup>

There are clear links between a strong civic sector and the GCM objectives. For instance, States will not be able to effectively achieve Objective 15 (provide access to basic services for migrants) without the assistance of migrant-allied CSO providers who can help establish easily accessible service points at the local level and reach migrants in vulnerable positions. States will also fail to achieve Objective 19 (create conditions for migrants and diasporas to fully contribute to sustainable development in all countries) if they cannot “build partnerships between local authorities, local communities, the private sector, diasporas, hometown associations and migrant organizations to promote knowledge and skills transfer between their countries of origin and countries of destination . . . .”<sup>36</sup> Moreover, if migrant-allied CSOs are prevented from providing services to vulnerable migrants, criminal groups may step in to fill this gap,<sup>37</sup> in direct opposition to the achievement of Objectives 9 and 10 (countering the trafficking and smuggling of migrants). In support of all objectives, a strong civic sector can assist with migrant advocacy, dissemination of information, integration, messaging and education, programs, and services.<sup>38</sup>

It therefore behooves States, migration activists, the UN Network on Migration and any other stakeholders invested in successful GCM implementation to promote migrant civic freedoms and an expansive civic space as necessary preconditions to the achievement of the GCM objectives.

## Recommendations

As the first IMRF approaches, there are still opportunities to effectively embed protections for migrant civic freedoms and civic space into the framework for understanding and evaluating the GCM. To this end, we recommend that **States, civil**

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<sup>33</sup> Appleby, at pp. 215-216.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> GCM, at para. 19(j).

<sup>37</sup> Special Rapporteur’s report, at para. 85.

<sup>38</sup> Appleby, at pp. 216-218.

**society actors**, the **UN Secretary-General** and the **UN Network on Migration** issue clear statements acknowledging that:

1. A prerequisite for the realization of GCM objectives is that migrants can freely exercise their rights to association, assembly and expression, and that migrant-allied CSOs can operate without undue constraint. Therefore, the successful implementation of the GCM requires the promotion and protection of civic freedoms and civic space.
2. Objective 16 (Empower migrants and societies to realize full inclusion and social cohesion) is understood to incorporate the promotion and protection of migrant civic freedoms.
3. All State action in pursuit of GCM objectives must be rights-respecting and that State implementation of each of the GCM objectives should be evaluated through human rights metrics.

In addition:

The **UN Network on Migration**, along with the **Secretary General**, where relevant, should:

1. Amend Annex I to the IMRF roadmap to request that States explain how their implementation of GCM objectives protects and promotes human rights, including by safeguarding civic space and migrants' civic freedoms.
2. In consultation with migrants and civil society, develop and incorporate human rights indicators into their background notes, to be used as the basis for review of State implementation during the voluntary GCM reviews; the multi-stakeholder hearings; and the IMRF policy debates and round tables.
3. Incorporate discussion of Objective 16's inclusion of migrant civic freedoms into the background note prepared for round table three.
4. Select the importance of meaningful incorporation of human rights into GCM implementation as a theme for one of the webinars in the Dialogue series.

**States** should:

1. Ensure that each of the above acknowledgements is included in the Progress Declaration resulting from the first IMRF.
2. In preparing for their GCM review, provide information on how their actions taken to implement the GCM have protected and promoted human rights, including by safeguarding civic space and migrants' civic freedoms.
3. Recognize in domestic laws migrants' right to freedom of association, assembly, and expression, regardless of their migration status, and establish laws, policies, and practices supportive of migrants' exercise of these rights.



4. Take positive measures, including affirmative action, to ensure that women migrants and migrants with specific vulnerabilities are able to effectively exercise their civic freedoms.
5. Ensure policy coherence by conducting a review of all national policies that are relevant to the civic freedoms of migrants and revising those that could adversely affect migrants' exercise of these rights.
6. Ensure the accessibility of legal protection and effective judicial or other appropriate remedies to address any violation of migrants' civic freedoms regardless of their migration status.
7. Strengthen civil space and create an enabling environment for civil society organizations, including those working on migration and migrants' rights issues.
8. Ensure that criminal justice laws are not misused to punish migration related humanitarian acts or to harass civil society organizations that work with migrants.