



# THE RESPONSIBILITIES AND OBLIGATIONS OF MIGRANTS TOWARDS HOST COUNTRIES

*Building upon the New York Declaration for Refugees and Migrants adopted on 19 September 2016, the Global Compact for Safe, Orderly and Regular Migration (GCM) will set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions. The GCM should make an important contribution to global governance and enhance coordination on international migration. For the consideration of Member States, the “Thematic Papers” developed by IOM, outline core topics and suggestions to inform actors involved in the 2017 consultation process that will lead to the inter-governmental negotiations and final adoption of the GCM.*

## INTRODUCTION

It is a well-established principle of international law that all people – without discrimination – possess rights and fundamental freedoms and that States have a prime responsibility and duty to respect, protect and fulfil those rights and freedoms. However, one issue that has received less attention in the migration policy field is that relating to the reciprocal responsibilities and obligations of migrants towards host societies. This is an important aspect of the discussion, because legal systems give rise to both rights and responsibilities, and it is generally understood that all individuals, be they nationals or non-nationals, must respect the laws and regulations of the State on whose territory they are present. Migrants are no exception to this.

The issue of migrants’ rights and obligations is not only important from a purely legal perspective, but also from a practical one, given that it is closely linked to migrant integration, social cohesion, as well as the receiving society’s overall acceptance of migrants and migration. Successful integration for example, is a two-way process that involves the mutual adaptation of migrants and the host society, as well as equality and reciprocity of rights and obligations. It implies a sense of obligation and respect for a core set of values – such as rule of law – that bind migrants and their host communities to a common purpose.

The general obligation to respect the laws and regulations of a State has multiple dimensions in the migration context. It is relevant not only in terms of the laws applicable to all people (including nationals), but also to those that more specifically govern the entry and stay of foreigners, such as visa conditions, work entitlements and return, amongst others. The principal contribution for governments is to ensure that people considering migrating have access to sufficient information on their rights and obligations, including by investing in pre-departure orientation training to prepare migrants for life in their new country. Together with the broader range of initiatives and practices relevant to integration and social cohesion, this could be amongst the recommendations and commitments outlined in the Global Compact for Safe, Orderly and Regular Migration.

## EXISTING PRINCIPLES

The New York Declaration notes the obligation of “refugees and migrants to observe the laws and regulations of their host countries” (para. 39). This obligation is also enshrined within the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention). Similarly to Article 2 of the 1951 Convention relating to the Status



of Refugees, Article 34 of the Migrant Workers Convention provides that: “Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.” Article 33 of the Convention further prescribes a concomitant right of migrant workers to be informed by the State of origin, employment or of transit of “the conditions of their admission, their rights and obligations under the law and practice”. This entails taking “all measures [deemed] appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions”, as well as, as appropriate, the obligation to cooperate with other countries.<sup>1</sup>

Migrants thus have responsibilities and obligations towards both transit and destination countries. These responsibilities and obligations imposed under national laws, however, are not limitless, and must still comply with States’ obligations under international law. Key among these is the respect for the human rights of all migrants, irrespective of migratory status.<sup>2</sup> As reaffirmed by Member States in the New York Declaration,<sup>3</sup> the principle of non-discrimination is in this regard central to secure the enjoyment of human rights irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including migratory status.<sup>4</sup> The only distinctions permitted in international law on the basis of nationality or migratory status – and which thus not amount to discrimination – concern access to voting rights and freedom of movement within States. The right to vote is indeed limited to nationals under international law (Article 25 of the International Covenant on Civil and Political Rights (ICCPR)), while liberty of movement and freedom to choose one’s residence within a State are secured to individuals “lawfully within the territory of a State” (Article 12(1) ICCPR). Concerning migrants who regularly entered a host country and those whose stay has been regularized,<sup>5</sup> any restrictions of freedom of movement and differential treatment compared to nationals have to be legally justified, necessary, proportionate and consistent with other human rights, including the principle of non-discrimination.<sup>6</sup> The same applies for restrictions of any other human rights.

As international human rights law applies to any individuals under a State’s jurisdiction, other human rights are also central in setting limits to migrants’ responsibilities and obligations imposed in host countries. Migrants shall thus be recognized as a person before the law to the same extent as nationals (Article 16 ICCPR). They have the right to due process of law and procedural protection in all procedures, including those related to immigration, emigration, criminal charges, detention, expulsion or deportation. In this respect, migrants shall be equal before courts and tribunals regardless of the nature of the proceedings and without discrimination, and their right to a fair trial must be secured and respected (Article 14 ICCPR).<sup>7</sup> While States retain the right to expel migrants from their territory, expulsion may be undertaken “only in pursuance of a decision reached in accordance with law” and give the possibility for the person to submit the reasons against his/her expulsion (Article 13 ICCPR and Article 22(2) Migrant Workers Convention), especially concerning risks of refoulement and respect for the right to private and family life. As a result, arbitrary and collective expulsions are prohibited.<sup>8</sup>

## ISSUES

The obligation to comply with the national laws of the host country has various dimensions, including, first, those relating to entry, second, those applicable once on the territory and under the jurisdiction of the host country and, third, those arising as a consequence of irregular entry and/or stay.



### ***Migrants' responsibilities and obligations relating to entry into a host country***

Migrants have the right to leave any country and return to their own country (see e.g. Article 12(2) and (4) ICCPR). They have however no concomitant right to enter and be admitted into a third country. It is indeed for States to decide who they admit onto their territory,<sup>9</sup> subject however to the principles of family reunification and non-refoulement. Beyond these principles, there exists no general right of entry and stay into a State other than the one of nationality; entry and stay being thus regulated through multilateral/bilateral agreements between States and under the immigration laws of each single State.

The absence of such a right of entry entails, as a result, a duty for future migrants to comply with national immigration laws of the future host country through, for instance, applying and obtaining a visa and/or a work/residence permit. While this does not raise an issue for the majority of migrants worldwide who have regularly entered a host State, the limited possibilities and/or restrictive conditions to obtain a visa and/or permit constitute obstacles for others. Indeed, the issuance of a visa usually requires proof of sufficient financial resources, while to obtain a work permit, future migrants often need to already have a contract and/or be sponsored by an employer in the prospective host state.<sup>10</sup> When combined with lack of employment prospects in one's country of origin, poverty, discrimination, human rights violations and/or armed conflicts, for instance, these limited possibilities to migrate regularly have fueled irregular migration routes.

Hence, while migrants retain the responsibility to comply with national immigration laws to enter into a State, the increasing use of irregular migration routes appears to indicate that States ought to consider options for opening up temporary and long-term regular migration pathways for both low and high-skilled migrant workers,<sup>11</sup> as well as for any individual in need of international protection. This echoes the possibility for "the creation and expansion of safe, regular pathways for migration" enshrined in Annex II of the New York Declaration (para. 8(e)).

### ***Migrants' responsibilities and obligations once on the territory of the host country***

In addition to the general obligation to respect the laws of the territorial State as any other individuals, specific obligations attached to their immigration status are often incumbent upon migrants in host countries. Among these, migrants may have an obligation to register to the concerned authorities and be subsequently responsible for renewing their visa/permit. Depending on the latter, they might have the right to work or not, or be entitled to work under specific conditions. In some countries, for instance, students do not have the right to work alongside their studies except during holidays. While all such responsibilities and obligations may be legitimate, States should also make sure they do not infringe upon migrants' human rights, especially the principle of non-discrimination and the right to due process.

The reference made in the New York Declaration to "the obligation for refugees and migrants to observe the laws and regulations of their host countries" directly follows States' commitment to improve their integration and inclusion (para. 39). In some countries, migrants have the obligation to respect integration-related obligations, such as mandatory integration programmes. However, there is currently no obligation of integration for migrants under international law. It is nevertheless recognized that integration is a "two-way process of adaptation by migrants and host societies" with mutual respect for each one's culture,<sup>12</sup> partly reflected in the Migrant Workers Convention as an "obligation [of migrants] to respect the cultural identity of the inhabitants" of host countries. As a joint responsibility, integration programmes should however not impose too cumbersome obligations on migrants, as it is sometimes the case with unrealistic language requirements.<sup>13</sup>



Although public perception of migrants is not uniform among countries, the responsibilities and obligations of migrants are increasingly associated with lack of respect thereof, especially concerning alleged practices of abuses of social assistance and higher propensity to criminality. These perceptions, which are usually not based on any data, consequently undermine migrants' integration within the host country and social cohesion. States have an important role to play in countering such perceptions by increasing evidence-based communications with host societies and communities.

### ***Migrants' responsibilities and obligation in case of irregular entry and/or stay***

While irregular entry or stay constitutes a violation of national law, these acts should not be criminalized under national law.<sup>14</sup> This applies, in particular, to persons who have been subject to smuggling, human trafficking or forced labour, as well as to asylum-seekers and refugees. As IOM's Migration Governance Framework outlines, individuals who have been "subject to forced labour, trafficked or smuggled should not be criminalized; more generally, neither should irregular migrants".<sup>15</sup> With regard to human trafficking, the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN Office of the High Commissioner for Human Rights provide that "trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons".<sup>16</sup> The 1951 Convention relating to the Status of Refugees also prohibits the penalization of asylum-seekers and refugees' illegal entry or stay (Article 31(1)).

In some countries, migrants irregularly on the territory of a state and subject to a return decision may have the obligation to collaborate with the state authorities with the view to their return. This obligation of collaboration is not always clearly defined in national law, but it often entails that the individual should not abscond. Failing so, States normally impose further duties on the individual to secure his/her removal, including reporting duties pending the effective execution of the removal order. In such cases, States should indeed favour alternatives to detention,<sup>17</sup> as any deprivation of liberty always has to be prescribed by law, be necessary and proportionate to the objective pursued so as not to be arbitrary and, thus, not be in violation of international human rights law.<sup>18</sup>

## **SUGGESTED ACTION**

- 1) In the context of regular migration programmes, invest in pre-departure orientation trainings that inform migrants of their rights and responsibilities in the destination country.
- 2) Ensure accessible information on rights and obligations are provided to migrants on arrival, in their interactions with authorities (for example through information materials in different languages), in language and integration courses, via employers and schools, as well as in migrant information centres and civil society organizations.
- 3) Evaluate responsibilities and obligations imposed on migrants in light of international legal principles and standards and in the context of similar responsibilities and obligations imposed on nationals.
- 4) Review and reform national legal frameworks to ensure they adhere to the principles of non-discrimination and equal treatment with respect to migrants.



- 5) Review any existing integration programmes to ensure these do not create unrealistic obligations for migrants.
- 6) Increase evidence-based communications with host societies to counter illegitimate public perceptions of migrants.
- 7) Decriminalize irregular entry and stay in particular in the case of individuals who are in need of international protection, have been smuggled, trafficked or subjected to forced labour.
- 8) Develop alternatives to detention based on delimited and clearly defined obligations of migrants.

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<sup>1</sup> With respect to domestic migrant workers, it was recommended by the Committee on the Rights of Migrant Workers for States to undertake pre-departure training and awareness-raising campaigns: Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *General Comment No. 1 on Migrant Domestic Workers*, CMW/C/GC/1, (Geneva, 2011), paras. 28 and 29.

<sup>2</sup> See IOM, *Effective Protection of the Human Rights and Fundamental Freedoms of Migrants, including Women and Children, Regardless of their Migratory Status*, Global Compact Thematic Paper, (2017).

<sup>3</sup> New York Declaration, para. 13.

<sup>4</sup> UN Human Rights Committee, *General Comment No. 18: Non-Discrimination*, (1989), para. 7

<sup>5</sup> UN Human Rights Committee, *General Comment No. 27: Freedom of Movement (article 12)*, CCPR/C/21/Rev.1/Add.9, (1 November 1999), para. 4.

<sup>6</sup> *Ibid.*, para. 4; and UN Human Rights Committee, *General Comment No. 15: The Position of Aliens under the Covenant*, (1986), para. 8.

<sup>7</sup> UN Human Rights Committee, *General Comment No. 32, Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, (23 August 2007), para. 8.

<sup>8</sup> UN Human Rights Committee, *General Comment No. 15*, paras. 9-10; and Article 22(1) Migrant Workers Convention.

<sup>9</sup> UN Human Rights Committee, *General Comment No. 15*, para. 5

<sup>10</sup> See IOM, *Expanding Legal Labour Mobility Channels*, Global Compact Thematic Paper, (2017).

<sup>11</sup> *Ibid.*, para. 3.10.

<sup>12</sup> IOM, *Glossary on Migration*, 2<sup>nd</sup> edition, (Geneva, 2011), p. 51.

<sup>13</sup> See IOM, *Integration: Social Cohesion, Capacity Building, Facilitating Labour Market Access and Promoting the Positive Contribution of Migrants*, Global Compact Thematic Paper, (2017).

<sup>14</sup> UN Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/7/4, (Geneva, 2008), para. 53.

<sup>15</sup> IOM, *Migration Governance Framework*, C/106/40, (Geneva, 2015), para. 11.

<sup>16</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, (Geneva, 2002), para. 7.

<sup>17</sup> UN Human Rights Council, *Report of the Working Group on Arbitrary Detention*, A/HRC/7/4, (Geneva, 2008), para. 53.

<sup>18</sup> See IOM, *Immigration Detention and Alternatives to Detention*, Global Compact Thematic Paper, (2017).