



STATELESSNESS AND THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

Policy Brief

Tendayi Bloom
The Open University

4th December 2018

This policy brief is intended for those working on statelessness who want to know more about the global compact for safe, orderly and regular migration (GCM) and how to engage with it.

Statelessness and the Global Compact for Safe, Orderly and Regular Migration

This policy brief is intended for those working on statelessness who want to know more about the Global Compact for Safe, Orderly and Regular Migration (GCM) and how to engage with it.

Why the Global Compact for Migration is relevant to NGOs working on statelessness

There are three reasons why NGOs working on statelessness, including members of the European Network on Statelessness (ENS), should be interested in the Global Compact for Safe, Orderly and Regular Migration (GCM).

First, while most stateless persons have never crossed an international border, they are often subject to migration control measures.ⁱ This must be taken into account by those coordinating the future of global migration governance.

Second, migration can often put people at risk of statelessness. The GCM's goal of safe, orderly and regular migration must include reducing the risk of statelessness associated with migration and ensuring that stateless persons have access to regular migration routes.

Third, advocacy in these areas would benefit from an understanding of developments in the global migration governance infrastructure, particularly the changes surrounding the adoption of the GCM.

Historical Context

There has been cooperation among United Nations Member States in many areas of migration and many existing treaties include State commitments with regard to migrants, but there has not been an overarching approach. This was reflected in the 2002 'Doyle Report' for example, which was commissioned by then UN Secretary General Kofi Annan, and uncovered substantial scope for improvement in cooperation on migration and suggested ways forward for more coherent institutions and processes. This led to the creation of the Global Commission on International Migration (GCIM) which organised consultations and then produced a further report on 'Migration in an Interconnected World' in 2005, reiterating the need for coherence.ⁱⁱ

The early 2000s saw a transition in framing from 'migration' to 'migration and development'.ⁱⁱⁱ One result was the holding of 'High Level Dialogues on International Migration and Development' (HLDs) in 2006 and 2013. At the first HLD, UN Member States agreed that they would be willing to meet to discuss best practices of migration governance, but outside the remit of the UN. This led to an annual Global Forum on Migration and Development (GFMD). This has occurred every year since, hosted by a different Member State or most recently, a pair of Member States.

Global civil society has played an increasing role in the GFMD. Since 2008, this has included more formalised opportunities for such movements to participate in agenda-setting and since 2011, for controlled spaces for representatives of global civil society and States to meet to discuss migration governance. In the 2013 HLD there was substantially more symbolic inclusion of civil society voices than had been possible in 2006, though this was still constrained.^{iv} Since then, the context in which global migration governance is discussed has changed significantly.

The 2030 Sustainable Development Agenda was launched in 2015.^v Migrant civil society successfully lobbied, in conjunction with international agencies and other stakeholders, to ensure that migrants and migration would appear explicitly in the Agenda. This is reflected in Target 10.7, to facilitate ‘safe, orderly and regular migration’, and in references throughout the text to the need for non-discrimination according to migratory status for example.

During this period, there was also growing concern about emergency migration. This led to the decision to hold an emergency summit to respond to ‘large movements of refugees and migrants’ globally. It was held in September 2016 at the UN Headquarters in New York. The New York Declaration, its outcome document, set the parameters for the development of two ‘compacts’.^{vi} The first would relate to refugees (GCR).^{vii} The second would be for ‘safe, orderly and regular migration’ (GCM). Neither of these will be binding treaties, but rather statements of commitment.

The GCM has been developed in three phases: consultation, stock-taking, and negotiation. Following consultation with a range of stakeholders, the zero draft of the GCM document was produced. The content of this text was then negotiated from February to July 2018, to produce the final draft.^{viii} This process will culminate with a summit to adopt the final text in Marrakech in December 2018. As well as the creation of the GCM and the GCR, this period represents a significant reorganisation of global migration governance institutions. At the 2016 Summit, the International Organisation for Migration (IOM) was officially made into a related agency to the UN. The IOM has played a driving role both in the GCM process and in re-designing institutional structures, such as the ‘UN Migration Network’, the format of which will soon be announced. This period of significant change represents an opportunity for advocacy and for reframing how statelessness is addressed in global migration governance.

Statelessness in the Compact

Statelessness has long been largely absent from considerations relating to global migration governance. This also reflects a broader absence of statelessness from global policy frameworks and relative ignorance of statelessness among global actors.^{ix} Yet statelessness is addressed in the New York Declaration and in the drafts of both the global compacts. The annexed Table 1 shows the different ways this is done and how it has changed through the drafting process. While the zero draft of the GCR addressed statelessness weakly, the final draft is more extensive and takes a stronger, more explicit, rights-based focus. The evolution in the GCM has gone in the other direction.

Published following the consultation period, the content of the zero draft of the GCM, while imperfect, was stronger and more rights-focused than many observers anticipated. It formalised the consideration of statelessness in the context of global migration governance. It also offered concrete ways to improve conditions for stateless persons and those at risk of statelessness, and to avoid risk of statelessness. This attention to statelessness is contained within Objective 4 of the GCM which relates to legal identity and documentation. The final draft of the GCM differs in key ways.

There are some things to be celebrated in the final draft. For a start, it still recognises the need to consider statelessness in global migration governance. The document also includes recognition of the obligation under international law to eliminate gender discrimination in nationality laws. It will be important to build upon this, as well as the material set out in the zero draft, during the implementation phase.

However, there is also reason for both disappointment and serious concern with the final draft of the GCM, and specifically with regard to Objective 4 to ensure that all migrants have proof of legal identity and adequate documentation. As can be seen in the annexed Table 1, it retracts in almost every dimension from commitments in the zero draft both to protect the rights of stateless persons and to avoid the risk of

statelessness. This is particularly concerning because strong State commitments in these areas are already set out in existing treaties, some of which are almost unanimously ratified. For example, the final draft does not acknowledge the international law commitment for States to offer citizenship to those children born in their territories who would otherwise be stateless. The position of international law relating to statelessness with respect to key aspects of the GCM is presented in detail (though non-exhaustively) in the annexed Table 2.

Understanding the final document in the context of this trajectory and its non-binding nature has implications for advocacy efforts.

For example, while municipal registration cards have remained in the GCM, their nature has changed. In the zero draft the focus was on the possibility that such cards could facilitate access to services, engagement in business and participation in community life irrespective of status. In the final draft, explicit reference to this aspiration has been removed and been replaced with the requirement that such cards provide no entitlement to citizenship or residency. Advocates using the GCM might find it useful to reference the original intention behind this provision as set out in the zero draft.

In addition, while the zero draft advocated the abolition of requirements to prove citizenship at service delivery centres, by the final draft this had become the need instead to 'review and revise' the requirements to prove nationality. While this ostensibly represents a weakening of the commitment, the non-binding nature of the compact means that the change need not impair advocacy efforts, which can continue to focus on reviewing existing practice and advocating revision where it compromises rights.

Finally, the discussion of statelessness in the GCM is found in Objective 4, on legal identity and documentation, but not in other objectives. This risks obscuring the fact that statelessness is important to consider explicitly across the migration governance agenda. The annexed Table 3 provides a list of the objectives of the GCM.

For example, stateless persons are often absent from official data (Objective 1), may be forced to move involuntarily (Objective 2), and yet also lack pathways for regular migration (Objective 5). Stateless persons are often particularly at risk of being trafficked (Objective 10) and being detained (Objective 13), often indefinitely. And at the same time, without citizenship of any country, they lack access to consular protection (Objective 14). Moreover, in broader terms, a lack of regular migration pathways (Objective 5), access to status determination (Objective 12) and consular protection (Objective 14) for example can also put those migrating at risk of statelessness.

Hence, it will be important that future advocacy efforts make explicit the relevance of statelessness to all dimensions of global migration governance and all objectives of the GCM.

Influencing Implementation

Advocacy around and monitoring of the implementation of the GCM will need to build on the positive opportunities and developments that it represents, while being alert to the need for vigilance to ensure that it does not lead to a watering down of existing state obligations or practices. The GCM is non-binding, but there is possibility that it may lay the basis for hard law in the future. It is crucial that this process does not formalise retractions from key and well-established international norms.

1. Mainstreaming a recognition of the relevance of statelessness to UN migration governance discussions

Statelessness is now on the global migration governance agenda. It is addressed in both compacts and in the New York Declaration. It will be important to build upon this in the implementation of the GCM to ensure that the new UN Migration Network continues to address: the protection of stateless persons, including those who move; and the prevention and reduction of statelessness. Civil society must play an important role in

highlighting the often hidden statelessness impacts of migration governance. This includes for example, ensuring that statelessness is considered in the creation of Working Groups and that stateless persons and their advocates are sought out and consulted from the outset.

2. Working with global civil society to address statelessness

It will be important for stateless persons and their advocates to reach out to those civil society actors that have been involved in the global compact process to support their efforts. This will include ensuring that those civil society actors that are best-placed to intervene in the implementation process are supported in identifying the relevance of statelessness to their work, and its nexus with gender equality, children's rights, labour rights, access to education, and minority rights, for example.^x

3. Reasserting existing State obligations under international law

It is crucial that those with expertise relating to statelessness on a State, regional and global level articulate and publicise their specific concerns about the final draft of the GCM, including that some of its provisions fall below pre-existing standards to which states are bound under international law. This must include feeding into the official implementation and monitoring processes once the structure for this is announced, as well as reporting and monitoring outside the official process where this process falls short.

Table 1. Comparing the New York Declaration, the zero draft of the Global Compact for Migration, the final draft of the Global Compact on Refugees and the final draft of the Global Compact for Migration as they relate to statelessness

| | New York Declaration (September 2016) | Zero Draft of Global Compact for Migration (focus on Objective 4) (February 2017) | Global Compact on Refugees (August 2018) | Final Draft of Global Compact for Migration (focus on Objective 4) (July 2018) |
|---|--|---|--|---|
| Why consider statelessness? | It is both a root cause and a consequence of forced displacement (72). | It represents a form of vulnerability (chapeau). States can identify nationality e.g. for return (chapeau). Human right to a nationality (a). | Protect stateless persons (5) Both a cause and consequence of refugee movements (83). | Proof of legal identity is to enable migration authorities to ascertain identity, including for removal (chapeau). Human right to nationality (e). |
| Avoiding risk of statelessness | | Identity documents for all migrants (a). Consular documents to all migrants (d). Determine status autonomously, independently and individually (e). Individual documentation for female and child migrants (e). Citizenship or access to passport or visa not tied to spouse or parent (e). | Identify stateless persons and those at risk of statelessness (60). Strengthen capacity of national civil registries for access by refugees and stateless persons (82). Share good, gender-sensitive practices for prevention and reduction of statelessness (83). | States provide their nationals with proof of nationality (chapeau, c). States provide documentation to all migrants on territory (chapeau, a). Improve civil registry systems (a). Non-discriminatory criteria to obtain passports and visas (d). |
| Ensuring citizenship | Note UNHCR campaign to end statelessness in a decade and encourage States to consider actions that could reduce incidence of statelessness (72). | Facilitate conferring to citizenship to children born in another State's territory and allowing women to confer nationality to children (b). | | Ensure women and men can equally confer nationality to their children (e). Each State to provide nationality to children born in another State's territory (e). |
| Rights of stateless persons | | Abolish requirements to prove citizenship at service delivery centres (f). Institute identification cards enabling access to services, conduct business and participate in community life irrespective of status (g). | When requested by States, help will be provided for inclusion of stateless persons in national data and statistical collection processes (46). Identification of stateless persons and those at risk of statelessness (60). | Review and revise requirements to prove nationality at service delivery centres (f). Build on e.g. municipal registration cards that contain basic personal information without entitlement to citizenship or residency (g) |

Table 2. List of international treaties (non-exhaustive) with provisions concerning statelessness and corresponding existing rights and obligations

| | |
|---|--|
| <p>Why consider statelessness?</p> | <p>Everyone has a right to a nationality (UDHR 15, CNMW preamble ICCPR 23(3)). Every child has the right to acquire a nationality (CRC 7(1)) and preserve that nationality (CRC 8(1)). Human rights are universal (ICCPR 2(1)).</p> |
| <p>Avoiding risk of statelessness</p> | <p>Women should have equal right to men to acquire, change, retain nationality (CEDAW 9(1)). Neither marriage nor divorce, nor a change in nationality of a husband, should automatically affect the nationality of the wife (CNMW 1, ICESCR 9(2), CEDAW 9(1)), nor make her stateless (CEDAW 9(1)). No change in status (e.g. through marriage, divorce, adoption, renunciation of citizenship) should make someone stateless (CRS 5, 7) and if someone must lose their citizenship because of the change in citizenship of their spouse or parent, this cannot happen if they would thereby be stateless (CRS 6) Efforts must be made to ensure change in State territory does not lead to statelessness (CRS 10) Women should have equal rights with men to pass nationality to their children (ICESCR 9(3), CEDAW 9(2)) Children should be registered immediately after birth (CRC 7(1))</p> |
| <p>Ensuring citizenship</p> | <p>No one should be arbitrarily deprived of their nationality (UDHR 15, CRS 8, 9) States should facilitate and expedite naturalisation of stateless persons as far as possible (CRSSP 32) States should grant nationality to anyone born in their territories who would otherwise be stateless (CRS 1(1)), to foundlings within that State (CRS 2), and to babies born on ships or aircraft carrying that State's flag (CRS 3). States should grant nationality to anyone born overseas to at least one citizen parent of that State if the person would otherwise be stateless (CRS 4) Women should have equal rights with men to acquire, change, retain nationality (ICESCR 9(1))</p> |
| <p>Rights of stateless persons</p> | <p>Stateless persons should be protected at least as well as citizens wrt freedom of religion (CRSSP 4), artistic rights and industrial property (CRSSP 14), access to justice (CRSSP 16, ICCPR 26), any rationing (CRSSP 20), elementary education (CRSSP 22(1)), public relief (CRSSP 23), labour protections and social security (CRSSP 24), access to documents, ID papers, civil registration (CRSSP 25, 27, 28), free movement within the territory (CRSSP 26), tax (CRSSP 29(1)). They should be treated as well as possible with regard to property (CRSSP 13), association (CRSSP 15), work (CRSSP 17), self-employment (CRSSP 18), professional work (CRSSP 19), housing (CRSSP 21), post-elementary education (CRSSP 22(2)). In all other aspects, stateless persons should have same treatment as other 'aliens' (CRSSP 7(1))</p> |
| <p>Abbreviations and number States Parties</p> | <p>1948 Universal Declaration of Human rights (UDHR) 1954 Convention Relating to the Status of Stateless Persons (CRSSP) (91) 1957 Convention on the Nationality of Married Women (CNMW) (74) 1961 Convention on the Reduction of Statelessness (CRS) (73) 1966 International Covenant on Civil and Political Rights (ICCPR) (172) 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) (169) 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (189) 1989 Convention on the Rights of the Child (CRC) (196)</p> |

Table 3. Objectives of the Global Compact for Safe, Orderly and Regular Migration

| | |
|---------------------|---|
| Objective 1 | Collect and utilize accurate and disaggregated data as a basis for evidence-based policies. |
| Objective 2 | Minimize the adverse drivers and structural factors that compel people to leave their country of origin. |
| Objective 3 | Provide accurate and timely information at all stages of migration. |
| Objective 4 | <p>Ensure that all migrants have proof of legal identity and adequate documentation.</p> <p><i>We commit to fulfil the right of all individuals to a legal identity by providing all our nationals with proof of nationality and relevant documentation, allowing national and local authorities to ascertain a migrant’s legal identity upon entry, during stay, and for return, as well as to ensure effective migration procedures, efficient service provision, and improved public safety. We further commit to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration, as a means to empower migrants to effectively exercise their human rights.</i></p> <p><i>To realize this commitment, we will draw from the following actions:</i></p> <p><i>a) Improve civil registry systems, with a particular focus on reaching unregistered persons and our nationals residing in other countries, including by providing relevant identity and civil registry documents, strengthening capacities, and investing in information and communication technology solutions, while upholding the right to privacy and protecting personal data</i></p> <p><i>b) Harmonize travel documents in line with the specifications of the International Civil Aviation Organization to facilitate interoperable and universal recognition of travel documents, as well as to combat identity fraud and document forgery, including by investing in digitalization, and strengthening mechanisms for biometric data-sharing, while upholding the right to privacy and protecting personal data</i></p> <p><i>c) Ensure adequate, timely, reliable and accessible consular documentation to our nationals residing in other countries, including identity and travel documents, making use of information and communications technology, as well as community outreach, particularly in remote areas</i></p> <p><i>d) Facilitate access to personal documentation, such as passports and visas, and ensure that relevant regulations and criteria to obtain such documentation are non-discriminatory, by undertaking a gender-responsive and age-sensitive review in order to prevent increased risk of vulnerabilities throughout the migration cycle</i></p> <p><i>e) Strengthen measures to reduce statelessness, including by registering migrants’ births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State’s territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation</i></p> <p><i>f) Review and revise requirements to prove nationality at service delivery centres to ensure that migrants without proof of nationality or legal identity are not precluded from accessing basic services nor denied their human rights</i></p> <p><i>g) Build upon existing practices at the local level that facilitate participation in community life, such as interaction with authorities and access to relevant services, through the issuance of registration cards to all persons living in a municipality, including migrants, that contain basic personal information, while not constituting entitlements to citizenship or residency</i></p> |
| Objective 5 | Enhance availability and flexibility of pathways for regular migration. |
| Objective 6 | Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work. |
| Objective 7 | Address and reduce vulnerabilities in migration. |
| Objective 8 | Save lives and establish coordinated international efforts on missing migrants. |
| Objective 9 | Strengthen the transnational response to smuggling of migrants. |
| Objective 10 | Prevent, combat and eradicate trafficking in persons in the context of international migration. |
| Objective 11 | Manage borders in an integrated, secure and coordinated manner. |

| | |
|---------------------|--|
| Objective 12 | Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral. |
| Objective 13 | Use migration detention only as a measure of last resort and work towards alternatives. |
| Objective 14 | Enhance consular protection, assistance and cooperation throughout the migration cycle. |
| Objective 15 | Provide access to basic services for migrants. |
| Objective 16 | Empower migrants and societies to realize full inclusion and social cohesion. |
| Objective 17 | Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration. |
| Objective 18 | Invest in skills development and facilitate mutual recognition of skills, qualifications and competences. |
| Objective 19 | Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries. |
| Objective 20 | Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants. |
| Objective 21 | Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration. |
| Objective 22 | Establish mechanisms for the portability of social security entitlements and earned benefits. |
| Objective 23 | Strengthen international cooperation and global partnerships for safe, orderly and regular migration. |

Notes

- ⁱ European Network on Statelessness (2017) *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, accessible here <https://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-agenda-change>; David Weissbrodt (2008) *The Human Rights of Non-citizens* Oxford University Press; Caia Vlieds (2017) 'Context of statelessness: the concepts of 'statelessness in situ' and 'statelessness in the migratory context'', pp.35-52 in Bloom et al (2017) *Understanding Statelessness*, Routledge.
- ⁱⁱ Migration Working Group (chaired by Michael Doyle) (2002) Report to the Secretary General on Migration; GCIM (2005) *Migration in an Interconnected World: new directions for action*, Global Coalition on International Migration.
- ⁱⁱⁱ Peter Sutherland (2010) 'The Age of Mobility: Can We Make Migration Work for All?', *Global Policy Essay* February 2010; Raúl Delgado-Wise (2014) 'A Critical Overview of Migration and Development: The Latin American Challenge', pp.643-663 in *Annual Review of Sociology* 40.
- ^{iv} Tendayi Bloom (2017) 'The Critical Role of Civil society in the Development of Global Migration Governance Frameworks', United Nations University; Tendayi Bloom (2014) 'Global migration governance: a decade of change?', Policy Report No. 02/07, United Nations University Institute on Globalization, Culture and Mobility.
- ^v United Nations (2015) *Transforming our World: the 2030 Agenda for Sustainable Development*, accessible here: <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication> (23 Nov 2018)
- ^{vi} Full text of New York Declaration is accessible here: http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf (23 Nov 2018)
- ^{vii} UNHCR provides information about the GCR and its process here: <https://www.unhcr.org/towards-a-global-compact-on-refugees.html>
- ^{viii} Full text of final draft of GCM is accessible here: https://refugeemigrants.un.org/sites/default/files/180711_final_draft_0.pdf (23 Nov 2018)
- ^{ix} Lindsey Kingston (forthcoming) 'Conceptualizing Statelessness as a Global Problem'
- ^x See for example the work of the Global Coalition on Migration (<http://gcmigration.org>) and the International Migrants Alliance (<https://wearemigrants.net>).

Acknowledgements

This policy brief was produced for the European Network on Statelessness by Dr Tendayi Bloom of The Open University as part of the larger project 'Noncitizenship in the Global Compact for Migration' which is made possible thanks to funding from the Leverhulme Trust. The views expressed in the report do not reflect those of either the Open University or the Leverhulme Trust. For more information on the European Network on Statelessness: <https://www.statelessness.eu>; info@statelessness.eu. For more information on Politics and International Studies at the Open University: <http://fass.open.ac.uk/politics> and on Citizenship and Governance Research at the Open University: <http://www.open.ac.uk/research/themes/citizenship-governance>. For more information on the Leverhulme Trust: <https://www.leverhulme.ac.uk>.

LEVERHULME
TRUST



European
Network on
Statelessness

