



UN Migrant Rights: Non-Negotiable Legal Obligations

Ensuring *Global Compact for Migration* Implementation Respects Binding International Law

The Conflict in the Declaration: The Progress Declaration suggests States may "distinguish" between regular and irregular status in legislation and policies in GCM implementation. However, **such administrative distinctions must not result in the derogation of fundamental rights.**

The Higher Mandate: While States exercise sovereignty in migration management, **they remain bound by their international human rights obligations and peremptory norms**, which include fundamental human and labour rights and the prohibition of torture, which are inherent to all human beings, existing independently of a State’s administrative classifications.

I. Binding Obligations Under International Law

GCM Guiding Principle 15(c) stipulates that States must distinguish status "in accordance with international law," including the principles of non- regression, discrimination and refoulement. This legal requirement ensures that administrative classifications do not lead to the erosion of fundamental rights or a retreat from established human rights standards.

GCM implementation must be consistent with ratified treaties and fundamental labour and human rights standards that establish legally binding norms. Rights to equality, human dignity and labour protections cannot be eviscerated by administrative "tiered" approaches based on paperwork:

| Instrument / Standard | Inalienable Legal Obligations |
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| The International Covenant on Economic, Social and Cultural Rights (ICESCR) | Recognizes the rights of “everyone” to work, just and favourable work conditions, trade union freedoms, social security, health, education, and an adequate standard of living. Article 2 prohibits discrimination based on “national or social origin regardless of legal status and documentation” (General Comment 20, para 30). |
| International Covenant on Civil and Political Rights (ICCPR) | Article 2 requires States to ensure to all individuals within their territory the rights recognized in the Covenant, without distinction of any kind, including “national or social origin” or other status. ICCPR applies to all persons in a State’s territory, including undocumented non-citizens. States must ensure due process, equality before the law, and freedom from torture or cruel, inhuman, or degrading treatment for all. |
| ILO Fundamental Principles and Rights at Work (1998) & related fundamental ILO conventions | Applies to all workers and all states regardless of migration status or ratification: <ul style="list-style-type: none"> ● Freedom of Association and Effective Recognition of the right to Collective Bargaining ● Elimination of all forms of Forced or Compulsory Labor ● Effective Abolition of Child Labor ● Elimination of Discrimination in respect of employment and occupation ● Safe and Healthy Working Environment |
| International Convention on the Protection of the Rights of All Migrant Workers (ICRMW) | Part III protects all migrant workers, including in an irregular situation. It mandates equality before the law, protection from forced labour, and equal treatment regarding remuneration, overtime/working hours, weekly rest, health/safety, and other working conditions (Art 25). It further guarantees the right to emergency |

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| | medical care (Art 28) and ensures that all children of migrant workers have access to education, regardless of their or their parents' migration status (Art 30). |
| Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee on the Elimination of Racial Discrimination (CERD) | Cedaw protects all women irrespective of migration status (Gen. Rec. 26) and requires states to respect the human rights of undocumented migrants, including access to legal remedies, CERD General Recommendation XI finds that discrimination against non-citizens must not discriminate on the basis of particular nationality and also must be compliant with UDHR, ICCPR and ICESCR. |
| Convention on the Rights of the Child (CRC) | Rights apply to every child without discrimination. The best interests of the child cannot be diminished by their parents' migration status. |
| European Convention on Human Rights (ECHR) (Regional) | Fundamental protections apply regardless of administrative regularity. ECHR and relevant EU Directives further solidify that migration status cannot serve as a justification for the erosion of basic human dignity or labour standards. National laws must comply with these higher regional and international obligations. |
| The African Charter on Human and Peoples' Rights & African Guiding Principles on the Human Rights of All Migrants | The African Charter does not distinguish between citizens and non-citizens (or regular vs. irregular) for most rights. The African Guiding Principles on the Human Rights of All Migrants explicitly reinforce that status is not a lawful basis for denying human rights. |
| Inter-American Court of Human Rights (IACHR) | The IACHR (Advisory Opinion OC-18/03) ruled that the right to non-discrimination and equality are peremptory norms applicable to all residents regardless of immigration status; the "migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment." |

II. The Illegitimacy of Status-Based Distinction: Attempting to decouple rights from persons based on "irregularity" contradicts the foundational principles of the UN Charter and ILO mandates:

- **Universal Labour Standards:** The ILO *Declaration on Fundamental Principles and Rights at Work* (as enshrined in key ILO conventions) applies to all workers, including those in an irregular situation, and all member states of the ILO regardless of ratification.
- **Administrative Fluidity:** Migration status is an administrative category. Rights cannot be "toggled" off through complex asylum or renewal processes.
- **Labour Market Integrity:** Denying labour rights to any group creates "rights-free zones" that depress wages and safety standards for the entire labour market.

III. Call to Action in GCM Implementation: To ensure Progress Declaration consistency with international law:

- **Reaffirm** sovereign jurisdiction is bounded by existing human rights obligations and that migration status does not affect a person's human rights.
- **Clarify** that "distinguishing" status for policy reasons does not permit the derogation of fundamental human and labour rights, including the right to seek and access asylum, the principle of non-refoulement, as well as the right to ask for labour law enforcement and remedy.
- **Ensure** implementation is fully compliant with non-discrimination (Article 2 of the ICCPR).
- **Access to Justice:** Strengthen labour inspections and ensure effective access including through "firewalls" between labour law and immigration enforcement.
- **Universal Services:** Unhindered access to basic healthcare and education regardless of documentation.

"States cannot negotiate away their pre-existing legal obligations."