

Protecting and Benchmarking Migrants' Rights: An Analysis of the Global Compact for Safe, Orderly and Regular Migration

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ABSTRACT

The Global Compact for Safe, Orderly, and Regular Migration (GCM) was to be “guided by human rights law and standards” in recognition of the rights of international migrants, who are currently protected by an overlapping patchwork of treaties and international law. The GCM contains many laudable commitments that, if implemented, will ensure that states more consistently respect, protect, and fulfil the rights of all migrants and also that states incorporate data on migration into a more cohesive governance regime that does more to promote cooperation on the issue of international migration. However, many concerns remain. Using a legal analysis and cross-national policy data, we find that the GCM neither fully articulates existing law nor makes use of international consensus to expand the rights of migrants. In its first section, this article provides a concise analysis of the GCM’s compliance with a set of core principles of existing international human rights law regarding migrants. In the second section, we apply a novel instrument to create an objective, cross-national accounting of the laws protecting migrants’ rights in various national legal frameworks. Focusing on a sample of five diverse destination and sending countries, the results suggest we are close to an international consensus on the protection of a core set of migrants’ rights. This analysis should help prioritize the work necessary to implement the GCM.

The Global Compact for Safe, Orderly, and Regular Migration (GCM) is a major development when it comes to the protection of the rights and dignity of people who move across international borders. While not formally legally binding on states,¹ the GCM (2008) reflects a range of principled commitments by states to take concrete steps to reshape an area of global legal and policy architecture that has historically failed to be either orderly or regular – or to keep migrants² safe. This article argues that how states, international and intergovernmental organizations, and civil society – including migrants – engage with two aspects of the GCM could well determine how effective it is in promoting safe, orderly, and regular migration: *first*, the degree of divergence and convergence between the GCM’s operative commitments and existing international law (and future state practice) and, *second*, the degree of divergence and convergence between the GCM and various national laws and international law, as demonstrated by a Migrant Rights Database.

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A GLOBAL ACHIEVEMENT FOR THE RIGHTS OF ALL MIGRANTS

The GCM is firmly anchored in existing international law protecting the rights of all migrants, regardless of the cause of their movement across an international border. This body of law derives from many sources, including but not limited to human rights law, labour law, refugee law, and law related to state responses to trafficking and smuggling.³ The GCM begins by noting in its preamble that it rests on the purposes and principles of the Charter of the United Nations (which include the promotion of human rights, see, e.g., United Nations Charter (1945), Art. 55) as well as the most important treaties protecting human rights (GCM ¶¶ 2, 3). The GCM includes myriad other references to the overriding importance of state obligations to protect the rights of migrants, including declaring it as the first “Shared Responsibility” and as a “Guiding Principle” (GCM ¶¶ 11, 15 “The Global Compact is based on international human rights law and upholds the principles of non-regression and non-discrimination”).⁴

A fundamental goal for states committed to both the protection and the development of the rights of migrants, as well as for international and intergovernmental organizations and civil society, should therefore be to use the GCM to get the entire community of states to comply with such legal commitments, particularly where the GCM clearly reflects an existing legal norm, and to expand those norms when possible, particularly where there is a broad and emerging consensus among states. For those areas where the GCM does not clearly mirror a current legal norm in broadly ratified treaty law or widespread state practice, or derogates from the law, similar efforts should be made by stakeholders to clarify the scope of the law and to address the shortcomings of the GCM.

The GCM is also rooted in a desire to “[c]ollect and utilize accurate and disaggregated data as a basis for evidence-based policies” (GCM ¶ 17). Indeed, the recognition of the importance of the “collection, analysis and dissemination of accurate, reliable, comparable data” is the first “objective and commitment” reflected in the GCM and a key element in the mechanism for monitoring its implementation. The “International Migration Review Forum,” to be first convened in 2022, for example, is designed in large part to leverage such data to support state compliance with such objectives and commitments as part of the “follow-up and review” of the GCM (see GCM ¶¶ 48–54).

The core commitment to improved and data-informed global governance of migration creates an opening to produce and use data on the protection of the rights of migrants to encourage and even prod states into applying the GCM in a way that promotes more consistent and effective protection of migrants’ rights. We propose that this is likely to be most effective in areas where data shows that states already formally recognize such rights in their national law (a task which would be greatly aided by the Migrant Rights Database presented below). Such efforts are a prerequisite to a GCM which actually promotes migration that is safe, orderly, and regular. The rest of this paper will focus on these twin opportunities.

PROMOTING COMPLIANCE WITH INTERNATIONAL LAW PROTECTING MIGRANTS RIGHTS

The GCM is a sprawling document, containing commitments as practical as the creation of comparison websites to expand access to remittance transfer costs and as broad and sweeping as responding to the needs of migrants who face situations of vulnerability (compare GCM ¶¶ 36(f) with GCM ¶ 23). This breadth makes it impossible to include in this article a detailed analysis of the GCM’s relation to every provision of international law protecting the rights of all migrants and subcategories of migrants. It is possible, however, to underscore a few important areas in which the GCM clarifies the content of international law protecting migrants, regardless of the cause of their migration, by using language that tracks the relevant law.⁵ It is likewise possible to highlight a few

significant shortcomings of the GCM. This analysis should help key stakeholders (as well as the staff at the “capacity-building mechanism” created as a result of the GCM, the new United Nations Network on Migration, coordinated by the International Organization of Migration (IOM) (GCM ¶ 43)) ensure that compliance with the GCM also promotes compliance with the law.

Key GCM protections to be expanded

There are many areas of international law protecting the rights of migrants reflected in the GCM. Perhaps the most important three areas are those protecting the right to liberty and security of person; the right to be free from slavery, servitude, or forced or compulsory labour; and the right to due process and legal rights in the context of expulsion or deportation.

Liberty and security of person

Among the most intractable human rights challenges faced by those moving across an international border in recent years has been the widespread, lengthy, and arbitrary detention of many migrants (see, for example G.A. Res. 63/184, U.N. Doc. A/RES/63/184 (Mar. 17, 2009)). Because the GCM’s language on the right to liberty and security of person is strong and consistent with international law and standards, it will make the GCM a powerful tool to end these rights abuses.

The GCM specifically reflects states’ commitment to ensuring that detention on account of status as a migrant is a “measure of last resort,” that it “follows due process of law,” and that it is “non-arbitrary” (GCM Objective 13, ¶ 39). Thus, the GCM indicates that such detention must be “based on law, necessity, proportionality and individual assessments, is carried out by authorized officials, and for the shortest possible period of time” – regardless of where and when in the migration process it occurs (GCM ¶ 39). Such commitments reflect the core right to liberty and security of person for migrants required by widely ratified human rights instruments⁶ (see, e.g., UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966b, United Nations, Treaty Series, vol. 999, p. 171, hereinafter “ICCPR” Art. 9. As the Human Rights Committee has stated, “detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time” and must be based on an individualized determination (United Nations Human Rights Committee/HRC, *General comment no. 35, Article 9, Liberty and security of person*, 16 December 2014, CCPR/C/GC/35 ¶ 18). That the GCM tracks this language and articulates such principles so clearly is a boon for those who have been fighting for the recognition and protection of the right of liberty and security of person for migrants. It also sends a clear signal to states using blanket detention as a measure of first resort (or even as a deterrent) that their actions are unlawful.

Merely reaffirming that the core right to liberty and security of person applies to migrants is a significant achievement, but there are three further dimensions of the GCM that also can help promote states’ protection of the rights liberty and security of person. First, states have committed to promote and expand alternatives to detention (GCM ¶¶ 39, 39a). Second, states have also specifically committed to completely ending the detention of children on account of their status as a migrant (GCM ¶ 39 (h) “[State actions shall include] working to end the practice of child detention in the context of international migration.”). Finally, third, the GCM includes strong language recognizing the importance of safeguarding migrants from ill-treatment in detention and for permitting monitoring of places of detention⁷ (GCM ¶ 39(f) “[State actions shall include] guaranteeing . . . safeguards [for migrants’] physical and mental integrity, and that, as a minimum access to food, basic healthcare, legal orientation and assistance, information and communication, as well as adequate accommodation is granted, in accordance with international human rights law.”). These dimensions of the GCM, if implemented, could help make the enjoyment of the right to liberty and security of person a reality for migrants around the world and cement state practices consistent with existing international law.

Right to be free from slavery, servitude, or forced or compulsory labour

The international protections of labour rights predate the modern international human rights regime; the prohibition of forced labour is a cornerstone of the human rights system. Nonetheless, the recognition and protection of migrants in the world of work has long lagged behind the broad legal consensus on the key content of these rights. The low ratification rate of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is perhaps indicative of this phenomenon.⁸ The GCM emphatically affirms that migrants, regardless of their status, have such rights and may help promote state practice that is consistent with existing international law.

Among the most important state undertakings in the GCM is arguably the commitment to:

Provide 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 just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions.

(GCM ¶ 22(i))

While many of these rights (such as to the highest attainable standard of physical and mental health) apply to all migrants, not just migrant workers, the affirmation by states that such an important range of labour rights are applicable to all migrants is a significant advance.⁹ Similarly, the GCM commits states to act to reform recruitment practices to ensure that migrants receive a written job offer or contract that is enforceable and addresses terms and conditions of employment and to guarantee migrants the ability to change employers and to modify the conditions and length of their stay (GCM ¶¶ 22(d), (g)). Thus, while the GCM does not commit states to recognizing the right of migrants, regardless of their status, to *work* (nor its progressive development),¹⁰ it *does* enshrine a number of core labour protections. The GCM thus has the prospect of being a significant tool for promoting state practice that more consistently and uniformly protects the rights of all migrants in the world of work.

Legal personhood, due process, and the right to be free from discriminatory or arbitrary expulsion or deportation, including collective expulsion

The failure of states to recognize and protect the rights of migrants to legal personhood and due process is widespread – particularly in proceedings (or lack of proceedings) related to their status as migrants, which can result in their expulsion, removal, or deportation. The GCM reflects commitments by states to move in a rights-respecting direction and creates a powerful tool for promoting lawful state decision-making whenever it could affect migrants.

The GCM recognizes that “all migrants, everywhere, are ... persons before the law” and also recognizes that migrants enjoy the “right ... to a legal identity” (GCM ¶¶ 23(g), 20).¹¹ These rights have important consequences reflected in the GCM, including that states must issue those documents necessary for the enjoyment and exercise of legal rights and also ensure that their civil registry systems are able to register births to migrant parents and provide a birth certificate or document providing evidence of a state’s recognition of the child’s existence.¹²

This recognition is paired with commitments that reflect some of the core content of the right to due process.¹³ Thus, the GCM commits states to “[e]nsur[ing] migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them, including during any related judicial or administrative hearing” (GCM ¶ 23(g)). This is consistent with the progressive development of the right to due process, extending the right to legal aid and representation in any legal proceedings related to migrant status.¹⁴ Further, states have reflected in the GCM the international law prohibition on arbitrary and collective expulsion¹⁵ (GCM ¶¶ 23(h),

37). Similarly, the GCM underscores that due process requires “individual assessment and interview processes” as part of border screenings (GCM ¶ 27(c)). Thus, states have agreed to ensure that migrants can be determined not to “have a legal right to stay on another State’s territory” only after an “individual assessment, [] carried out by competent authorities . . . and [which] allows all applicable legal remedies to be exhausted” (GCM ¶ 37(e)). This is a very robust formulation of the consequences of the right to due process for migrants.

Finally, the GCM recognizes that any sanctions states impose on irregular entry or stays must be “proportionate, equitable, non-discriminatory, and fully consistent with due process and other obligations under international law” (GCM ¶ 37(e)). This would seem to recognize that human rights law does not approve of the aggressive use of the penal law to criminalize such entry or stay, and it send a message to states that they must protect migrants’ rights in such proceedings.

The combined effect of these commitments within the GCM, if implemented, could radically shift how many states address migrants who are in or fall into an irregular status. States have clearly underscored that core human rights obligations applicable to all human beings require that states provide substantial protections to migrants when it comes to proceedings regarding their status as a migrant. The GCM thus provides a powerful tool to ensure the regular treatment of migrants at borders, provision of due process and a right to counsel in any proceedings that might result in expulsion or deportation, the ability to remain pending any appeal or challenge to such a determination, and an end to the use of the penal law to punish irregular entry or stay.

Key GCM shortcomings to be addressed in state practice

In addition to key victories for human rights, there are areas in which drafters introduced ambiguity or retrograde language into the GCM or otherwise used language that threatens to inhibit the progressive development of the law. Two of the most important of these are in the areas of non-discrimination and the right to be protected from *refoulement*, or the return to harm.

Non-discrimination

Discrimination against migrants, including differential treatment on account of their status as migrants, is a widespread phenomenon. The GCM has thus made great strides in repeatedly emphasizing that state actions affecting migrants must not be discriminatory (see, e.g., GCM ¶¶ 23(g), 27(b), 27(f), 33). The GCM also reflects a commitment to ensuring equal protection and the right against discrimination in access to basic services (GCM ¶¶ 31, 31(a)). This specifically reflects an obligation to ensure that “differential treatment” is “based on law, proportionate, [and] pursue[s] a legitimate aim, in accordance with international human rights law”¹⁶ (GCM ¶ 31). This is a powerful statement about the application of international law when evaluating if state actions do not afford equal treatment.

Regrettably, however, the GCM does not include all the prohibited grounds of discrimination already recognized by international law in its statement banning discrimination in access to basic services. For example, the GCM omits references to grounds currently established as bases of discrimination under international law: economic position, marital status, birth, gender, sexual orientation, and gender identity¹⁷ (GCM ¶ 31(a)). Further, while the GCM recognizes that state action may be discriminatory as a result of “other grounds” for differential treatment, it does not use the term of art typically used as a catch-all in international law (to show that the prohibition against discrimination is not exhaustive): “other status”¹⁸ (GCM ¶ 31(a)). This is troubling because this change in terminology could introduce unnecessary ambiguity into the application of the important legal right to non-discriminatory treatment.

The omission of language already widely accepted as defining bases of discrimination under international law raises the question of whether the GCM might actually contribute to diluting the

protections guaranteed by states under international law. States and other stakeholders should ensure that the GCM's language on non-discrimination is not used to justify discrimination on a basis already recognized as prohibited. Stakeholders should also hold states accountable and promote broad language consistent with human rights in the implementation of the GCM.

Protection from *refoulement* and return to harm

Most but not all migrants who are protected under international law prohibiting *refoulement* are refugees. In addition to international refugee law protecting those who face a well-founded fear of persecution; however, general human rights law provides protection from *refoulement* to other migrants and includes broader protection from return in circumstances in which international refugee law does not apply.¹⁹

The GCM entirely avoids the term *refoulement*, committing states to “upholding the prohibition of . . . returning migrants when there is a real and foreseeable risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm” (GCM ¶ 37). This is unfortunate because *non-refoulement* is a widely recognized legal obligation with clear standards. Setting aside when and how the *non-refoulement* obligation under international refugee law applies to migrants who are also refugees,²⁰ the commitment made in the GCM is problematic for at least two additional reasons.

First, the GCM suggests that states will uphold a prohibition on return when there is a “real and foreseeable risk” of specified harm. As to the risk of torture and other cruel, inhuman, and degrading treatment or punishment, international law instead obligates states not to return migrants when there are “substantial grounds for believing” they would be at risk of such mistreatment²¹ (see, e.g., United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85 (Hereinafter “CAT”) Art. 3(1)). It is unclear how the two standards can be reconciled, but the threshold for the obligation being triggered is extremely important: drafters should have used the term of art from international law.

Second, the GCM omits mention of the prohibition on return when there are substantial grounds to believe individuals would be subjected to other human rights violations. There is an emerging jurisprudence recognizing that the progressive development of human rights law, in particular law protecting the right to life, provides migrants with protection against return, deportation, or expulsion when fundamental or other human rights are threatened.²² The GCM's language does little to advance the progressive development of this law and may indeed inhibit state practice recognizing or crystalizing such norms.

Notwithstanding these deficiencies, the breadth of commitments reflected in the GCM, if implemented, globally or regionally, would substantially improve the lives of millions of migrants for years to come. In the areas of detention, labour rights, and due process, the GCM largely tracks core international law and standards. Actions consistent with the GCM could therefore mean that migrants are not detained, or detained only as an *ultima ratio* measure; have vital labour protections in the world of work; and can be refused entry, change their status as a migrant, or be deported only on the basis of an individualized determination in relation to which they have a right to legal counsel and other core due process protections (and cannot be criminally prosecuted simply due to irregular entry or stay). However, some of the language of the nonbinding GCM threatens to erode core norms of international law, including the prohibition against discrimination and against returning migrants to face torture, ill-treatment, or other human rights violations. The above analysis shows that efforts to implement the GCM should pay close attention to human rights law and how state practice evolves in a post-GCM world. Such attention will reveal pathways for how to use the GCM to promote more consistent recognition and protection of fundamental rights and also prevent the GCM from limiting state compliance with the body of law already protecting the rights of all migrants.

DATA COLLECTION TO PROMOTE COMPLIANCE WITH INTERNATIONAL LAW

The Migrant Rights Database, piloted by the World Bank's Global Knowledge Partnership on Migration and Development (KNOMAD) addresses the profound paucity of accurate and disaggregated data about migration. The database applies a novel instrument that permits the objective, cross-national accounting of the laws protecting migrants' rights enshrined in national legal frameworks. After rigorous testing on five destination and sending states – Germany, Mexico, the Russian Federation, South Africa, and Turkey – it has demonstrated its capacity to produce a comprehensive, reliable examination of migrant protections across space, time, and legal systems. The results represent a powerful tool for identifying common legal baselines and benchmarking state progress. As the foregoing shows, a comprehensive Migrant Rights Database could show areas in which GCM implementation could strengthen state law and areas where state law already converges with international obligations. Such analysis could be vital to implementation of the GCM in a manner that expands the protection of rights. The following sections will present the methodology for this novel database and the results from the pilot test.

Method

The Migrant Rights Database indicators contribute a rigorous dimension that permits aggregation, disaggregation, and an objective system of benchmarking – all contained in an efficient coding instrument that can be applied cross-nationally and over time. The database's sixty-five indicators are composed of several features in the interest of methodological rigour. The indicator questions have the following characteristics:

- (1) Binary, with answers ranging from 0 to 1 wherein 0 represents the absence of the right in national law and 1 represents the presence of the right;
- (2) Standardized for aggregation on scales evaluating the protection of migrants' rights by law
- (3) Consistently framed and measured across seventeen categories of migrants' rights;
- (4) Versatile to accommodate any national context and period (pilot states were coded for 2017 only);
- (5) Each coding decision includes the citation of statute or case law, to establish objectivity, replicability, and transparency; and,
- (6) Derived directly from the IMBR.

The measures permit various means of aggregation. In this initial analysis, we weight each indicator equally across all categories of rights. We then calculate an average score (between 0 and 1) for standardized observation across countries.

Two highly qualified, independent (nongovernment) attorneys who were accredited in each relevant country coded the five pilot countries. The countries – Germany, Mexico, Russia, South Africa, and Turkey – were selected by the KNOMAD Secretariat. To mitigate intercoder reliability bias, each attorney coded independently from the others. Any coding discrepancies were then resolved through intermediation. This approach enabled the creation of comparable, reliable country reports and profiles, along with a broader database of migrants' rights for use by government, civil society, and individual observers. It is a key tool for benchmarking and the spread of knowledge worldwide and would be useful in the implementation of the GCM.

Convergence and divergence between national and international law

The early results validate the design of the questionnaire²³ and reveal substantial variation within and across the pilot countries. Table 1 summarizes the aggregate results, as well as the scores for each

TABLE 1
AGGREGATE MEASURES OF MIGRANT RIGHTS PROTECTION

Category (number of indicators)	Germany	Mexico	Russian Federation	South Africa	Turkey
Vulnerable migrants (3)	0.667	1	0.333	1	1
Life (3)	0.333	1	0.333	1	0.333
Liberty (6)	0.667	0.667	0.833	0.667	0.667
Legal personhood (4)	0.750	0.500	0.875	0.875	0.750
Due process (4)	0.750	0.500	0.750	0.750	0.750
Victims of crime (2)	1	1	0.500	0.500	1
Expulsion, asylum, and non-refoulement (8)	0.813	0.929	0.571	0.786	0.714
Nationality (5)	0.900	0.800	0.900	0.900	0.700
Family (4)	0.625	0.750	0	0.625	0.375
Freedom of thought, conscience, and religious belief (1)	1	1	1	1	1
Freedom of opinion and expression (2)	1	1	1	1	1
Freedom of peaceful assembly and association (2)	0	0.500	0.500	1	0.5
Civil and political life (2)	0	0	0	0	0
Labour (12)	0.729	0.625	0.729	0.708	0.792
Health (4)	0.500	0.500	0.500	0	0
Education (2)	0.500	1	0.5	0	0
Equal protection (1)	1	1	1	1	0
Aggregate mean (65 indicators)	0.691	0.723	0.657	0.734	0.664

category of rights coded. Among the observed countries, South Africa and Mexico demonstrate the most complete protection of migrants' rights in aggregate terms (73.4% for South Africa and 72.3% for Mexico) and in several categories. South Africa offers strong protections of rights relating to vulnerable migrants; life; nationality; and freedom of thought, opinion, and assembly. Mexico offers strong protections related to family, education, expulsion, asylum, and *non-refoulement*.

Among the five observed countries, Russia (65.7%) and Turkey (66.4%) demonstrate the most incomplete protection of migrant rights. However, illustrating the deep insights that are to be gained from this project, disaggregating the scores by category shows that Turkey features the most complete formal protection of migrants' rights related to labour – the most substantial category of indicators. The greatest variation appears in categories related to the rights of legal personhood, vulnerable migrants, family, expulsion, asylum, and *non-refoulement*.

It is noteworthy that South Africa and Mexico – which are the pilot countries that most completely enshrine international protections in their national laws – remain behind the international baseline in several dimensions. This suggests the importance of the database, not merely as a means for comparison across states but also as a means of revealing where derogation takes place.

Country profiles overview

Germany represents the most significant migrant destination among the pilot countries. This profile has grown in importance, as the government has admitted approximately one million asylum seekers since summer 2015. However, with its integration into the European Union, particularly since the extraordinary 2015 influx, Germany has come to resemble many of the world's other principal destinations in the global North. These countries are gradually diversifying but cautious about extending full rights to migrants in order to appease xenophobic constituencies and to deter unwanted migrant arrivals. The countries offer relatively generous welfare states and government provisions and are wary of committing to international obligations that limit their sovereignty, but

they are simultaneously interested in upholding a rhetorical commitment to human rights. The results from the Migrant Rights Database reinforce this image of caution. Compared with the other pilot cases, Germany offers moderate protections to migrants but falls short of international standards as they relate to rights to life, assembly, civil and political engagement, health, and education – most of which pertain to the integration of migrants alongside citizens.

Mexico is generally considered a sending country that, like many other sending states, has aggressively pursued international legal protections for migrants, ostensibly in the interest of its own expatriates abroad. However, Mexico has become an important country of transit and, with the development of its economy, a destination. Although most migrants in Mexico have origins in Central and South America, new reports suggest increasing arrivals of people from sub-Saharan Africa, East Asia, and the Caribbean. The results from the Migrant Rights Database reflect the Mexican government's enduring commitment to *de jure* migrant protections. Among the observed countries, Mexico has some of the most complete protections of migrants' rights in aggregate terms, as well as in several categories relating to family, education, expulsion, asylum, and *non-refoulement*. However, Mexico features the weakest protections related to labour and legal personhood among the observed countries and, like the other states, does not protect migrants' rights to engagement in civic and political life.

Although Russia does not attract migrants from around the world, it is a significant destination for migrants from the former Soviet republics. Citizens from these surrounding countries have easy access to Russia through visa-free travel agreements that require documentation or labour authorization after only a short time in Russian territory. This system has created a reportedly enormous number of irregular migrants who are vulnerable to exploitation and rights violations. Unlike Mexico, however, the results from the Migrant Rights Database suggest that these migrants are not as well protected under Russian law. Compared with the other pilot cases, Russia offers the least complete protections of migrants' rights. The only rights that Russian law protects better than any other pilot country are those related to liberty. And like Mexico, questions abound regarding the implementation of those rights that are enshrined in Russian national law.

After its tumultuous postcolonial period, South Africa has emerged as a regional destination for many sub-Saharan African migrants – particularly from Zimbabwe and Mozambique – working in the country's prosperous mining, agriculture, and hospitality industries. Although most statistical analyses estimate that migrants comprise less than 10 percent of the South African population, many migrants are thought to work informally and reside without authorization (Budlender, 2013). Still, South Africa has a long history as a destination state that once attracted millions of Europeans and sought to incorporate them swiftly. The results from the Migrant Rights Database reflect this experience. Compared with the other pilot cases, South African law offers the most complete protection to migrants but falls short of international standards as they relate to the rights to assembly, civil and political engagement, health, and education.

For a long time, one of European migrants' principal countries of origin, Turkey is now a crucial destination for many asylum-seekers who fled conflict in Iraq and Syria. This has generated increasing interest in the extent to which migrants' rights are structurally protected inside Turkish borders. Unlike Mexico, which has eagerly adopted international migrants' rights standards in its legal system, Turkey exhibits among the least complete protection of migrants' rights across the pilot countries considered in the Migrant Rights Database. The country's aggregate score is just a fraction ahead of Russia. Turkey ranks very low in the protection of migrants' rights related to life, family, civil and political life, health, education, and equal protection. However, Turkey features the most complete protection of migrants' rights related to labour – the most substantial category of indicators.

These results suggest the potential of the data to reveal “low-hanging fruit” for the implementation of the GCM – the areas in which there is a near international consensus on the protection of migrants' rights. From the initial coding, such promising areas of law include rights associated with nationality; freedom of thought, conscience, and religious belief; freedom of opinion and expression; labour; and equal protection.

TABLE 2
CORRELATIONS BETWEEN CASE STUDY COUNTRIES

Country	Germany	Mexico	Russian Federation	South Africa	Turkey
Germany	1				
Mexico	0.627	1			
Russian Federation	0.674	0.331	1		
South Africa	0.387	0.446	0.482	1	
Turkey	0.542	0.335	0.394	0.599	1

Avenues for analysis

The Migrant Rights Database permits deeper evaluation beyond the comparison of means. For example, in analysing the pairwise correlation between countries by each category of rights for which data are collected (vulnerable migrants, due process, and so forth), we can not only uncover whether countries are similar or dissimilar in the aggregate but also identify the areas of rights in which they are similar or dissimilar. Beyond a call to improve rights protections vis-à-vis migrants, such analyses can provide more detailed and actionable policy guidance. For example, Table 2 shows the pairwise correlations between the countries coded to date when distinguishing between their means for each category of rights for which data are collected.

For example, Germany is most dissimilar to South Africa, a result that is not apparent in the comparison of means. The spider plot in Figure 1 compares Germany with South Africa across all the categories of rights. Figure 2 shows exactly where Germany and South Africa diverge. The two

FIGURE 1
SPIDER PLOT FOR GERMANY AND SOUTH AFRICA

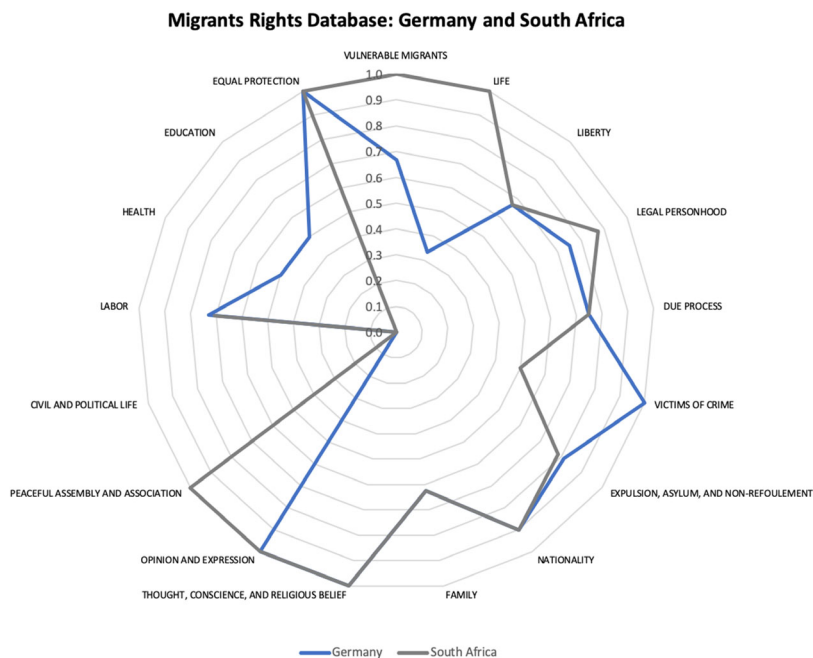
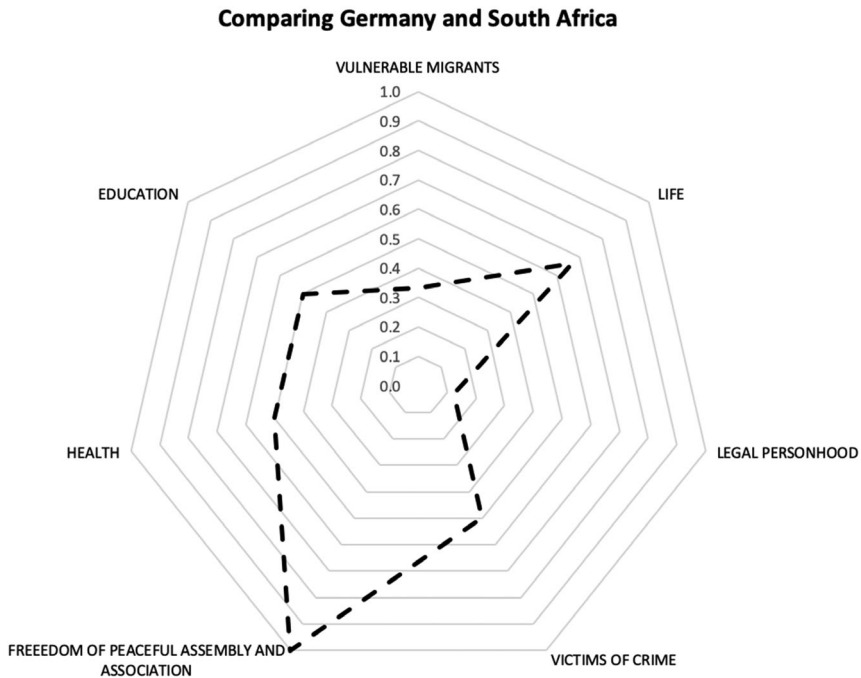


FIGURE 2
COMPARING RIGHTS PROTECTIONS: GERMANY AND SOUTH AFRICA



Note: The dashed line represents the absolute difference in the scores between Germany and South Africa. For example, on legal personhood, Germany scores .8 and South Africa scores .9, for an absolute difference of .1. Points near the 5 centre of the spider plot signal convergence in scores, and points closest to the outermost edge signal divergence.

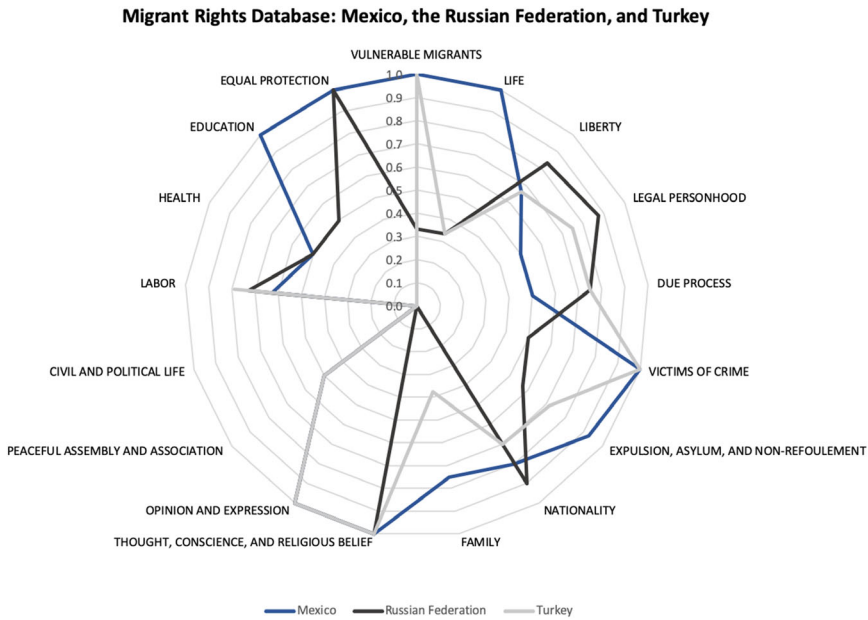
countries diverge most significantly in freedom of peaceful assembly and association, as the mean for Germany on the two indicators is 0 while the mean for South Africa is 1. The two countries also diverge in protections of life, victims of crime, health, education, and vulnerable migrants.

Mexico is most dissimilar to Russia, with Turkey close behind. The spider plot in Figure 3 compares Mexico with Russia and Turkey across all categories of rights. Figure 4 shows exactly where Mexico and Russia, as well as Mexico and Turkey, diverge. As the figure shows, Mexico and Russia diverge on different categories of rights than do Mexico and Turkey (which is also hidden in the basic comparison of means). Mexico and Russia diverge most on protection of family. Mexico and Turkey diverge most on equal protection and education.

As more countries are coded, the Migrant Rights Database will be able to compare countries with a global average. The global average will be a “tether” that can be used to evaluate how close or far countries are to realizing the protection of the human rights of migrants (which are themselves a reflection of broad agreement among states). Figure 5 provides a graphical representation. The black solid line represents the global average based on the pilot countries that have been coded thus far.

Another layer of analysis involves identifying the most frequent (or core) indicators that states have “on the books.” Not only does this identify a specific set of rights (the low-hanging fruit) that can be used to ease into negotiations about more robust rights protections that states can adopt, but the coding and reporting of similarly situated countries (for example, comparable countries in migration flows, economic conditions, and so forth) can provide case studies for states that are considering adopting or expanding these rights protections.

FIGURE 3
SPIDER PLOT FOR MEXICO, THE RUSSIAN FEDERATION, AND TURKEY

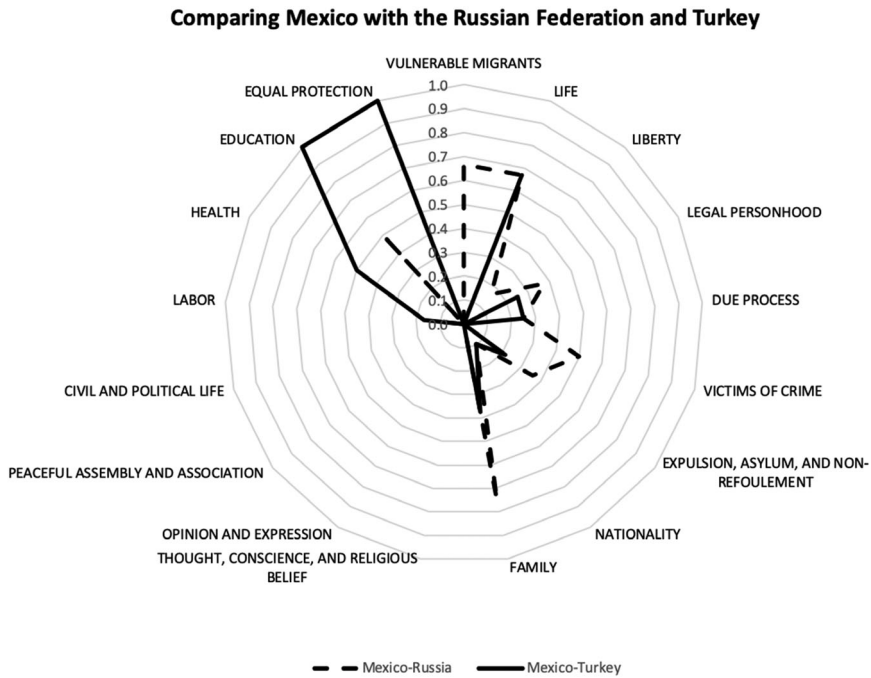


Moreover, factor analysis, which can be used to identify unobserved latent variables, can identify indicators that potentially work at cross-purposes – in other words, when a “yes” to a particular right or set of rights often means a “no” to another right or set of rights. We do not assume that improving rights protections for migrants will represent a case of linearly increasing policy diffusion, as trade-offs will undoubtedly be part of negotiations among states. Thus, researchers and states could use the Migrant Rights Database to identify the specific indicators or set of indicators over which the issue of trade-offs may be most salient and use this information to anticipate obstacles and inform bargaining strategies related to policy or legal change. However, this can only be done if more countries are coded.

Opportunities and gaps between national law and international law obligations

The potential of the Migrant Rights Database is substantial. The instrument permits a holistic, country-level evaluation of the extent of migrants’ rights protections across states, which may be systematically extended to new destinations and over time. These data would be invaluable for evidence-based implementation of the GCM over time, as the database creates new avenues to explore an entire suite of policy-relevant questions, including the extent to which state policy contexts influence migratory flows, the extent to which integration outcomes are tied to policy interventions, and societal responses to state efforts to extend or contract their recognition of the international law protecting migrants’ rights. This data and analysis would aid states, international and intergovernmental organizations, and civil society in identifying areas where there is convergence among states or regions in protecting important international human rights. Such analysis would help convince states to implement the GCM in a way that reflects this convergence and expands protection of international law. States could also use the database to limit themselves to a truncated set of

FIGURE 4
COMPARISON OF RIGHTS PROTECTIONS: MEXICO–RUSSIAN FEDERATION–TURKEY

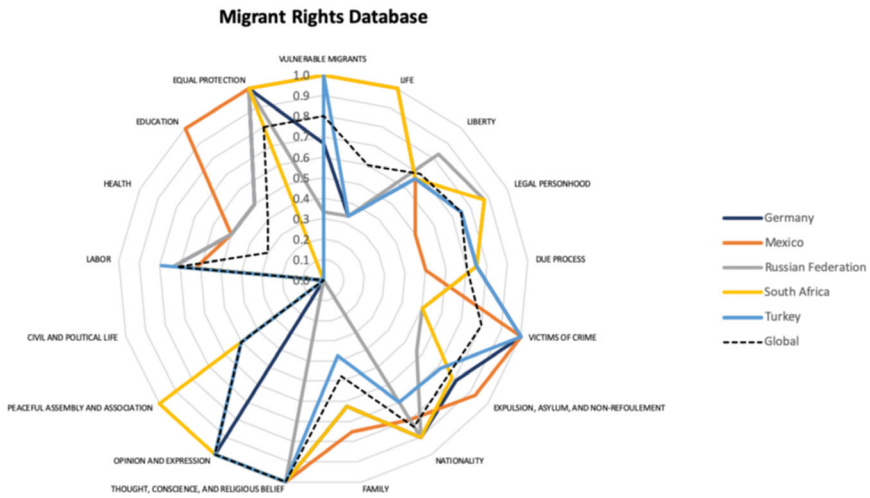


Note: The dashed line represents the absolute difference in scores between Mexico and Russia. For example, on victims of crime, Mexico scores 1 and Russia scores .5, for an absolute difference of .5. The solid line represents the absolute difference in the scores between Mexico and Turkey. For example, on equal protection, Mexico scores 1 and Turkey scores 0, for an absolute difference of 1. Points near the centre of the spider plot signal convergence in scores, and points closest to the outermost edge signal divergence.

migrants' rights' guarantees more likely to generate consensus. Relatedly, data and analysis showing divergence could inform how implementation work is prioritized and pursued in a manner that yields dividends for the protection of migrants' rights.

Importantly, the database and its instrument do not currently account for the extent to which law enforcement agencies and bureaucracies in the examined states actually implement the rights their national laws protect. These implementation gaps are prevalent in migration enforcement across the world, with countless pieces of anecdotal evidence but very little generalizable evidence – let alone evidence that is standardized and comparable across countries. Such data are challenging to collect because it requires consistent reporting by law enforcement agencies, courts, or bureaucracies, domestically and then cross-nationally. Even under the best of circumstances, such accounting is also likely to miss many violations that go unreported due to corruption, exploitation, or fear. Furthermore, many outcome indicators that address the fulfilment of rights (e.g., those related to culture, health, association, or expression) are highly subjective in their interpretation and exceptionally resource-intensive to evaluate when states do not already collect such data. Despite these limitations, future extensions of the database can incorporate expert evaluations of implementation of the various rights coded.

FIGURE 5
COMPARATIVE AND GLOBAL MEAN SPIDER PLOT



CONCLUSION

The GCM is a major innovation in the field of international migration and could help promote better recognition and protection of both international law protecting the rights of migrants and the global governance of migration. This article has presented two interrelated sets of findings. The first is an analysis of the GCM compared to the international law baseline protecting the rights of migrants. This analysis shows that in several key areas, the GCM articulates state commitments in a manner that can be used to solidify and advance the protection of migrants' rights. In other areas, however, the GCM articulates core international law concepts in a way that muddies the waters and threatens the recognition and protection of rights. The second is a novel Migrant Rights Database. The analysis of a pilot test of this database in five key states shows that there are likely to be a number of areas of divergence and convergence among states in how national law incorporates and protects important international rights. Extension of such analysis in a more robust database could help fulfil the GCM's mandate to use such data in guiding implementation. Together, these twin analyses show that the rights of migrants and actual compliance with these rights in state practice are likely to be vital prerequisites to a GCM which actually promotes migration that is orderly, regular, and, most importantly, safe for migrants.

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Center and its chapter of the International Migrants Bill of Rights Initiative. A previous version of those indicators were presented at a workshop kindly sponsored by the Open Society Foundations. The indicators were then refined thanks to extensive consultations with our brilliant colleagues Timnah Baker and Lisa Wang, and then Martin Ruhs—who kindly permitted us to employ a number of the labor rights indicators from his excellent book, *The Price of Rights*. Once developed, the KNOMAD program at The World Bank had the vision to invest in the pilot study. We are deeply grateful to Dilip Ratha, Nadege Yameogo, Sonia Plaza, Caglar Özden, William Gois, Pia Oberoi, Kerry Neal and, in particular, Hanspeter Wyss—who has championed our work and its potential to advance the global governance of migration. Our work was further facilitated by the invaluable support of T. Alex Aleinikoff, Susan Martin, Pietro Mona, and Fernando De La Mora. We would also like to thank our country-specific coders for their top-class work: Hüseyin Çelik and Oliver Wolf (Germany), Elizabeth Arroyo and Mónica Oehler Toca (Mexico), Kirill Boychenko and Roman Rybakov (Russian Federation), Jacob Van Garderen and Chris Watters (South Africa), and Neva Ozturk and Ozan Turhan (Turkey). Throughout the preparation of this work, we liaised with our colleagues on the Steering Committee of the International Migrant Bill of Rights Initiative: Becca Balis, Shaw Drake, Elizabeth Gibson and Bianca Zambello Santos. The authors would also like to thank E. Tendayi Achiume, Álvaro Botero, François Crépeau, Elizabeth Collett, Anna Crowley, Carole Dahan, Michael Doyle, Bill Frelick, Felipe González Morales, Michele Klein-Solomon, Benjamin Lewis, Gregory Maniatis, Aryeh Neier, Jonathan Prentice, Andrew Schoenholtz, Kristina Touzenis, Volker Turk, Sanjula Weerasinghe and Kees Wouters for contributions to and critique of the ideas undergirding this analysis. Finally, our work would not have been possible if not for the tireless, meticulous support of Aubrey Grant who helped oversee the administration of database from the beginning. All errors and omissions, of course, are the authors' alone.

NOTES

1. GCM ¶ 7 (“This Global Compact presents a non-legally binding, cooperative framework”).
2. In this article, we use the term “migrant” to refer to a person who is outside a state of which they are a citizen or national, or, in the case of a stateless “migrant,” outside their state of birth or habitual residence. The GCM, remarkably, does not define the term “migrant,” and no single international definition formally exists in treaty law. However, our definition has been proposed in the International Migrants Bill of Rights (IMBR), which two of us co-authored and edited, and has been used as a working definition of migrants by both the UN Office of the High Commissioner for Human Rights and the Inter-American Commission on Human Rights (Bench, “International Migrants Bill of Rights,” *Georgetown Journal of Immigration Law* 28:9 14 (2013a) (hereinafter, “IMBR”) (Art. 1(1)–(2)) (also noting that such definition “shall apply during the entire migration process of migrants”); United Nations Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders*, UN GA Doc A/69/277 (2014) Inter-American Commission on Human Rights, *Consultation Regarding the Inter-American Principles on the human rights of migrants, refugees and other persons in the context of mixed migration movements* Section III (2019). Notably, our definition clearly and intentionally includes “refugees” as a subcategory of migrants, albeit as a subcategory protected by rights that do not all attach to all migrants (Bench, “International Migrants Bill of Rights, With Commentary,” *Georgetown Journal of Immigration Law* 28:23 33-38 (2013b) (Hereinafter, “IMBR Commentaries”) (Commentaries to Art. 1)). The IMBR is a proposed soft-law framework that seeks to restate and distil the core rights held by all migrants as well as to reflect areas of progressive development where states should take actions not yet reflected in broadly ratified treaties or in the practice of the majority of states (Kysel, “Promoting the Recognition of the Rights of All Migrants Using a Soft-Law International Migrants Bill of Rights,” *Journal of Migration and Human Security*, 4:2 32–37 (2016)).
3. For a lengthy treatment of the many sources of international law informing both the IMBR and, therefore, the body of law protecting all migrants, see generally the legal commentaries accompanying the IMBR (IMBR Commentaries 27 *et seq.*).

4. The GCM does not, however, specifically include the protection of human rights as an “[o]bjective” driving a specific set of state commitments (GCM ¶ 16).
5. Many stakeholders promoted the clarity with which the GCM reflects international law protecting migrants; two of the co-authors of this article (J. Gest and I. Kysel) were actively involved in this effort, making numerous presentations to United Nations member state missions to the United Nations and other stakeholders and producing multiple analyses providing drafters with tools to do better do so, via the IMBR Initiative (see, e.g., International Migrants Bill of Rights (IMBR) Initiative, “Analysis of Migrants Rights in the New York Declaration” (May 1, 2017); IMBR Initiative, “IMBR Initiative Observations & Recommendations for Revisions to the Global Compact Draft Rev. 1” (April 1, 2018).
6. The legal commentaries accompanying the IMBR provide a further detailed treatment of the consequences of the right to liberty and security of person in the context of human mobility (see IMBR Commentaries, 48–54).
7. This last obligation in the context of the detention of migrants is also an effect of other core human rights, including the right to be free from torture and cruel, inhuman, or degrading treatment or punishment. The fundamental connection between the two rights in the context of the detention of migrants has increasingly been underscored by human rights experts (see, e.g., United Nations General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez UNGA Doc. A/HRC/28/65 (March 5, 2015) (discussing the state obligation to treat detention of children as a measure of last resort as part of the duty to prevent torture and ill-treatment)).
8. At the time of writing, 131 UN Member States had taken no action on the ICRMW, which has only fifty-four state signatories. (see Office of the United Nations High Commissioner on Human Rights, Status of Ratification Interactive Dashboard, <http://indicators.ohchr.org/> (last accessed July 30, 2019)).
9. Supplementing the application of human rights law in this area (and in many cases predating it), the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work holds that all 187 ILO Member states, including those who have not ratified all relevant ILO Conventions, are obligated, on account of their membership in the ILO respect, promote and realize rights in four categories: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation (International Labour Organization (ILO), *ILO Declaration on Fundamental Principles and Rights at Work*, June 1988). There are eight ILO Conventions that reflect these four principles (ILO Convention No. 29 concerning Forced or Compulsory Labour, June 10, 1930, 39 U.N.T.S. 55; Abolition of Forced Labour Convention (No. 105), Jan. 17, 1959, 320 U.N.T.S. 291; Discrimination (Employment and Occupation) Convention (No. 111), June 15, 1960, 362 U.N.T.S. 31; Equal Remuneration Convention (No. 100), May 23, 1953, 165 U.N.T.S. 303; ILO Convention 87, supra note 362; Right to Organise and Collective Bargaining Convention (No. 98), July 18, 1951, 96 U.N.T.S. 257; Convention Concerning Minimum Age for Admission to Employment (No. 138), June 19, 1976; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), Nov. 19, 2000, 2133 U.N.T.S. 161). The legal commentaries accompanying the IMBR provide a further detailed treatment of migrants’ labour rights (see IMBR Commentaries 91–96.)
10. At the core of the right to work is not the right to automatically or always obtain employment, but instead to freely choose employment and not to be unfairly deprived of employment (UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966a, United Nations, Treaty Series, vol. 993, p. 3 (Hereinafter “ICESCR”) Art. 6(1)). The legal commentaries accompanying the IMBR summarize the international law sources addressing the legal obligation to progressively realize the right to work for all migrants and also notes that the prohibition on slavery, servitude, and forced labour could arguably be seen to flow from the right to freely choose work, rather than the inverse (see IMBR Commentaries 91–96).
11. The right to be recognized as a person before the law necessarily includes the extension of all of the duties and protections offered by a legal system. While citizens may still possess rights not extended to non-citizens, the right to recognition as a person before the law must be afforded equally (and is *non-derogable* under the ICCPR) (see ICCPR Arts. 4, 16; African Charter on Human and Peoples’ Rights, June 27, 1981, 1520 U.N.T.S. 217 Art. 5; UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106 Art. 12). The legal commentaries accompanying the IMBR further detail the myriad legal obligations underlying how the right to legal personhood applies in the context of migration (see IMBR Commentaries 54–56).
12. The right to registration immediately after birth is enshrined in the ICCPR, CRC and ICRMW, among others (ICCPR Art. 24; United Nations General Assembly, *Convention on the Rights of the Child*, 20

November 1989, United Nations, Treaty Series, vol. 1577, p. 3 Art. 7; United Nations General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158 (Hereinafter “ICRMW”) Art. 29).

13. Human rights law views due process as an essential consequence of the right to legal personhood (see, e.g., ICCPR Arts. 14, 16; ICERD Art. 5(a); ICRMW Arts. 17(1), 18(1)). The legal commentaries accompanying the IMBR analyse the application of the right to due process in the context of migration in great detail (see IMBR Commentaries 57–61).
14. Myriad states and international bodies have affirmed that the right to counsel is equally vital and mandatory in civil and criminal contexts (see Lidman, R., “Civil Gideon: A Human Right Elsewhere in the World” *Clearinghouse Review*, 40:288 (2006)). This is especially important given the stakes of decisions about migrants’ status – and the complexity of the matters involved (see *Airey v. Ireland*, App. No. 6289/73, 2 Eur. H.R. Rep. 305 (Oct. 9, 1979); IMBR Commentaries 57–61).
15. Human rights law has long allowed states to expel migrants only when the decision is reached in accordance with law and minimum procedural requirements are met (ICCPR Art. 13; ICRMW Art. 22(2)). The legal commentaries accompanying the IMBR trace a range of due process obligations to the cornerstone prohibition of arbitrary and collective expulsion under international law (see IMBR Commentaries 64–68).
16. The legal commentaries accompanying the IMBR address the application of the right to equal protection of the law at some length and include a very similar formulation of the core applicable legal duty (see IMBR Commentaries, 40–46).
17. “Economic position” is enshrined in the non-discrimination clause of the ICRMW (ICRMW Art. 7). “Marital status” is enshrined in the non-discrimination clause of the CEDAW (United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 (Hereinafter “CEDAW”) Art. 1). “Birth” is enshrined in the non-discrimination clause of the ICCPR, ICESCR, and ICRMW (ICCPR Art. 2(1); ICESCR Art. 2(2); and ICRMW Art. 7). “Gender,” “Sexual Orientation,” and “Gender identity,” while not formally recognized independent of “other status” in a widely ratified treaty, are broadly recognized as protected under “other status” under existing treaties and could and should have been included in the GCM (see generally International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007).
18. “Other status” is enshrined in the non-discrimination clause of the ICCPR and ICESCR (ICCPR Art. 2(1); ICESCR Art. 2(2)).
19. The legal commentaries accompanying the IMBR propose that a range of protections against *refoulement* flow from widely recognized international legal obligations and progressive development, including that, “No migrant should be expelled or returned in any manner to another State where there are substantial grounds for believing that the migrant would be subjected to other serious deprivations of human rights” (see IMBR Commentaries 70–74).
20. The scope of the protection against *refoulement* under refugee law is itself the subject of a large body of law, too large to address in this article.
21. The Human Rights Committee and the European Court of Human Rights have interpreted the ban on *refoulement* as being inherent in the prohibitions against torture or cruel, inhuman, or degrading treatment or punishment in Article 7 of the ICCPR (see United Nations Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992 ¶ 9; United Nations Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13 ¶ 12); and Article 3 of the ECHR [see, e.g., *Soering v. United Kingdom*, 1/1989/161/217, App. No. 14038/88, 11 Eur. H.R. Rep. 439 (1989); *Cruz Varas v. Sweden*, 46/1990/237/307, App. No. 15576/89, 14 Eur. H.R. Rep. 1 (1991); *Vilvarajah v. United Kingdom*, 45/1990/236/302-306, App. No. 13163/87, 14 Eur. H.R. Rep. 248 (1992); *Chahal v. United Kingdom*, 70/1995/576/662, App. No. 22414/93, 23 Eur. H.R. Rep. 413 (1996); *Ahmed v. Austria*, 71/1995/577/663, App. No. 25964/94, 24 Eur. H.R. Rep. 278 (1996); and *T.I. v. United Kingdom*, App. No. 43844/98 Council of Europe: European Court of Human Rights (2000)).
22. See, for example, General Comment 6 of the Committee on the Rights of the Child (United Nations Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6 ¶ 27 (“States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under

- articles 6 [right to life]... of the Convention.”); Human Rights Comm., General Comment No. 31 ¶ 12 (“[T]he article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 [right to life] and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.”); *G.T. v. Australia*, CCPR/C/61/D/706/1996, UN Human Rights Committee (HRC), 4 December 1997 ¶ 8.1. See also *Bader v. Sweden*, App. No. 13284/04, 46 Eur H.R. Rep. 13, 206 (2005) (finding that deportation of the applicant to face execution would violate the right to life). International human rights bodies and regional frameworks also recognize *non-refoulement* protection for situations of generalized violence, which may implicate a broad range of rights; Council Directive 2011/95/EU art. 15 (Subsidiary protection of nonreturn includes risk of serious harm, defined as: “(a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”); *Na v. United Kingdom*, App. No. 25904/07, 48 Eur. H.R. Rep. 15, 356 (2009) (“The Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return”).
23. The instrument is available via The World Bank at: https://www.knomad.org/sites/default/files/2018-07/KNOMAD%20Working%20Paper_Migrant%20Rights%20Database_3.pdf

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