POLICY PAPER

THE GLOBAL COMPACT FOR MIGRATION

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CONREP

Comparative Network on
Refugee Externalisation Policies

Contents

List of Abbreviations

CEDAW	Convention on the Elimination of Discrimination against Women
CONREP	The Comparative Network on Refugee Externalisation Policies
GCM	Global Compact for Safe, Orderly and Regular Migration
HLM	High-level meeting
ILO	International Labour Organization
IOM	International Organization for Migration
New York Declaration	New York Declaration for Refugees and Migrants
UN	United Nations
UNGA	United Nations General Assembly

1. About CONREP

The Comparative Network on Refugee Externalisation Policies (**CONREP**) researches the impact and effects of the externalisation of refugee policies in two regions: Australia's activities in Southeast Asia and the Pacific; and the European Union and its member states' activities in North Africa. These policies exploit power asymmetries to transfer state and regional obligations and responsibility for asylums seekers and refugees to neighbouring states. At their most destructive, externalisation policies can prevent refugees from reaching safety, and breach their human rights.

Externalisation policies reshape the boundaries of sovereignty and blur the lines of responsibility among states. By avoiding their legal and political responsibility, many states violate their legal obligations. Externalisation deflects responsibility, transforming the governance of refugee protection and border control. Regional cooperation for refugee protection is weakened, and human rights protections are undermined. At a global level, migration pathways are disrupted, and refugees are often trapped in transit, placing them at risk. Nationally, some governments gain electoral advantage by being 'tough' on border protection. The accelerating phenomenon of externalisation characterising these 'tough' border protection policies requires a comprehensive analysis by researchers, civil society actors, refugees, and policy makers.

2. Executive Summary

The Global Compact for Safe, Orderly and Regular Migration (**GCM**) was adopted by 164 countries in Marrakech, Morocco at a special summit on 10 and 11 December 2018, and formally adopted and endorsed by United Nations General Assembly (**UNGA**) on 19 December 2018 by 152 countries. The GCM was developed after a multi-year state-led response to numerous migration crises between 2014 and 2015, putting into practice the 2016 New York Declaration for Refugees and Migrants (**New York Declaration**), which was recognised by 193 United Nations (**UN**) Member States. Today, there are approximately 244 million migrants worldwide, and in order to ensure safe conditions for migrants, promote economic growth globally, and protect nation-state interests, it is vital, more than ever, for the world to unite within the GCM framework. Strength and solidarity in global cooperation is vital to protect the most vulnerable to exploitation and to deal with transnational people-smuggling and other exploitative underground networks.

Australia has the potential to be a leading global citizen in this international migration framework. Although Australia was one of 17 countries to either vote against or abstain from the Compact at the United Nations General Assembly vote on 19 December 2018, Australia is a country that was entirely built by migrants, hosts large numbers of migrants[1] and is a founding member of the UN. There are several convincing reasons for Australia to reverse its stance, and contribute positively within a global migration framework, as provided by the GCM. Three of these will be discussed in this policy paper, which are (1) Australia's role as a guarantor of human rights, (2) Australia's status as an exemplary global citizen, and (3) Australia as a leader in migration policy and implementation.

3. Overview and Aims

This policy paper seeks to go beyond the already significant body of work analysing the GCM and consider Australia's response to the GCM in the context of its positioning as a leading global participant in the global migration framework, and the international community more broadly. In so doing, this policy paper will provide reasons for Australia to adopt an internationally cooperative approach to global migration so that it may contribute to and benefit from the significant opportunities provided by the safe, holistic, secure global migration framework that the GCM represents.

This policy paper aims to:

- outline the background and framework of the GCM;

- detail migration trends and potential opportunities for all States to benefit from migration;

- discuss the components of the GCM;

- consider the approach of the GCM in relation to the rights of migrant women and girls, the GCM's response to climate change-induced migration, and the effectiveness of the GCM particularly in the context of the COVID-19 pandemic;

- understand and investigate Australia's engagement with the GCM and make a comparison with other States; and

- discover the opportunities for Australia to engage positively and collaboratively in the GCM as an exemplary global citizen.

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1   According to the Australian Bureau of Statistics, there were over 7.6 million migrants living in Australia for the year ending 30 June 2020: Australian Bureau of Statistics, Migration Statistics, 23 April 2021 <https://www.abs.gov.au/statistics/people/population/migration-australia/latest-release>.

4. Background

4.1 Migration

A migrant is generally defined as someone who 'changes [their] country of residence, with a distinction made between short-term or temporary migration and permanent migration'.[2] Recently, the tendency for States to erect physical and logistical barriers between push and/or pull factors, without responding to underlying needs, has precipitated migrants' precarity, and created a flourishing underground labour market.[3]

The International Organization for Migration's (**IOM**) *World Migration Report 2022 identifies* that there are approximately 281 million migrants worldwide (3.6 per cent of the world's population) as of 2020 (the most recent reporting period), which represents an increase of 3.5 per cent from approximately 272 million in 2019.[4] Of this number, there are approximately 135 million female migrants as of 2020, up from approximately 130 million in 2019.[5] The majority of migrants are migrant workers: there were approximately 169 million migrant workers globally in 2019 (the most recent reporting period), up from an approximate 164 million migrant workers globally in 2017.[6] While global mobility was restricted as a result of the first year of the COVID-19 pandemic during the reporting period, internal displacement events (both from internal disaster displacement events and internal conflict and violence displacement events) increased.[7]

Between 2000 and 2015, Asia received 1.7 million migrants per year, more than any other geographical region in the world.[8] Indeed, most migrants originate from middle-income countries, with 59 per cent settling in developed regions, where they make up some 11 per cent of the population. Despite the apparently high number of migrants today, the actual rate of migration slowed between 2010 and 2015 which led François Crépeau, the former UN Special Rapporteur on the human rights of migrants to argue that it is therefore not appropriate to describe migration as being in 'crisis' today.[9]

Due to the ageing population and low fertility rates, it is estimated that by 2030 Europe will have a labour shortage of approximately 8.3 million workers, Australia is also predicted to experience severe shortages,[10] and labour shortages may be faced even earlier in Canada, China, the Republic of Korea and the Russian Federation (by 2020).[11] Thus, the demand for migrant workers has increased in developed countries which are explicable in part as a result an ageing population and low fertility rates leading to labour market shortages.

These demographic shifts will require countries to balance their labour supply and demand. To meet employment targets, States could safely and fairly harness the capacity of migrants by employing a globally integrated, complex migration policy mix.[12] Through such a policy mix States will be able to fill their labour shortages, generate new employment opportunities, increase tax collection,[13] and stimulate economic growth.[14]

Global migration represents significant benefits for destination-countries. Indeed, research has demonstrated that the impact of migration is overwhelmingly positive, both for countries of origin and receiving countries,[15] and, the UN General Assembly has recognised that human mobility is a key factor for sustainable development.[16]

4.2 Background to the GCM

Recent regional-level initiatives demonstrate the strong response that States can take to firmly address large movements of people to ensure that migration benefits participating States as well as migrants themselves. For example, from 1989 to 1997 the Comprehensive Plan of Action for Indo-Chinese Refugees brought together countries of origin, first asylum and resettlement, each of which made concrete commitments to find solutions for the millions of refugees fleeing countries in South-East Asia and for the orderly departure of hundreds of thousands of migrants.[17] Similarly, the African Union-Horn of Africa Initiative on Human Trafficking and the Smuggling of Migrants (known as the Khartoum process), began in 2014 and has advanced the consideration of joint action on these issues.[18] Finally, the *Regional Refugee and Resilience Plan* in

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2   François Crépeau, *Report of the Special Rapporteur on the Human Rights of Migrants*, UN Doc A/71/285 (4 Aug 2016) para 12 *('2016 Report')*.
3   United Nations Secretary-General, *In safety and Dignity: Addressing Large Movements of Refugees and Migrants,* UN Doc A/70/59 (21 April 2016) para 11 ('*In Safety and Dignity Report 2016*').
4   International Organization for Migration, *World Migration Report 2022* (Report, December 2021) 3 ('World Migration Report 2022').
5   Ibid.
6   Ibid.
7   Ibid 4.
8   United Nations Department of Economic and Social Affairs, 'International Migrant Stock 2015' (Web Page) <www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml>.
9   François Crépeau, 2016 Report (n 2) para 17.
10   Rainer Strack et al, 'The Global Workforce Crisis: $10 Trillion at Risk' (Blog Post, 2 July 2014) <https://www.bcg.com/publications/2014/people-organization-human-resources-global-workforce-crisis.aspx#chapter3_section3>.
11   François Crépeau, 2016 Report (n 2) para 9.
12   François Crépeau, 2016 Report (n 2) para 10.
13   Office of the United Nations High Commissioner for Human Rights, 'The Economic, Social and Cultural Rights of Migrants in an Irregular Situation' (Report, 2014) 99.
14   Organization for Economic Cooperation and Development, 'International Migration Outlook 2013' (Report, 2013).
15   See United Nations Development Programme, 'Human Development Report 2009: Overcoming Barriers — Human Mobility and Development' (Report, 2009).
16   Declaration of the High-level Dialogue on International Migration and Development, GA Res 68/4, UN Doc A/RES/68/4 (21 January 2014, adopted 3 October 2013).
17   United Nations Secretary General, In Safety and Dignity Report 2016 (n 3) para 41.
18   Ibid paras 43-2.

response to the crisis in the Syrian Arab Republic brought together more than 200 partners in a regionally-coordinated response to the refugee crisis.

Strength and solidarity in cooperation has proved time and time again to be more effective than lone-State solutions that weaponize combatting people smuggling, and similar rhetoric to deny and limit migration. Indeed, without other options, migrants may be forced to avail themselves of irregular migration solutions offered by opportunistic smuggling rings. Repressive measures push migrants further underground, into 'the hands of unscrupulous lenders, recruiters, smugglers, employers and landlords'.[19] The only way to effectively reduce smuggling and regularise migration is to offer more accessible, safe, cooperative, and affordable solutions, with all the identity and security checks that efficient visa procedures can provide.

The GCM is such a process that can provide the means to articulate regional and global solutions, a means to harness effective, strong, and sustainable migration results in an increasingly complex and fragmented world. The world has collectively demanded better international cooperation in recent years,[20] in conjunction with guidance from the International Labour Organization (**ILO**) Fair Migration Agenda[21] and Multilateral Framework on Labour Migration,[22] and the International Organization of Migration Governance Framework.[23] The GCM is consistent with these international demands and the heavily respected guidance of international organisations.

Finally, the GCM is consistent with Goal 10.7 of the 2030 Agenda for Sustainable Development,[24] and demands that all migrants are entitled to the respect, protection and full enjoyment of their human rights under the core international human rights treaties and different branches of international law, including refugee, labour, humanitarian, maritime, transnational criminal, nationality and consular law and the law of the sea.[25]

5. The Global Compact for Migration

The GCM was adopted by 164 countries in Marrakech, Morocco at a special summit on 10 and 11 December 2018.[26] This was followed shortly thereafter with formal adoption and endorsement of the GCM at the UNGA on 19 December 2018 by 152 countries.[27] The GCM represents a State-led process to move towards a global framework to address the political, humanitarian, security, and development challenges posed by the large-scale flow of refugees and migrants.

The development of the GMC was State-led with Switzerland and Mexico acting as co-facilitators in the development and negotiation of the Compact.[28] Australia was represented by a large delegation during the negotiation process for the GCM and, as an active participant, was able to achieve modifications to the final text of the GCM to reflect Australia's interests.[29]

The GCM is a voluntary, non-binding document that creates no additional obligations on States, but which is grounded in existing international law and multinational agreements, including the International Bill of Rights, the 2030 Agenda for Sustainable Development, the United Nations Framework Convention on Climate Change, and the Paris Agreement.[30] The GCM is a global agreement which sets out a common framework, shared principles, and fosters dialogue and sharing of best-practice on international migration.[31] While the GCM recognises that migration must be addressed in a globally cooperative way, it also 'upholds the sovereignty of States' and the GCM leaves untouched the States' abilities to determine their own national migration policy and govern migration within their jurisdiction in conformity with international law.[32]

The GCM is centred around 10 'cross-cutting and independent guiding principles'.[33] These are a focus on a people-centred approach; international cooperation; respect for national sovereignty; respect for the rule of law and due process; a commitment to sustainable development; respect, fulfillment, and protection of human

19   François Crépeau, *2016 Migration Report* (n 2) paras 14-6.
20   Norwegian Refugee Council, 'What is the Global Compact for Migration?' (Web Page, 10 December 2018) <https://www.nrc.no/news/2018/what-is-the-global-compact-for-migration/>
21   International Labour Organization, *Fair Migration: Setting an ILO Agenda* (2014). Available from <http://ilo.org/global/topics/labour-migration/fair-migration-agenda/lang--en/index.htm>.
22   International Labour Organization, *ILO Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a Rights-Based approach to Labour Migration* (2006). Available from <http://ilo.org/global/topics/labour-migration/publications/WCMS_178672/lang--en/index.htm>.
23   *IOM Migration Governance Framework,* IOM Res 106/40, IOM Doc C/106/40 (4 November 2015).
24   *Transforming our World: The 2030 Agenda for Sustainable Development*, GA Res 70/1, UN Doc A/RES/70/1 (21 October 2015, adopted 25 September 2015) Goal 10.7.
25   United Nations Secretary General, *In Safety and Dignity Report 2016* (n 3) para 88.
26   Henry Sherrell, 'Australia and the Global Compact on Migration' (Australian Parliamentary Library, 15 March 2019) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2019/March/Australia_and_the_Global_Compact_on_Migration>.
27   *Global Compact for Safe, Orderly and Regular Migration,* GA Res 73/195, UN Doc A/RES/73/195 (11 January 2019, adopted 19 December 2018) ('GCM'). 152 countries voted for its adoption, 12 countries abstained from the vote (Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore, Switzerland), and five countries voted against it (Czech Republic, Hungary, Israel, Poland, United States).
28   United Nations Refugees and Migrants, 'Global Compact for Migration' (Web Page) <https://refugeesmigrants.un.org/migration-compact>.
29   Angela Smith, Melissa Phillips and Nichole Georgeou, 'Australia and the Global Compact on Migration: Opportunities for a New Agenda' (Report, 2018) 8.
30   GCM (n 27) paras 2, 4.
31   Marcia V. Espinoza et al, 'Global Compact for Migration: What is it and Why Are Countries Opposing It?', *The Conversation* (online, 7 December 2018) <https://theconversation.com/global-compact-for-migration-what-is-it-and-why-are-countries-opposing-it-106654>.
32   GCM (n 27) paras 7, 15(c).
33   Ibid para 15.

rights; a gender-responsive approach; a child-sensitive approach; a whole-of-government approach; and a whole-of-society approach.[34] These principles guide the GCM's work as it seeks to fulfil its 23 objectives to achieve safe, orderly, and regular migration.[35]

1. Collect and utilize accurate and disaggregated data as a basis for evidence-based policies

2. Minimize the adverse drivers and structural factors that compel people to leave their country of origin

3. Provide accurate and timely information at all stages of migration

4. Ensure that all migrants have proof of legal identify and adequate documentation

5. Enhance availability and flexibility of pathways for regular migration

6. Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work

7. Address and reduce vulnerabilities in migration

8. Save lives and establish coordinated international efforts on missing migrants

9. Strengthen the transnational response to smuggling of migrants

10. Prevent, combat and eradicate trafficking in persons in the context of international migration

11. Manage borders in an integrated, secure and coordinated manner

12. Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

13. Use migration detention only as a measure of last resort and work towards alternatives

14. Enhance consular protection, assistance and cooperation throughout the migration cycle

15. Provide access to basic services for migrants

16. Empower migrants and societies to realize full inclusion and social cohesion

17. Eliminate all forms of discrimination and promote evidence-based public discourse to sharpen perceptions of migration

18. Invest in skills development and facilitate mutual recognition of skills, qualification and competences

19. Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries

20. Promote faster, safer and dignified return and readmission, as well as sustainable reintegration

21. Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration

22. Establish mechanisms for the portability of social security entitlements and earned benefits

23. Strengthen international cooperation and global partnerships for safe, orderly and regular migration

In this policy brief, we seek to highlight the objectives of the GCM in so far as the Compact aims to respond to the particular human rights situation facing migrant women and girls and the already seen and worsening impacts of climate change. These themes are discussed further below.

6. A Gender-Responsive Approach

Gender responsiveness is one of the principles of the GCM and seeks to 'ensure that the human rights of women, men, girls and boys are respected at all stages of migration' by 'mainstream[ing] a gender perspective and promot[ing] gender equality and the empowerment of women and girls, recognizing their independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood'.[36] A gendered-responsive approach to migration is also integrated into several of the GCM's objectives, including the minimisation of adverse drivers and structural factors that compel migration (Objective 2),[37] the enhancement of available and flexibility in pathways for regular migration (Objective 5),[38] and addressing and reducing vulnerabilities in migration which encourages the development of 'gender-responsive migration policies to address the particu.ar needs and vulnerabilities' of migrant women and girls (Objective 7).[39] In this way, the 'GCM represents an opportunity to ensure that women in migration are at the centre of development policies and practices as agents of change and leaders in their own communities and beyond'.[40]

In addition to the GCM's 'soft law' approach of gender-responsiveness, international human rights law also

34   Ibid para 15(a)-(j).
35   Ibid paras 16-39.
36   GCM (n 27) para 15(g).
37   Ibid para 18.
38   Ibid para 21.
39   Ibid para 23, especially para 23(c).
40   Carolina Gottardo and Paola Cyment, 'The Global Compact for Migration: What Could it Mean for Women and Gender Relations?' (2019) 27(1) *Gender and Development* 67, 79.

requires that a gender perspective be adopted in the development and implementation of migration policies. The Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) prohibits discrimination and obliges States parties (including Australia) to eliminate discrimination against women.[41] In particular, the CEDAW requires States to suppress trafficking in women,[42] grant women equal rights with men to acquire, change, or retain nationality,[43] eliminate discrimination in employment,[44] eliminate discrimination against women in health care and ensure equal access to health care services,[45] and accord women the same rights as men in respect of the movement of persons and the freedom of persons to choose their residence and domicile.[46] The Committee on the Elimination of Discrimination against Women has addressed the issues of women migrant workers and in doing so recommended that States adopt 'a comprehensive gender-sensitive and rights-based policy' across all stages and all aspects of migration 'to facilitate access of women migrant workers to work opportunities abroad, promoting safe migration and ensuring the protection of the rights of women migrant workers'.[47]

The current UN Special Rapporteur on the human rights of migrants, Felipe González Morales, has acknowledged that migration is increasingly 'a gendered phenomenon' and that

> Gender-specific norms governing society are decisive factors, as are gendered expectations and differentiated power relations. The differentiated impact of economic inequality shapes the reasons for which women and girls migrate. Those reasons vary considerably compared to the reasons for which men and boys choose to migrate. It is also equally important to note that migrant women and girls are a highly heterogenous group, with different profiles and socioeconomic characteristics.[48]

In particular, the Special Rapporteur has identified specific challenges faced by women migrants who belong to the LGBTQI+ community who 'often experience discrimination and stigmatization from both their own communities and from mainstream culture, in both their countries of origin and destination and along the migratory route', which is particularly acute for transgender women.[49]

To achieve a truly gender-responsive approach to migration, 'it is critical that policies and programmes implemented on the ground are rights based … in order to put people who are on the move, and particularly women and girls, at their centre, and ensure that the human rights of migrants prevail over the management of borders, national security, and national sovereignty'.[50]

7. The GCM and Climate Change: A Priority for Global Cooperation on Migration

Climate change has been recognised as 'an increasingly important driver of human mobility'.[51] The New York Declaration recognised that persons move for a variety of reasons, including 'in response to the adverse effects of climate change'.[52] However, the Office of the UN High Commissioner for Human Rights has stated that while 'it is clear that climate change substantially contributes to human rights harms and related human movement'[53]

> establishing clear causality between the adverse effects of climate change and human movement can be difficult. Decisions to move, even when the adverse effects of climate change are the predominant driver, can be compounded by violations of economic, social, cultural, civil and political rights, some of which may themselves be caused or exacerbated by climate change. … [These] complexities pose substantial challenges for quantitative research and can inhibit understanding of the climate change/human mobility nexus, as well as the potential effects of climate change mitigation and adaption of human mobility. [54]

As we have seen above, the GCM rests on the foundations of existing international law, including the United Nations Framework Convention on Climate Change and the Paris Agreement.[55] Three of the objectives of the GCM also seek to integrate addressing climate change as part of global cooperation on migration. Objective 2 seeks to minimise the

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41   *Convention on the Elimination of All Forms of Discrimination against Women,* opened for signature 19 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).
42   Ibid art 6.
43   Ibid art 9.
44   Ibid art 11.
45   Ibid art 12.
46   Ibid art 14 (4).
47   Committee on the Elimination of Discrimination against Women, *General Recommendation No 26: Women Migrant Workers,* 42nd sess, UN Doc CEDAW/C/2009/WP.1/R (5 December 2009) para 23.
48   Felipe González Morales, *Report of the Special Rapporteur on the Human Rights of Migrants,* UN Doc A/HRC/41/38 (15 April 2019) para 31.
49   Ibid paras 69-71.
50   Gottardo and Cyment (n 40) 80.
51   United Nations High Commissioner for Human Rights, *Addressing Huan Rights Protection Gaps in the Context of Migration and Displacement Across International Borders Resulting from the Adverse Effects of Climate Change and Supporting Adaption and Mitigation Plans of Developing Countries to Bridge the Protection Gaps,* UN Doc A/HRC/38/21 (23 April 2018) para 6 ('Climate Change and Migration Report 2018').
52   New York Declaration for Refugees and Migrants, GA Res 71/1, UN Doc A/RES/71/1 (3 October 2016, adopted 19 September 2016), para 1.
53   United Nations High Commissioner for Human Rights, *Climate Change and Migration Report 2018* (n 51) para 10.
54   Ibid paras 9-10.
55   GCM (n 27) para 2.

adverse drivers and structural factors that compel people to leave their country of origin.[56] To realise this objective, the GCM seeks to, inter alia, strengthen cooperation on addressing and mitigating climate change and develop 'adaption and resilience strategies to sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation'.[57] To enhance the availability and flexibility of pathways for regular migration (Objective 5), the GCM seeks to foster cooperation 'to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation'.[58] The GCM also seeks to address climate change through its objective to strengthen international cooperation and global partnerships for safe, orderly, and regular migration (Objective 23).[59]

In addition to being a cause of global human mobility, '[c]limate change-related migration can also exacerbate pre-existing inequalities and intensify gender-specific dimensions of discrimination and poverty'.[60] In this way, the climate change-related imperative to adopt a global response to migration is cross-cutting with the need to adopt gender-responsive migration policies. The Committee for the Elimination of Discrimination against Women has noted the gendered nature of climate change-induced or exacerbated migration and has renewed its calls to adopt gender-responsive migration and development policies to adequately deal with this phenomenon and ensure that the rights of women and girls are respected, protected, and fulfilled.[61]

Walter Kälin has argued that 'the comprehensive inclusion of disaster-and climate change-related migration in the [GCM] is a breakthrough', reflecting 'a sophisticated understanding of the disaster-migration nexus' and an '[a]cknowledgement of the fact that people may be forced to move when they are exposed (or expect to be exposed) to a sudden-onset natural hazard or slow-onset process of environmental change, and a lack of resilience to withstand its impacts'.[62] Despite this, Kälin acknowledges that the GCM addresses the complex disaster-migration nexus 'not very systematically', and cautions that the effectiveness of the GCM—'as a legally non-binding instrument'—in responding to climate-induced migration 'will very much depend on the quality of the follow-up'.[63] In particular, Kälin warns that:

> Building an effective protection regime at all levels for such people requires long-term efforts, which will be greatly facilitated by the language contained in the [GCM]. However, the disaster-migration nexus is a topic that competes with a very large number of other important issues addressed by the [GCM]. Without systematic efforts by States and other relevant stakeholders to keep it high up on the international agenda, disaster- and climate change-related human mobility will not get the attention it needs.[64]

8. The Effectiveness of the GCM

8.1 The Approach of the GCM: Constructing an Unhelpful Binary Divide?

As Jane McAdam and Tamara Wood point out, the GCM and its counterpart the GCR 'have been criticized for reinforcing "unhelpful binary thinking between voluntary and forced migration" and for "assuming certain categorical distinctions between refugees and migrants, which are more fluid than they imagine'.[65] These arguments are valid, according to McAdam and Wood, 'not least because there are two compacts purporting to deal distinctly with each group', although such distinctions reflect the reality under international law that there is a distinction between refugees and migrants.[66] However, Penelope Matthew has concluded that it is ultimately 'premature to offer conclusions as to success or failure of … the Global Compacts' although 'there are many intriguing questions about the potential to the overarching narrative and political/soft law framework to secure buy-in from stakeholders and promote change'.[67] Further, while the GCM marks a distinct and positive shift away from 'the populist and xenophobic posturing which sees borders as protection for citizens and seeks to externalize those borders', it remains 'an ongoing struggle' between these ideas and the goals espoused by the GCM.[68]

56   Ibid para 18.
57   Ibid para 18(h)-(i).
58   Ibid para 21(h).
59   GCM (n 27) para 39.
60   United Nations High Commissioner for Human Rights, *Climate Change and Migration Report 2018* (n 51) para 21.
61   Committee on the Elimination of Discrimination against Women, *General Recommendation No 37: Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change,* 69th sess, UN Doc CEDAW/C/GC/37 (7 February 2018) paras 73-8.
62   Walter Kälin, 'The Global Compact on Migration: A Ray of Hope for Disaster-Displaced Persons' (2018) 30(4) *International Journal of Refugee Law* 664, 665.
63   Ibid 665, 667.
64   Ibid 667.
65   Jane McAdam and Tamara Wood, 'The Concept of "International Protection" in the Global Compacts on Refugees and Migration' (2021) 23(2) *International Journal of Postcolonial Studies* 191, 192.
66   Ibid.
67   Matthew, Penelope, 'Killing Asylum Softly or leaving No One Behind? The New York Declaration and Global Compacts in a Divided World' (2021) Globalisations, DOI: 10.1080/14747731.2021.1974207, 10.
68   Ibid.

8.2 The GCM's Ability to Respond to COVID-19

The COVID-19 pandemic has provided both opportunities and challenges for the GCM. As discussed in Section 5.1 above, at least the first year of the COVID-19 pandemic saw a decrease in global migration largely as a result of measures taken by States to restrict the flow of people in an effort to halt or delay transmission of the virus across the globe. Research conducted by the Danish Refugee Council's Mixed Migration Centre found that during the first year of the COVID-19 pandemic, '[t]he energy around the Compact for Migration continue[d] to be positive, but scattered in the whirlwinds of "COVID-time"'.[69] Concerns were also raised about 'the mix of hesitation and distraction that is impeding States and other actors from expressly referencing the Compact as they act in ways that clearly correspond to it', especially in the context of the COVID-19 induced urgency for global action on migration.[70]

At the one and a half year mark of the pandemic, the UN Special Rapporteur on the human rights of migrants noted that the COVID-19 pandemic has 'unveiled systemic inequalities, including those affecting mostly migrants' and that '[s]ome measures adopted by Governments [sic] to contain the pandemic further exposed existing human rights and governance deficits and exacerbated the vulnerabilities of those in low socioeconomic status, including migrants'.[71] In particular, the Special Rapporteur identifies 'three interrelating factors' that render migrants and their families particularly vulnerable as a result of the COVID-19 pandemic.[72] These are: the high potential of migrants to face low socioeconomic status and precarious living conditions which affects their ability to access healthcare; the high potential of migrants to be working in the informal economic 'with unfavourable conditions of work and limited access to social protection systems' which leads them exposed to exploitation; and the potential for forceable return to their country of origin where they may not enjoy adequate access to health care.[73]

The COVID-19 pandemic's effect on migration shows that there is still a way to go for the international community to realise the objectives of the GCM.

9. Australia's Response to the GCM

Australia participated in the negotiations of the GCM in a cautiously positive way: Australia's then Permanent Representative to the United Nations, Gillian Bird, noted Australia had 'engaged in good spirit during these negotiations because we recognise – and have been well-served by – the significant social and economic benefits of migration'.[74] Despite this profession of good faith engagement, media reporting revealed that the Australian delegation to the GCM negotiations had stated in the course of negotiations that the compact had 'failed to make clear distinctions between regular and irregular migrants and between refugees and migrants'.[75]

Following the release of the agreed final draft GCM in early August 2018, then Minister for Home Affairs Peter Dutton said Australia would not sign the GCM 'in its current form'. Minister Dutton said that 'we're not going to sign a deal that sacrifices anything in terms of our border protection policies … We're not going to surrender our sovereignty'.[76] On 21 November 2018, Prime Minister Scott Morrison, together with Home Affairs Minister Dutton and Foreign Affairs Minister Marise Payne formally announced Australia would not sign the Compact, arguing it would 'compromise our successful way of doing things', and that the Compact would 'risk encouraging illegal entry'.[77]

While the global reaction to the GCM was largely positive, as evidenced by the large support it received at the UNGA, some key States have abstained or withdrawn from making commitments to the GCM. The United States of America, under the Trump Administration, withdrew from the GCM at the end of 2017 on the basis that the GCM would 'undermine the sovereign right of the United States to enforce [its] immigration laws and secure [its] borders'.[78] During negotiations in July 2019, Hungary also stated that it would withdraw from the GCM arguing that it was 'totally at odds with the country's security interests' and 'in conflict with common sense and also with the intent to restore European security'.[79] Just prior to the GCM intergovernmental conference in Marrakech, Austria also announced it would

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69   Mixed Migration Centre and Danish Refugee Council, 'COVID-19 and the Global Compact for Migration' (Discussion Paper, September 2020) 8.
70   Ibid.
71   Felipe González Morales, Report of the Special Rapporteur on the Human Rights of Migrants, UN Doc A/76/247 (30 July 2021) para 20.
72   Ibid para 21.
73   Ibid.
74   Australian Mission to the United Nations, 'Australian statement on the final draft of the Global Compact for Migration' (13 July 2018) <https://unny.mission.gov.au/files/unny/180713%20National%20Statement%20at%20closing%20of%20the%20GCM%20negotiations.pdf>.
75   Chris Merritt, 'UN migration pact "a threat to sovereignty"', The Australian, (online, 3 August 2018) <https://www.theaustralian.com.au/nation/immigration/un-migration-pact-a-threat-to-sovereignty/news-story/f9c795ec8127863e55aacbd9baebb6eb>.
76   Amy Remeikis and Ben Doherty, 'Dutton says Australia Won't "Surrender our Sovereignty" by Signing UN Migration Deal', The Guardian Australia (online, 25 July 2018) < https://www.theguardian.com/australia-news/2018/jul/25/dutton-says-australia-wont-surrender-our-sovereignty-by-signing-un-migration-deal>.
77   Scott Morrison, Peter Dutton, and Marise Payne, 'Global Compact for Migration' (Media Release, 21 November 2018) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressrel%2F6345600%22>.
78   Lex Rieffel, 'The Global Compact on Migration: Dead on Arrival?', Brookings (online, 12 December 2018) <https://www.brookings.edu/blog/up-front/2018/12/12/the-global-compact-on-migration-dead-on-arrival/>.
79   Ministry of Foreign Affairs and Trade, 'Hungary is Exiting the Adoption Process of the Global Compact for Migration' (Media Release, 18 July 2018) <https://www.kormany.hu/en/ministry-of-foreign-affairs-and-trade/news/hungary-is-exiting-the-adoption-process-of-the-global-compact-for-migration>.

not be adopting the document,[80] with other European countries of Bulgaria, the Czech Republic, Latvia, Italy,[81] Slovakia,[82] and Poland, similarly not participating in the GCM, and Chile, the Dominican Republic,[83] and Israel also withdrawing. In 2021, the Biden Administration reversed the former Administration's position on the GCM and endorsed 'the vision contained in the [GCM]' in conjunction with celebrations for that year's International Migrants Day.[84]

9.1 Australia's Commitment to Human Rights

Australia was one of 17 countries to either vote against, or abstain from voting for, the Compact at the United Nations General Assembly on 19 December 2018.[85] This is a surprising stance based on the Australian Government's recognition that Australia was entirely build by migrants, that Australia hosts over 7 million migrants[86] and in recognition of Australia enduring commitment to global human rights ever since its role as a founding member of the UN.[87]

The GCM is based on existing international human rights law and framework—which Australia is committed to as a State party to each of the core international human rights treaties— and upholds the principles of non-regression and non-discrimination.[88] These are core values which underlie Australia's positioning of itself within the global community.[89] Indeed, Australia was a member of the UN Human Rights Council between 2018 and 2020, where its participation was based on key priorities of gender equality, good governance, freedom of expression, the rights of indigenous peoples, and strong national human rights institutions and capacity building.[90] Australia's commitment to human rights and contribution as a key member of the UN Human Rights Council would be confluent with a resolve to positively and actively engage in the GCM.

Australia has described itself as 'a pioneer of women's rights', and has pledged to 'work collaboratively across all regions and forums to eliminate violence against women,

support women's voices and agency, and increase and enhance economic opportunities for women'.[91] Australia's self-described feminist perspective to its international engagement is crucial in the global migration space, as women make up 48 per cent of all international migrants, with most migrants in Europe and North America being female.[92] As many migrant women are exploited and forced into prostitution, sex-trafficking and forced labour, the GCM outlines the need to apply a gender-responsive approach in addressing vulnerabilities and develop gender-responsive migration policies that address the particular needs of migrant women, including references to providing health care and access to justice and effective remedies.[93] Australia's strong and consistent engagement in pioneering women's rights globally, especially in the context of Australia's membership of the UN Human Rights Council, presents Australia with a historic opportunity to engage with the GCM and be a leader in developing a feminist-sensitive global migratory framework.

Further, Australia has a strong commitment to combatting people smuggling and illegal migration; both of which are pathways through which migrant women are often exploited. The GCM includes a commitment to identify smuggled migrants and to protect their human rights, taking into particular consideration the special needs of women and children, and develop gender-sensitive co-operation protocols to identify and assist smuggled migrants.[94]

Australia's global recognition and expertise in women's rights and migration would be invaluable in assisting the Compact States to uphold women's political and economic participation globally and prevent women's exploitation at the hands of people smugglers and predatory networks. Indeed, Australia has repeatedly pledged to work with other States to support their implementation of international human rights obligations and address human rights violations through regional network and the UN.[95] The GCM, as an extensively signed international pledge, represents the best forum for Australia to lead advocacy efforts as

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80   Shehab Khan, 'Austria to Follow US and Hungary by Withdrawing From UN Migration Pact', *The Independent* (online, 31 October 2018) <https://www.independent.co.uk/news/world/europe/austria-un-migration-global-pact-agreement-us-hungary-sebastian-kurz-freedom-party-a8610161.html>.
81   ANSA, 'Italy not Signing Global Compact-Salvini', *ANSA Politics* (online, 28 November 2018) <http://www.ansa.it/english/news/politics/2018/11/28/italy-not-signing-global-compact-salvini_fde75c34-ea73-4358-bd17-df80c94e5c2d.html>.
82   Robert Muller, 'Slovakia Will Not Support UN Migration Pact: Prime Minister', *Reuters* (online, 25 November 2018) <https://www.reuters.com/article/us-un-migrants-slovakia/slovakia-will-not-support-un-migration-pact-prime-minister-idUSKCN1NU0JJ>.
83   Haiti Libre, 'The Dominican Republic Refuses to Sign the Global Compact for Migration', *Haiti Libre* (online, 5 December 2018) <https://www.haitilibre.com/en/news-26316-haiti-flash-the-dominican-republic-refuses-to-sign-the-global-compact-for-migration.html>.
84   United States Department of State Bureau of Population, Refugees, and Migration, 'Global Compact for Safe, Orderly and Regular Migration (GCM)' (Web Page, 17 December 2021) <https://www.state.gov/global-compact-for-safe-orderly-and-regular-migration-gcm/>.
85   Sherrell (n 26).
86   See (n 1) above.
87   *Note Verbale Dated 14 July 2017 from the Permanent Mission of Australia to the United Nations Addressed to the President of the General Assembly,* UN Doc A/72/212 (24 July 2017) para 1 ('Note Verbale 14 July 2017').
88   GCM (n 27) para 15(f).
89   Note Verbale 14 July 2017 (n 86) para 2.
90   Australian Government Department of Foreign Affairs and Trade, 'Pillars and Priorities', United Nations (2018) <https://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/pillars-and-priorities/Pages/pillars-and-priorities.aspx>.
91   Note Verbale (n 86) para 10.
92   François Crépeau, *2016 Migration Report* (n 2) para 8.
93   See Gottardo and Cyment (n 40).
94   Ibid.
95   *Note Verbale* (n 86) para 19.

a human rights pioneer. As recognised by Australia in its commitments to the UN General Assembly,[96] fighting women's oppression and exploitation is a global concern, and Australia must engage with the GCM to lead this fight and create safe, sustainable, and strong migration networks for the fair and regulated movement of women and other individuals labelled as vulnerable globally.

9.2 Australia as a Good Global Citizen

Australia has a proud tradition of positive engagement with international human rights mechanisms and global governance frameworks. As pledged to the UN General Assembly, Australia is deeply interested in promoting and enhancing regional cooperation to combat trafficking in persons and slavery; actively supporting efforts to improve international cooperation on migration and trafficking in persons. Australia has historically been a responsive, global citizen in this area, taking part in the high-level review of the United Nations Global Plan of Action to Combat Trafficking in Persons; participating in the Global Alliance to Eradicate Forced Labour, Modern Slavery and Human Trafficking and Child Labour; supporting the efforts of the United Nations to develop global compacts on migration and refugees; and co-chairing the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.[97]

Australia has historically been strongly committed to the international human rights project. It was involved in the very formation of the UN and was an early ratifier of the International Bill of Rights and the core UN human rights treaties, such as the Refugee Convention. In this context, adopting the GCM is a logical next step in Australia's commitment to human rights and multilateralism on human rights issues.[98]

Importantly, Australia's unreserved commitment to achieving and shaping the Sustainable Development Goals (SDGs) 'as a universal, global approach to reduce poverty, promote sustainable development and ensure the peace and prosperity of people across the world',[99] has placed

Australia in a unique opportunity to similarly shape the GCM. Relatedly, Australia is a leading contributor to the global setting of labour standards and the development of policies and programs to promote decent work for all women and men through the ILO.[100]

The SDGs and labour laws are two of the interdependent guiding principles of the GCM.[101] SDG Goal 8, protecting labour rights and a safe and secure working environment for migrant workers, particularly women migrants, to promote economic growth, is a vital component of the GCM.[102] Through Australia's strong commitment to the SDGs, and in its commitment to ensure global growth for peace and prosperity for all through the protection and strengthening of international rules and norms,[103] it is vital to demonstrate to the world that Australia can continue its role as an exemplary global citizen through the truly international processes of the GCM. Australia has a unique opportunity to address the SDGs in an integrated, responsible and global manner through a leading commitment to the GCM.

9.3 Australia as a Leader in Migration

Australia has expressed concern that the GCM would impact key border protection policies.[104] However, then UN High Commissioner for Human Rights, Louise Arbour, categorically stated that the most important fundamental principle of the Compact was 'States have the prerogative, in fact the responsibility to control their territory, to control their borders, to determine which of non-nationals will have the right to enter, stay on their territory, under what terms and conditions.'[105] Several countries have also adopted this position, with Denmark's representative to the General Assembly at the UN, speaking on behalf of Iceland, Lithuania, Malta and the Netherlands, argued the Compact creates no new legal requirements nor further existing treaty commitments and confirms sovereignty.[106]

Australia's current border protection policies will not be impacted by the GCM, as the GCM 'is not a treaty… [and] it does not create any new legal obligations'.[107] Thus, the

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96   See *Note Verbale* (n 86).
97   Ibid paras 20-1.
98   For instance, Australia is a party to The International Covenant on Civil and Political Rights; The International Covenant on Economic, Social and Cultural Rights; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; The International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of Persons with Disabilities. Further, Australia signed the Slavery Convention, and also ratified and is a party to the Convention against Transnational Organized Crime; the United Nations Framework Convention on Climate Change; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa; and the Paris Agreement.
99   Australian Government Department of Foreign Affairs and Trade, 'Report on the Implementation of the Sustainable Development Goals' (Report, 2018) 7.
100   Ibid 61.
101   GCM (n 27) para 15(d), (e).
102   Gottardo and Cyment (n 40) 80.
103   Australian Government, *2017 Foreign Policy White Paper* (White Paper, 2017) 83 ('*2017 Foreign Policy White Paper*').
104   Paul Karp, 'Australia Refuses to Sign UN Migration Pact, Citing Risks to Turnbacks and Detention' *The Guardian Australia* (online, 21 November 2018) <https://www.theguardian.com/australia-news/2018/nov/21/australia-refuses-to-sign-un-migration-pact-citing-risks-to-turnbacks-and-detention>.
105   United Nations Geneva, 'Near Verbatim Transcript of the Press Conference by Louise Arbour, Special Representative of the Secretary-General for International Migration' (Web Page, 28 November 2018) <https://reliefweb.int/report/world/near-verbatim-transcript-press-conference-louise-arbour-special-representative>.
106   United Nations, 'General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants' (Media Release, 19 December 2018) <https://www.un.org/press/en/2018/ga12113.doc.htm>.
107   Jane McAdam and Walter Kalin, 'Rights for People Forced Out by Climate Change' (Blog Post, 22 August 2018) <https://www.lowyinstitute.org/the-interpreter/rights-people-forced-out-climate-change>.

time and resources that Australia invested into the GCM process as a global leader on migration are at risk of being wasted,[108] over misguided concerns over sovereignty. A range of civil society actors, including the Refugee Council of Australia,[109] the Asylum Seeker Resource Centre and thirty-three other refugee and asylum seeker NGOs,[110] many of which were involved in multi-stakeholder consultations around the GCM, have urged the Australian Government to engage with the global process.

Indeed, no country can manage migration on its own, and the GCM offers a normative and practical agenda that can serve Australia's national interests in ensuring that migrants have an underlying safety net,[111] migration is regular , and mass movements of people globally does not negatively affect security for all. The world is interdependent, and unmanaged, unregulated, and unsupported migration crises anywhere in the world will eventually have negative impacts for Australia, its national interests, and its people.

Finally, in Australia's most recent Foreign Policy White Paper, Australia pledged to contribute to the GCM,[112] and strengthen cooperation with regional partners in migration.[113] Australia still has the chance to seize on its commitments, work with regional partners through the GCM, and be a global leader to address a truly international problem. Migration will never, ever be solved through lone-state responses, and Australia must demonstrate that it is a leader in migration policy and contribute constructively to ensure safe and regular migration to promote economic growth, human rights, and international law and norms.

10. Conclusion

The GCM provides a comprehensive global framework to manage global migration; to both share the extensive opportunities that comes from migration, and respect, protect, and fulfil the human rights of migrants, whilst respecting the role of States to determine their own migration policies. In particular, the GCM takes a strong gender-responsive approach to migration and seeks to comprehensively address the impact that climate change has, and will continue to have, on global migration.

Australia has committed to upholding international human rights law and served as a key member of the UN Human Rights Council until 2020. Australia has positioned itself as a global leader in the arena of human rights, focusing on key priorities of gender equality, good governance, freedom of expression, the rights of indigenous peoples, and strong national human rights institutions and capacity-building. Indeed, as a pioneer of women's rights across all regions and forums, Australia has adopted a strong feminist framework in its foreign policy. The GCM takes a strong, gender-responsive approach in addressing vulnerabilities and develop gender-responsive migration policies that address the particular needs of migrant women. Australia can use its unmatched experience and commitment to combat people smuggling and illegal migration, to prevent the exploitation and abuse of vulnerable women in migration networks. Australia's strong and consistent engagement in pioneering women's rights globally, especially in the context of Australia's membership of the UN Human Rights Council, presents Australia with a historic opportunity to engage with the GCM and be a leader in developing a gender-responsive global migratory framework. Australia's global recognition and expertise in women's rights and migration would be invaluable in assisting the Compact States to uphold women's political and economic participation globally and prevent their exploitation at the hands of people smugglers and predatory networks.

Additionally, the impact of climate change—both that which has already been realised, and that which is yet to be realised—will only exacerbate migratory flows, particularly in the Pacific which will see Australia in demand as a source country.

Australia has a proud tradition of positive engagement with international human rights mechanisms and global governance frameworks. Australia is a party to, and was involved in the negotiation and drafting of, a number of global treaties, including the International Bill of Rights and the core international human rights treaties and a range of other UN declarations and documents. Australia engages extensively with its obligations under these treaties and participates in the furthering and development of international agreements, frameworks, and commitments. Australia has also demonstrated unreserved commitment to achieving and shaping the Sustainable Development Goals, which places Australia in a unique opportunity to similarly shape the GCM, which are interlinked with several Sustainable Development Goals. Australia can continue its role as an exemplary global citizen and contribute to a universal, global approach to reduce poverty, promote sustainable development, and ensure the peace and prosperity of people across the world.

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108 Jesuit Refugee Service Australia, 'JRS Australia Condemns the Australian Government's Refusal to Adopt the Global Compact on Migration' (Media Release, 21 November 2018) <https://www.jrs.org.au/jrs-australia-condemns-australian-governments-refusal-adopt-global-compact-migration-refugees/>.

109 Refugee Council of Australia, 'No Truth to Prime Minister's Claim About Global Compact on Migration' (Media Release, 21 November 2018) <https://www.refugeecouncil.org.au/no-truth-to-prime-ministers-claim-about-global-compact-on-migration/>.

110 Asylum Seeker Resource Centre, 'Open Letter Calls on Government to Adopt Global Compact on Migration' (5 December 2018) <https://www.asrc.org.au/2018/12/05/openletter_gpc/>.

111 Smith, Philips and Georgeou (n 29) 8.

112 Australian Government, 2017 *Foreign Policy White Paper* (n 102)) 92-93.

113 Ibid 72.

The world is interconnected and global issues like migration require global responses. Put simply, migration raises complex global challenges that no State can address alone. Australia must continue to demonstrate that it is a leader in human rights and migration policy and should contribute to ensure safe and regular migration to promote economic growth, human rights, and international law and norms by endorsing the GCM.

The significant impact of climate change, in particular, means that now is the opportune time for Australia to commit to the GCM and global cooperation on migration. We urge Australia to do so.

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