



Report from the MENA and GCC Civil Society Consultation on the Global Compact on Migration

August 24-25 & September 24-25, 2017

Introduction

The process leading to the adoption of a Global Compact on Migration is an exciting yet anxious time for many civil society organizations working with migrants on the ground. In many ways, civil society in this region does what government cannot or is not willing to do: from basic language classes, to legal, social, and psychological assistance, community empowerment and vocational training, to visiting detention centers and prisons and providing humanitarian assistance, and assistance in emergencies. By doing this work, civil society provides an invaluable assistance to governments and is uniquely positioned to provide a crucial link between governments and migrants, infusing policy processes with grassroots knowledge to which governments may not otherwise have access.

The Global Compact on Migration, being the first intergovernmental negotiated agreement under the auspices of the United Nations, is uncharted territory. The stakes are high and while responsibility primarily rests on the states, the process requires the participation, commitment, cooperation, and mutual learning between different stakeholders; including states, civil society, and migrants themselves. If done well, this could be an unprecedented opportunity to improve the lives of millions of migrants by reaffirming already existing commitments to the human rights of migrants under international law, and putting in place mechanisms to operationalize them on a global, regional, and national level.

The MENA Civil Society Consultation on the Global Compact on Migration took place in Beirut on the 24-25 of August 2017. A more focused consultation for Civil Society in the Gulf Cooperation Council also took place in Beirut on the 24-25 of September 2017. Both consultations were organized by the Cross Regional Center for Refugees and Migrants, a group of civil society organizations in the Euro-MENA region working on migration and refugee issues. More than 65 participants from local human rights, women's rights, child rights, humanitarian and faith based organizations, labor unions, and migrant organizations attended the consultations. Participants discuss 8 main topics: (1) the

human and labor rights of migrants, (2) the governance of migration, (3) detention, (4) return and reintegration, (5) mixed migration, (6) migrants and crisis, (7) children on the move and other children affected by migration and recruitment¹.

This is the first civil society meeting of this scale in the region where participants came together to share their views on the Global Compact on Migration and to offer concrete recommendations.

As organizations with direct links to migrants on the ground, civil society is eager to see a compact that is migrant centered and one which “makes a real difference in the everyday life of migrants”. To this end, we have laid out a vision of what would a human rights based approach to migration practically mean in our region and how could this be implemented. A number of good practices, recommendations, and mechanisms were identified. The pages that follow presents a first draft of those recommendations.

(1) Labor and Human Rights of Migrants

Migration policies in labor receiving countries of the MENA region have and for a long time fallen short of international standards. The kafala system (or sponsorship system) which governs the work and living conditions of migrant workers in the Middle East is a set of laws and practices which limit many of the worker’s basic rights including the right to mobility in the labor market, the right to terminate employment and ability to return home before the end of the contract, and the migrants’ right to family life. The employer-employee relationship is built around a strong dependence on the employer; which creates a huge power imbalance. The kafala links the legal status of the worker to that of the kafeel (or sponsor) so that if workers leave their jobs their visas are automatically revoked and they become in a situation of illegality. Under this system, access to justice is very difficult as in the overwhelming majority of cases employers have the power to deport workers even when judicial procedures are still ongoing. A number of countries have committed themselves to revise or abolish the kafala system, this is encouraging. However, to uphold the labor and human rights of workers in the region, states must commit to promoting fair migration policies that balance between the needs of economy and the rights of the worker without compromising the latter.

RECOMMENDATIONS

¹ Recommendations from the session on recruitment were incorporated into the section on the governance of migration.

Promote fair policies on migration:

- *Include migrants- dominated sectors into national labor laws:*

At the heart of the present violations to workers' labor and human rights in the region are policies which discriminate between the rights of nationals and the rights of migrant workers. A good example of this discrimination are the migrant dominated sectors of domestic and agricultural work which are excluded from the labor laws of many Arab countries (for example, Lebanon, Oman, KSA exclude domestic work from their national labor laws. As a result, migrant workers in those sectors do not enjoy the same protections that other workers enjoy in terms of minimum wage, work hours, health benefits, end of service compensation, protection against wrongful termination among others.

States in the region should expand the remit of labor law to women and migrant-dominated sectors such as domestic work and agricultural work. A number of Arab countries have started to move in this direction, this includes Jordan and Bahrain where domestic workers were partially incorporated under local labor laws.

- *Promote flexibility and mobility within the labor market:*

Under the ILO Convention No. 29 forced labor is defined as having two key elements:

- Work that someone is not doing voluntarily and
- Work that is extracted under the threat of penalty

The right of migrant workers to be free from forced labor was also underlined by the Convention on Migrant Workers and Members of their families (article 11).

Migrant workers who fall under the sponsorship system do not enjoy the right to terminate their employment. Because of the inability to terminate employment, workers can find themselves doing involuntary work for the fear of penalty whether in the form of detention and deportation, non-payment of wages, or in some cases facing criminal charges.

To end rampant cases of labor abuses and forced labor in the region, states should de-link the status of migrant workers from that of their employers and allow workers to terminate their employment with reasonable notice and to change employers. Instead of linking workers to specific employers, workers could be linked to specific employment categories. This will guard against situation of

labor exploitation, forced labor, and labor trafficking, that many migrants in the region are pushed into under the current system. In countries where exit visas exist (such as Qatar), those should also be abolished as they constitute an infringement on the worker's freedom of movement and the right to leave any country including their own (UDHR, ICCPR, and CMW).

A notable exception is Bahrain where all migrant workers, including domestic workers, can terminate their employment. The law required the worker to give the employer a 30-day written notice. Bahrain has also recently introduced a new flexible permits system for migrant workers with irregular status, which allows them to obtain a work permit and work legally in the country for two years. The flexi-permit system allows workers to work without a sponsor and work for more than one employer in part-time or full-time jobs. Bahrain is the first country in the MENA region to allow migrants to live and work without a sponsor although some limitations apply on the eligibility for this new scheme.

Before that, Bahrain introduced reforms to allow more flexibility and mobility in the labor market. Bahrain's reforms which were introduced allowed workers to unilaterally change employers, without a minimum time requirement. Migrant workers could apply for transfer at the Labor Market Regulation Authority, even without the consent of their employer. However, in 2011, those reforms were watered down when an additional requirement was added. Workers had to have spent at least one year working for their previous employer to qualify for transfer. Furthermore, data is lacking on the number of applications that were approved under this scheme.

Good practices can also be observed in Qatar's new law (No 21/2015) and the UAE's Ministerial Decision (No. 1186 of 2010) which allows workers to change employers at the end of the contract without permission of the previous employer.

In 2015, the UAE, has introduced additional reforms allowing workers to unilaterally terminate a renewed work contract and find new employers (Ministerial Resolution 765 of 2015). Under those new reforms however, low skill migrant workers on a first time limited-term contract are unable to change employers unless "the employer initiates the termination of the employment relation, without reason of noncompliance on the part of the worker, provided the worker has completed a period of no less than six months with the employer" (Ministerial Resolution 766/ 2015, article I-3). The 6 months period is waived for those who are deemed as high skill workers.

There is no doubt that these reforms constitute steps in the right direction indicating a gradual relinquishment of rigid employment models, which

characterized earlier employment relationships in the region, however, those reforms must be supplemented by additional steps to ensure all workers whether high skill or low, on a fixed term, first term or renewed work contracts, reap the benefits of mobility and flexibility, and that policies do not unintentionally create hierarchies of rights and privileges.

Despite the urgent need to promote labor mobility and flexibility for all workers including the right to terminate employment and change employers, many states in the region have shied away from such reforms. One often cited reason is that employers put substantial financial investments to recruit workers. If workers are given to the right to change jobs, states are concerned that employers will stand to lose their investment.

Insurance schemes allowing employers to recoup part of their initial fees when migrant workers terminate employment early through no fault of the employer, could constitute a solution that allows states to extend the right to job mobility to all migrant workers (regardless of skill level, the nature and duration of the contract, or the time spent working for previous employers) whilst preserving employers' interests and the need for stability in the labor market.

An insurance scheme allowing employers to be compensated was introduced in Jordan as a condition for recruitment, although in practice there were some problems in application. A number of other countries, including the Kingdom of Saudi Arabia and Lebanon, are looking into setting up similar insurances for the domestic work sector. For insurances to an effective tool, coverage must be expanded to include workers in all sectors (not only the domestic work sector) and provide compensation not only to employers in cases of premature work termination, but also to compensate workers for employers' premature terminations.

The cost of insurance must be borne entirely by the employer and must be imposed as a requirement for obtaining recruitment pre-approval authorization from the authorities.

In addition to the lack of mobility in the labor market, requirements of current sponsorship are equally burdensome on employers and employees. For instance, the live-in requirement for domestic workers is something that many employers and employees do not support, however the current system does not allow domestic workers to work for multiple employers or live independently.

To address the lack of flexibility in the labor markets, employers and employees have oftentimes found informal work arrangement to bypass current sponsorship requirements. However, because of the informal nature of those arrangements

migrants become even more vulnerable to rights violation including non-payment of wages, blackmail, and abuse. Even when no abuses take place and when work arrangements are based on the mutual consent of the worker and the employer, immigration authorities can still detain and deport the worker for failing to abide by sponsorship regulations.

States should promote migration policies that consider long-term labor market needs into account employers' and workers' preferences in terms of contractual arrangements, including in the care economy.

- *End Wage discrimination based on nationality, gender, and migration status:*

Migrant Workers in the region are often concentrated in sectors where working conditions are difficult and where nationals refuse to work, these include construction, domestic worker and agriculture. As a result, wages in these sectors are very low and often below national minimum wages (where those exist).

Migrant women face double wage discrimination, for being foreign and because of the gender gap that exists between men and women in the region. Jobs that women do are concentrated in less regulated sectors such as domestic worker and agriculture, making them more prone to exploitation and unequal treatment.

Wage discrimination based on nationality is also rampant in the region; Filipino workers earn the highest wages while Sri Lankan, Indonesian and Bangladeshi earn the lowest wages- and is often linked to employer preferences and the perceived attributes of the workers.

Wage discrimination based on nationality, gender and migration status contravenes the fundamental principles and rights at work and a number international convention (Article 25, CMWs; Article 6, ILO C97).

States must end wage discrimination by developing skills qualifications and recognition systems, including for domestic, construction and agricultural workers, with a view to capturing the occupational segmentation within the different sectors and waging occupations appropriately irrespective of nationality and migration status. States must also promote opportunities for career progression within sectors and across different sectors.

Finally, more states should adopt wage protections systems to ensure that workers are paid on time and are paid in full in accordance to the law. Wage protections systems are adopted in a number of countries in the region including the UAE and the KSA.

A particularly good practice is the UAE. In 2009, the UAE introduced its wage protection system which is an electronic salary transfer system allowing for transparency in salary payment to workers. All wages are transferred through the system in accordance with the deadlines stipulated by law, and through banks and other financial institutions which are authorized to provide this service. Information is shared between the central bank and the ministry of labor enabling the latter to compare payments against its database of migrant workers and prosecute employers for failure to pay the workers' salaries.

Promote the implementation of fair policies on migration:

- *Strengthen the role of labor inspections:*

Labor inspection plays a vital role in ensuring that labor standards are followed and that migrant workers are free from abuse and exploitation. Despite the advantages of labor inspections, the effectiveness of inspections has been limited in the region due to several factors:

1. The inability of inspectors to inspect sectors not covered by national labor laws such as domestic work (ex: Oman which excluded domestic workers from the labor law, and Qatar's and Kuwait's special law on domestic workers which does not give mandate for labor inspectors)
2. Laws which prohibits inspectors from entering the homes of employers, which precludes all inspections of domestic work (ex: Lebanon)
3. When inspectors have mandates, ministries of labor often lack capacity and inspectors lack training.

States must invest in strengthening the role of labor inspection as they constitute an important safeguard against abuses. To do so states must:

- Give mandate under the law for labor inspectors to inspect houses and to cover sectors which are often excluded from inspections such as domestic work
 - Inspection should also focus on recruitment agencies and check compliance with local laws and regulations
 - Develop a clear mechanism under the law for labor inspector to act when abuses are detected
 - Strengthen and formalize cooperation and referral between labor inspectors, diplomatic missions abroad, and civil society that provide services to migrants
 - Train and build the capacity of labor inspectors, and increase the size of available staff
 - When capacity is limited, adopt a decentralized approach to labor inspections and delegate responsibility to carry out inspection to municipalities
- *Uphold migrants' rights to organize and for associations:*

The right of migrants to freedom of association, and to form and join trade unions is recognized by several international instruments including the ILO fundamental principles and rights at work, ICCPR (article 22), ICESCR (art 22) CMW (Article 26), UDHR (article 20(1); article 23(4)), ILO C.87 and C.98.

Generally, laws in the MENA region have failed to extend the right to organize and form labor unions to all migrant workers. In some instances, migrant workers are allowed to join unions, however the right to form unions is reserved to nationals (ex: Jordan and Kuwait). This means that in sectors where migrant workers are the overwhelming majority, workers are effectively denied this right.

The right of migrant workers to organize in trade unions, and their right to vote and to run for leadership positions must be promoted. Oman constitutes a good practice; all workers in Oman including migrant workers have the right to form and join labor unions. In national contexts where the right to organize does not extend to migrants or certain migrant-dominated sectors of the economy, and until necessary reforms to allow workers to organize in trade unions, states should actively promote the rights of migrants to self-organize, including through in self-help groups and member-based organizations.

(2) Governance of Migration

Migrant workers in the Middle East and North Africa play a key economic role. Gulf countries and many countries in the Levant rely heavily on migrant labor. Despite the positive contribution of migrants to the economies of countries of destination, many of them are at high risk of abuse and face labor exploitation. Discussions on the governance of migration in the MENA region highlighted the need to improve governance in four key areas:

- 1- Information & the use of Technology
- 2- Bilateral agreements and MoUs
- 3- Recruitment
- 4- Skilling, skill recognition and skill certification

o Information and the Use of Technology

Migrants in the region have limited information about their rights. Lack of information about rights can lead to numerous abuses including deception about the conditions of the job, debt burden, unpaid wages and hazardous working conditions. States must cooperate

and invest in pre-departure and post-arrival orientation programs that would acquaint workers with the conditions of the job; including wages, days off, and nature of job and the rights in the countries of destination. A good example of cooperation between countries of origin and countries of destination in the region is the Comprehensive Information and Orientation Program (CIOP) for Migrant workers which was adopted by the Abu Dhabi Dialogue and which aims to offer information to migrant workers at four key stages of the migration cycles: pre-employment, pre-departure, post-arrival and upon return. Programs such as the CIOP must be multiplied and routinely updated. The cost for pre-departure and pre-employment orientation programs should not be borne by the worker. These programs should be either financed by the state or paid for by the employer.

In addition to orientation programs for workers, orientation programs for employers must also be made available as many employers in the region are not aware of their duties towards the workers especially in sectors such as domestic worker which are traditionally not considered as work. Orientation programs for employers must explain the rights of the worker and the conditions of the contract.

Another challenge compromising the worker's access to information is the language barrier. National labor laws in some countries of the region require that all contracts are signed in Arabic (ex: Lebanon, KSA, UAE). When this is the case states must ensure that in addition to Arabic, contracts are signed in a language that the worker understands and the worker is allowed to retain copies of the contract.

Modern technology is also a useful tool to maximize the exchange of information between prospective employers and employees and to enable workers to access remedies when their rights are violated. Online recruitment platforms could potentially undercut middle men that exploit workers in the recruitment process and offer a more transparent recruitment experience. However, the key to success lays in accessibility. If online platforms are not accessible to workers, online recruitment systems will perpetuate the dependency of the worker on agents who could act as gatekeepers. Other forms of online platforms can include online complaint systems, where workers could file complaints against employers or agents who abuse them. Complaint systems must be accompanied with protocols for actions cutting across different governmental agencies (including the police, immigration authorities, prosecution and ministries of labor) or linked to existing taskforces to ensure that complaints are dealt with seriously and in a timely manner. Systems for monitoring and evaluation must be put in place to ensure to track outcomes in each case.

- *Bilateral Agreements and MOUs*

A number of countries in the region including Libya, Jordan, Qatar, the UAE, Lebanon, Bahrain, Kuwait and the KSA have signed bilateral agreements or Memorandum of Understandings with labor sending countries. Bilateral agreements and MoUs are useful tools for the governance of migration, however in the context of labor mobility in the region, BLA and MoU have often fallen short of labor standards.

To strengthen the governance of migration, existing bilateral agreements must be revised to ensure that they are worker centered and that they address the human rights violations faced by workers in the country of destination, including confiscation of passports, lower wages, long working hours, prohibition on the enjoyment of family rights among others. All bilateral agreements must uphold minimum international standards and must be rooted in international labor and human rights standards.

Bilateral agreements must be transparent and a clear monitoring and accountability mechanism must be set forth. Bilateral agreements should not discriminate between workers based on nationality, gender, or any other criteria.

The negotiations of BLAs and MOUs should not only include governments but must necessarily include other stakeholders such as migrant workers, NGOs, and trade unions.

- *Recruitment*

The lack of transparency and oversight in the recruitment industry, and its profitability are among the main reasons why workers' rights are violated in the process. The prevalence of the employee pays model especially in the construction sectors in the Gulf, leaves many workers deeply in debt and vulnerable to trafficking and forced labor. Deception on the terms of the job, confiscation of identity documents, contracts substitutions and salary deductions are among the most common problems that workers in the region face.

The recruitment industry is transnational by nature and therefore its regulation requires the concerted efforts of both countries of origin and countries of destination.

States must assume a greater oversight over recruitment agencies both in countries of origin and countries of destination, including tougher licensing requirements. Oversight can be achieved by the signature of government to government agreements that will either replace partially or fully recruitment agencies or instate mechanisms to monitor their actions. A right based approach to government to government agreements would include provisions on minimum wages, operationalize the principle of zero fees for workers, and put in place legal redress mechanism for when workers' rights are violated.

Kuwait and the UAE are one of the few countries which have taken steps to ensure that the cost of recruitment is entirely born by the employers. Under UAE law (per ministerial order 52 of 1989, Article 6) employers are not permitted to reclaim the cost of employment from an employee when they leave – whether they do so of their own accord or whether they are terminated. In Kuwait, it is illegal to extract recruitment fees from prospective workers; recruitment agencies are legally liable to prosecution if a fee has been extracted from the worker at any stage of the recruitment cost.

Elevated recruitment costs have however been used by employers and states as a pretext to deny workers of labor mobility. Therefore, employer pays models must be supplemented by compulsory insurance on the work contract that would compensate part of the recruitment fees that the employers pay if workers end their contracts prematurely.

In the context where employer pays model is not the norm (ex: construction sector in some Gulf countries where workers bear the bulk of recruitment fees), states must encourage and subsidize ethical recruitment agencies that do not charge fees to workers and who provide post-placement follow up and support to workers.

Stricter criteria for the operation of recruitment agencies must be put in place and labor inspection must cover recruitment agencies, small businesses and private employers (ex: in the domestic work sector). A good practice of oversight over recruitment agencies can be observed in Lebanon, where the Ministry of Labor strengthened labor inspections and cracked down on unlicensed recruitment agencies, closing down 171 recruitment agencies between the years of 2014 and 2016.

Standard unified contracts by sector are a useful means to unify the work conditions for migrant workers. A number of countries in the region (Bahrain, Jordan, Lebanon, Kuwait), have adopted unified contracts for different sectors including domestic worker and the garment sector. To ensure that unified contracts are effective in standardizing employment conditions for migrant workers, states must ensure that the contracts detail the work conditions, including minimum pay by sector, maximum working hours, rest days, paid leaves, and sick leaves. The contract must also include reasonable termination provisions that allow workers to terminate their employment and guarantee their right to mobility in the labor market (as explained in detail in section 1). Finally, in countries there is no legislation requiring that employers pay for all recruitment costs, extra provision requiring employers to pay all recruitment fees can help guarantee that workers pay no fees for their recruitment.

States must also address the problem of contract substitution which forces workers to accept lower wages and unfavorable work conditions. Contract substitution can occur even if unified contracts are put in place and especially where no minimum wage is specified as there is no guarantee that the worker is aware of the terms and conditions of the job before he/she arrives to the country of destination. Hence, cooperation is needed

to ensure that workers sign only one contract in a language that he/she understands before arriving to the country of destination and that the terms of that contract are enforced upon arrival. This could be ensured through legislation as is presently the case with the recent the United Arab Emirates Ministerial Decree (764 of 2015) which links the prior approval for hiring a new migrant worker to the submission of an offer of employment with a detailed job description specifying the pay and duration of the contract. The job offer must be signed by the potential recruit in their own country before authorization for employment is given. In addition to linking prior approval for recruitment with signed employment offers, states must accompany those measures with swift and clear grievance mechanisms at no cost to the worker to ensure that the terms of the contracts are upheld.

○ *Skilling, Skill Certification, and Skill Recognition:*

Any discussion on skilling, skill certification and skill recognition must focus on four distinct stages where a number of safeguards should be followed.

Those stages include (1) Diagnosis, (2) Training, (3) Monitoring, (4) Results.

(1) Diagnosis: Any discussion of skill acquisition should be based on an accurate assessment of the needs of the labor market as well as the needs of employers and employees. Skill acquisition programs must be able to respond to the needs of the labor market and provide the workers with tangible skills that will directly improve their chances of finding a job, or improving the quality of the job they are able to find.

(2) Training: Training programs or skilling programs in countries of origin must meet accreditation requirements in countries of destination to ensure that workers who invest their time and effort in such program are indeed able to benefit from those newly acquired skills. Standards must be developed to put in place accreditation requirements and ensure that training/ skilling programs are of quality, and deliver the desired skills to workers. Information about accredited programs must be circulated widely to prospective employees in countries of origin, to ensure that migrant workers are not deceived into investing in skilling programs that are not accredited or do not provide them with the necessary skills for the job.

Where no particular skills are required, but where basic training and orientation may nevertheless be needed, countries of destination should develop sector specific post-arrival training programs that would acquaint the worker with the conditions of work within the sector, the culture, laws and norms in the new country.

All compulsory trainings, or training required by the employer which takes place after the worker has been matched with the employer, whether in the country of origin or destination, must be at the expense of the employer. This measure will help ensure that skilling programs are not used as a pretext to indirectly extract recruitment fees from workers.

(3) Monitoring: Ongoing monitoring is needed to ensure that centers that provide training comply with standards and deliver the desired skills to worker. States

should also monitor the payment of fees and ensure that skilling that occurs after a worker has been matched with a prospective employer is at no cost to the worker.

(4) Results: Acquiring new and specific skill sets benefits the employer and the economy. Workers should also benefit from upskilling. Benefits should be reflected in higher pay, promotion opportunities, as well as job mobility. Workers who upgrade their skills but do not have the opportunity to find a new job that is more in line with their new skill level constitute a lost economic potential.

States must also recognize that upskilling also takes place outside of conventional training/ skilling programs. Workers develop invaluable skills as a result of work experience. Therefore, workers who have not necessarily undertaken formal training must also enjoy the same benefits.

(3) Detention

- Administrative Detention:

Migrant Workers in the Middle East can be administratively detained for a variety of reasons. These include failure to renew their residence permits, detention pending the execution of a deportation order, in cases of mass expulsions, or simply on suspicion of violating the terms of sponsorship.

Administrative detention takes place outside of the judicial system; the person administratively detained is not accused of committing a crime. Consequently, fair trial guarantees including the right to legal representation, the right to visitation, and maximum duration of detention are not applied.

The decision to detain and or to deport is taken by immigration or other administrative officials, is rarely justified orally or in writing, and the migrant's right to appeal is not respected.

Even though administrative detention is extrajudicial detention, it is rooted in the laws of a number of MENA countries. Laws in the MENA region gives the authority for immigration and or other administrative entities to administratively detain migrants pending the execution of a deportation order (Lebanon, UAE, Qatar, Kuwait). In Lebanon and the UAE migrants can be detained and expelled if their presence is deemed as threat to public safety and security. In the UAE migrant workers could also be administratively detained as punishment for violating immigration provisions. Jordanian laws warrant administrative detention for the purposes of crime prevention and grants governors the authority to detain persons who are a "danger to the people".

The duration of administrative detention is greatly varied and can range from a couple of weeks up to a year in certain cases. This is especially alarming as migrants in administrative detention have not committed a crime. Different factors affect the duration that migrants spend in detention this include the cooperation of employers in securing return tickets and releasing any confiscated identity documents, and the cooperation and capacity of the diplomatic missions of the countries of origin.

Where exit visas are required (ex: Qatar), an uncooperative employer can greatly increase the time migrants spend in detention.

RECOMMENDATIONS:

-All people have the rights to liberty and security, guaranteed by the International Covenant on Civil and Political Rights, the African Charter of Human and People's rights, and the European Convention on human rights.

In line with this right, states in the MENA region should end administrative detention as detention constitutes an infringement on the person's liberty and security. Restrictions placed on liberty should always be a measure of last resort, **must take place by a court decision**, in accordance with the law and for shortest period possible. Detention should take place within existing penal procedures and not outside of the judicial system and must always include fair trial guarantees: including limits on maximum pre-trial detention periods, the right to appoint a lawyer, the right to consular assistance, the right to visitation and contact with family and friends.

- Furthermore, states in the MENA should amend their laws that allow for extra-judicial detention and deportation of migrants for vague reasons such as posing a threat to public safety or for being a danger to the people. States should clearly define and limit by law the circumstances under which a person poses a threat or endangers public safety and not leave it to the arbitrary discretion of immigration authorities. The determination of whether a person is posing a threat to public safety must take place in a court of law and states must be able to provide proof before detention/ deportation decisions are taken. Under no circumstance shall the enjoyment of any of the person's human rights be deemed as endangering public safety (for example the enjoyment of the right to family life, the right to freedom of movement etc.). Information on the reasons for detention should be made available to the migrant in writing as soon as a decision is taken and without delays, and the migrant should have accessible and swift channels to appeal the detention/ removal order.

- Monitoring the operations of immigration and security personnel must be undertaken in a routinely manner by an independent body to ensure that no abuse of power is taking place.

- Put in place swift, affordable, and effective mechanisms that allow workers to appeal decisions of detention and deportation.

- States should not tie workers to particular employers, instead workers could be tied to employment categories. Workers should be allowed to terminate their contracts and change employers within the same employment category without the need for latter's consent.

- Enable the worker to obtain information on their legal status or any charges filed against them by employers or other entities, either directly or indirectly through their legal representatives.

- States should use and invest in alternatives to detention; these can include reporting obligations for example reporting to the police or immigration authorities at regular intervals, residence obligations for example requiring residence at a particular address and placing migrants in shelters that do not deprive them of their liberty. Alternatives to

detention must be grounded in law. A good example in this regard is Qatari law which gives the Minister authority to “force the expatriate to reside in a specific area for two renewable weeks in lieu of arresting him” (Article 39, 2009 Qatar Sponsorship law). In addition to having good laws that warrant the use of alternatives to detention, states should put in place the necessary mechanisms and infrastructure which are necessary for the implementation of these laws. These include running open shelters or working in cooperation with civil society organization who do, and assigning officials to whom migrants can report.

-Abolish the requirement for exit visas as they infringe on migrants right to freedom of movement and freedom to leave any country including their own, outlined in the UDHR and the International Covenant on Civil and Political Rights and Convention on Migrant Workers and Members of their Families (article 8).

While the recommendations outlined above are medium term, there are a number of short term measures which can be put in place to improve the conditions of migrants in detention these include:

- until exit visas are abolished states should at least waive the requirement for exist visas when a migrant is in detention and is awaiting deportation
- The judiciary should assume a stronger oversight of the operations of security and immigration personnel especially in cases involving administrative detention.
- States should allow an external and independent monitoring of the conditions of detention centers
- States should require that employers deposit a monetary insurance as a condition for recruiting migrant workers. This insurance could be used to cover return tickets and other expenses if the employer absconds or refrains from paying.

○ Criminalization:

The criminal code of many countries in the MENA criminalizes migrants for administrative breaches. Migrants can face a prison sentence for failing to produce identity documents, failing to renew their work or residence permit, failing to register with the authority within a given time frame, and for illegal entry and stay. This is especially problematic because employees are dependent on employers for the renewal of their papers and practices of confiscation of identity documents are commonplace.

RECOMMENDATIONS:

Failure to renew permits, or to produce identity documents should not be criminalized, states must amend their laws to decriminalize administrative breaches.

-States must enact legislation to punish employers who confiscate workers’ identity documents or fail to renew the workers’ residence permit.

- Pretrial Detention:

Migrants and non-migrants in the MENA region who are in conflict with the law can potentially face prolonged periods of pre-trial detention. In many cases people accused of a crime serve more time in pre-trial detention than the actual sentence. This is because justice systems in the region are overcrowded and under-capacitated. Migrants rights to a fair trial, recognized by the major human rights treaties (Article 14 ICCPR; Article 6 ECHR; Article 8 ACHR; and Article 7 African Charter on Human and Peoples' Right) is especially compromised. Migrants are far more likely to end up in pre-trial detention than nationals for a variety of reasons, those include language barriers, lack of the knowledge of proceedings, and the cost of legal defense. Migrants are also more vulnerable to false allegations of theft as retaliation for leaving their employers.

To ensure that the rights of migrants to a fair trial is upheld the following recommendations have been developed:

RECOMMENDATIONS:

- Migrants have must access to interpreters at all stages from arrest, trial and sentencing. The access to interpreters of migrants who speak the language of the country is often compromised as judges consider that migrants are not in need of interpreters. However, migrants are usually not familiar with the legal terminology and therefore their ability to express themselves and to understand the entire proceeding is often compromised.
- states must facilitate lawyers' access to detainees, even when no formal power of attorney has been signed.
- laws and measures must be put in place that guard against the use of torture especially in terrorism cases, at arrest, investigation, and detention.
- all migrants must have access to legal assistance free of charge, either in the form of legal aid or through pro-bono legal assistance offered by civil society organizations.
- states must ensure decent living conditions in all prisons and detention centers including food, drinks, heating, health care etc. and allow the access of civil society organizations to those facilities.

(4) Return and Reintegration

The discussion on return and reintegration in the MENA region reveals the plurality of the return scenarios. Acting as a region MENA of origin, transit and destination, returning migrants have pluralistic experiences that cannot be captured by a single one size fits all return and reintegration policy. The return of migrants from Europe to the North Africa (especially Morocco and Tunisia) is essentially different from the return of

migrant workers in the middle east, or from the one on returns within the region itself in the context of war and displacement. Perhaps the major difference is that all migrant workers in the MENA region are future returnees as labor employing countries in the region do not allow migrants workers to obtain permanent status, while returnees from Europe are overwhelmingly undocumented migrants or rejected asylum seekers who have no possibility to regularize their status. The return of migrants affected by conflict within the region but who do not classically fall under the refugee category is another intricate third category that requires further probing. The discussion on return and reintegration therefore needs to be contextualized to ensure that the diversity of return scenarios is captured in the Global Compact on Migration.

Furthermore, the traditional binary division in state discussions on returns between ‘voluntary returns’, which ought to be encouraged and “involuntary returns”, which ought to be discouraged is overly simplistic and not very helpful in practice as it conceals the fact that migrants often feel compelled to return “voluntarily” for a variety of reasons including the inability to regularize their status in the country of destination or facing the threat of forcible removal. This ambiguity in the use of the term “return” has been used to conceal that the vast majority of voluntary returns, in the context of returning migrants to the MENA region, are in fact compelled returns. Hence, there is an urgent need for more clarity on terminology. There is also a need to move away from categorizing returns as voluntary vs. involuntary and to analyze returns from the lens of chosen vs. compelled returns. A right based approach to returns needs to recognize that the only acceptable returns are returns that are chosen by individual sovereign decisions and not those who are compelled by state policies. Chosen returns must be fully and meaningfully informed, based on up-to-date and accurate information. Consent must be given free of coercion, including violence and ill treatment, or the actual or imputed prospect of indefinite or arbitrary detention, or detention in inadequate conditions.

RECOMMENDATIONS

○ General Recommendations:

-States must ensure that all returns are carried out in full respect of the human rights of migrants under international law including non-refoulement obligations and prohibitions on collective expulsions.

- states must ensure that return is a chosen return free from any coercion including the threat of detention and deportation, and that migrants have access to accurate up-to-date information on their case and on the conditions in the country of return to make an informed decision.

-Migrants should be able to choose the country to which they are returning, contingent on the approval of that country if different from country of nationality.

- All returns should be safe and dignified and migrants must have access to basic services in their place of return. Basic services include water, electricity, education, health care among others.

- An individual assessment must be carried out for every returning migrant; the assessment must take into consideration the person's individual circumstance and specific needs. Return must also be coordinated with the country of origin to ensure that return is sustainable and that the returnee has access to basic services and employment opportunities upon their return.

-States must invest in policies which facilitate the integration of migrants and which aim to combat racism and xenophobia to ensure that return is not the result of discrimination, or anti-migrant sentiments in countries of destination. At the same time states must facilitate migrants' ability to stay connected with their cultures, especially second and third generation migrants. Instruction of language and culture at schools is a measure that states must adopt to guard against the erosion of migrants' culture. Freedom of association of migrant communities is another measure that allows migrant to preserve the link with their countries of origin.

-When children are involved, states must ensure that any return is in the best interest of the child and that the children has been heard and that his/ her views are taken into consideration. A post-return monitoring plan must also be put in place when children return to ensure that they are well integrated and that their rights are not violated including the right to education, health, family life, and protection against all forms of violence.

-Children should not be separated from their families in the context of return. When return is not deemed in the best interest of the child, family unity must be preserved by keeping families together in the country of destination.

-Countries of destination should provide documentation to migrants whose countries does not accept their return or to those who are stateless.

-All cases of returns must be well documented and states must be able to show that all the safeguards above are followed in every return case.

- Any benefits that states offer to returnees as incentives should be final, states should not be able to renegotiate/ change return benefits and the incentive packages given to migrants after the return has been effectuated.

- Recommendations in the context of returnees within the region:

The recent crisis in Syria and Iraq has resulted in the displacement of millions of people. Countries of the region are among the countries hosting the largest numbers of refugees and asylum seekers in the world. The number of refugees registered with UNHCR is 650 000 in Jordan, 1 million in Lebanon, 3 million in Turkey although the total numbers are suspected to be much higher as many refugees do not register with the UN agency. While many of the Syrians and Iraqis who are displaced by the ongoing conflict will stay in the countries where they currently are or will be resettled to third countries, when peace and stability are restored, many will wish to return to their country of origin.

These additional recommendations have been developed to ensure that this return is safe and dignified:

Returnees should have access to basic services, infrastructure and employment opportunities upon their return. States affected by war and conflict should invest in restoring basic services, infrastructure, and employment opportunities as soon as stability is restored. States who have supported the continuation of war and conflict should support the restoration of peace by limiting arms trade, and financing the restoration of infrastructure and basic services.

-Systematic human rights abuses in the context of war and conflict devastate societies and their legacy is likely to make the conditions of the country fragile even after peace is restored. Popular confidence in the political and legal institutions like parliament, the judiciary, the police and the prosecution service may be weak or non-existent. Therefore, in order to make a safe transition to sustainable peace, it is essential that the country invests in judicial and non-judicial measures to redress the legacies of human rights abuses and ensure accountability. Such measures can include criminal prosecutions, truth commissions, reparation programs, and various kinds of institutional reforms. These measures must be put in place before those who were displaced by conflict can safely return to their home countries.

In addition to legacies of human rights abuses, destruction and the collapse of state institutions can have many practical devastating consequences on the lives of those who chose to leave the country. Returnees may be faced with disputes around land ownership rights, and difficulties in registering marriages and child birth which have taken place outside of the country. Adults displaced by conflict and whose documentation is lost, destroyed or confiscated may also face a certain risk of statelessness if it becomes impossible to replace such documentation due to the destruction of original civil registries in certain locations, which has been reported in the case of Syria. The absence of this documentation also precludes the registration of subsequent divorces, deaths, marriages, and births. Returning children might have to re-adjust with a new educational systems and different teaching curriculums.

In line with the rights of every child to birth registration and nationality (article 24,

paragraph 2 of the International Covenant on Civil and Political Rights and article 7 of the Convention on the Rights of the Child), states must ensure that migrants and refugees have access to marriage and birth registration and facilitate the process. This includes waiving requirements which exists in certain countries for valid residence permits as condition for registration and relaxing the requirements on what constitutes acceptable identification. Where identity documents have been lost or destroyed, cooperation between states is needed to ensure that the registration of marriages and birth is possible in the country where migrants and refugees are present and recognized in the home country upon return. Special expedited judicial procedures must be put in place to deal with disputes arising from the destruction of property deeds and conflicts of ownership rights. Scholastic support programs must be put in place to support children reintegrate school upon return.

- Recommendations in the context of returning Migrant Workers working in the MENA:

It is important to emphasize that MENA civil society understands return as a return that migrants themselves choose and not a return that the migrants feel compelled to choose for fear of detention or for the lack of other options. For the sake of clarity, we have chosen to refer to all other types of returns as deportations.

Under current sponsorship systems, labor employing states in the MENA region have given administrative authorities and employers significant powers to deport workers, while placing substantial limits on the ability of workers to return home before finishing their contracts.

The detention and deportation of workers have been dealt with in more details under the section on “Detention”. However, it is important to point out here that in the majority of cases migrant workers returns are in fact deportations. Undocumented migrant workers are rarely given the chance to regularize their status, are routinely detained and deported, or given notices to leave the country. This is even though migrant workers can become undocumented for a variety of reasons and through no fault of their own. These reasons include the refusal of employers to release workers, employers’ failure to renew the worker’s documentation, and changing regulations that render a category of migrants undocumented (ex: Lebanon new policy which denied domestic workers family rights affected those workers with families who were already present in the country).

Equally important to highlight, are the restrictions placed on the migrants’ ability to return home. In many MENA countries, migrant workers do not have the right to terminate their employment. Some countries also place limits on the workers ability to exit the country without their employers’ consent.

In some contexts, the return of undocumented migrants with children under amnesty periods have resulted in the separation of families and in children left behind. This is because of the difficulty in registering the births of children of migrant workers. Given that children who are not registered have no proof of identity, parents are sometimes forced to leave them behind and return home under short term amnesty programs.

In the context of an increased dependency on migrant labor in many Arab states in the region, states must reassess its approach. Instead treating migrant labor as a dispensable commodity; deporting those who become undocumented to be substituted by new workers, states must explore opportunities for status regularization and for more flexibility in the labor market (detailed under the section on Human and Labor Rights). The recent Bahraini policy to provide undocumented workers with untied visas is a step in the right direction that must be made accessible to all undocumented worker and not just a few. In addition to the moral imperative for this approach, states stand to economically benefit; regularizing workers and allowing mobility in the labor market would cut costs on employers and enterprises, reduce employment in the informal sector and benefit the economy as a whole. Finally, states must uphold migrant workers' rights to family life (Article 16 of the UDHR, Article 23 of the ICCPR) and facilitate birth registration and the acquisition of a name and nationality. Countries of origin must also recognize the difficulties migrants face in registering their children in the countries of destination and must facilitated procedures for birth registration in their diplomatic missions abroad; including allowing children to acquire their mothers' nationality.

(5) Mixed Migration

The Middle East and North Africa region is one of the regions with the largest number of migrants and refugees in the world. The MENA region acts at once as a region of origin, transit and destination for both refugees, migrants and internally displaced people. According to the International Organization on Migration, in 2015 there were 34.5 million international migrants in the MENA region, including registered refugees, a 150% increase from the number of migrants in 1990. The top destination of international migrants in the MENA region are Saudi Arabia, the United Arab Emirates, Jordan, Kuwait, and Lebanon in that order. Labor migration continues to constitute the largest share of all migration to this region where nearly three quarters of international migrants in the region are migrants working in the Gulf Cooperation Council (GCC) countries. While the Mashreq countries and North Africa hosts a significantly smaller number of migrants 19% and 6% respectively. Furthermore, statistics point out that the MENA

region is the “largest producer of refugees worldwide, with over 6 million refugees originating in the MENA at the end of 2015”².

As a region with mixed human mobility, we recognize that all refugees are also migrants; and that all migrants, especially those from the global south, are potential refugees. While both compacts will proceed as two separate documents, it is important to acknowledge the existence of this dynamic; and to provide a well-articulated bridge that extends continued and full protection for those individuals, whether refugees or migrants, or people caught in between statuses.

People in this region often fluctuate between the two categories as a result of government policies or as a result of change in circumstance in their country of origin. Furthermore, the motivation to move is in reality complex, blurry and overlapping. The global compact on migration must recognize this fluidity between migrants and refugees to ensure that people do not fall through the cracks of policy.

Neighboring countries have been overwhelmed by crisis in Syria and continue to struggle to find adequate policy responses. Policies on status determination and the right to work have often been vague and inconsistently applied. State responses in the different countries have varied from complete intolerance of refugees’ right to work (Lebanon), to states not allowing refugees to work but tolerating it in practice (Egypt), to active encouragement of refugees to work in certain occupations (Jordan). This is despite that the right to “work, to free choice of employment and to just and favorable conditions of work” is a fundamental human rights principle which is enshrined by the Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights.

Amid intolerant policies, refugees who choose to work are sometimes forced to forgo their status as refugees. For example, Syrian and Iraqi refugees are officially prohibited from working in Lebanon. Employers could be exorbitantly fined for employing refugees. If refugees wish to work they automatically lose status as refugees and considered as migrant workers who fall under the country’s sponsorship. In Egypt, refugees are not allowed to work, however the state tolerates refugees’ work, and so refugees oftentimes work in the informal economy.

On the other end of the policy spectrum there’s Jordan, a country who was successful at securing pledges for \$1.7 billion to support its Syria Refugee Response Plan which is known as the Jordan Compact. The Jordan Compact placed job creation at the center of its vision by promising to create 200 000 jobs for Syrian refugees. A year after the Jordan compact was agreed, experience has shown that compact faces a number of practical

² International Organization for Migration 2016. Migration to, from and in the Middle East and North Africa Data Snapshot.

challenges including the hesitance of refugees to apply for work permits as it limits their employability to certain sectors such as construction or agriculture, or because they believe that having a work permit linked to one particular employer would limit their job mobility and thus would decrease their job opportunities.

The treatment of refugees and migrants at the border is particularly worrisome as countries in the region move to place further restriction on the entry of people in need of protection. Jordan officially closed its borders with Syria in June 2016 and Turkey in closed its border in 2015, with the exception of allowing the entry of injured asylum seekers. Lebanon has moved to place stringent restrictions on the entry of Syrian national in early 2015, putting an end to the no visa arrangement between the two countries. Syrians wishing to enter Lebanon must fulfill one of these conditions: they must have a Lebanese sponsor (migrant workers), own real estate in Lebanon, or the purpose of their travel must fall under one of the following categories: tourism, business, study, transit, medical treatment, or visa application at a foreign embassy. Syrians are not allowed entry for fleeing war and persecution. Multiple cases of abuse have also been reported at the Syria-Turkey border. There has also been reports of Syrian refugees stranded at the Syria-Jordan border, and the Morocco-Algeria border. The closure of borders has been generally linked to security incidents in the countries, fear of terrorism and a rising anti-migrant popular sentiment.

RECOMMENDATIONS:

Evidence from the different countries in the region strongly suggests that refugees fair economically better and are less prone to exploitation when their right to work is recognized and when their work is formalized. While states have legitimate concerns that must be addressed, including competition with the national work force, states must acknowledge that giving refugees the right to work will only formalize the work that most refugees are already for lower wages as part of the informal economy. Helping refugees make the transition from the informal economy to the formal economy will create less competition to the national work force as it will drive refugees' wages up. Destination countries must be encouraged to consider several feasible options that can make refugees presence more economically sustainable and less reliant on aid, these include:

- Providing refugees with access to work permits and simplifying procedures for obtaining work permits.
- Developing market assessments of destination countries labor needs and establishing “sectoral quotas” that can be filled by refugees with already identified relevant skill sets. This must also take into consideration establishing a minimum wage scheme designed to prevent the abuse of workers, both citizens and refugees alike.

- Encouraging entrepreneurship programs which help refugees open their own business according to market needs.
- Carrying out a skills assessment of refugees as part of the registration process in order to facilitate job matching and integration in the labor market.

The treatment of refugees and migrants at the border and the closure of border are particularly concerning. While states retain the sovereign right to guard their borders and admit those who meet certain criteria, the sovereign rights of the state should not deny protection to those who need it the most. States should amend their policies to guarantee admission to asylum seekers. A swift mechanism for status determination must be put in place and asylum seekers must be given temporary legal residence until their claims are resolved. Refugees and migrants must have access to services including legal assistance. Furthermore, as reports of abuses at the borders and at the hand of security personnel are increasing in the region, it is important to invest in training border guards and security personnel on the identification and assistance of those in need of protection and to establish the presence CSO (child advocates, women advocates) alongside immigration officials at all border crossings, including airports and land borders to aid with identification, case management and referrals.

(6) Migrants and Crisis

Discussions of a migration crisis has shaped much of the global discourse about migrants in recent years. Although there is no agreed upon definition of what constitutes a migration crisis, the discourse of a migration crisis seems to take place when:

- 1- When migration happens in large numbers
and/or
- 2- When people move from one state to another irregularly

The discourse on a migration crisis is not unique to Europe or the West, states in the MENA region has often employed this discourse to solicit international aid from donor countries and justify restrictive measures at home.

As a region hosting the largest number of people displaced by conflict and crisis, we understand that the concept of large numbers is relative. While Europe raised the alarm after 1 million refugees have entered the continent in 2015, 6 million Syrian refugees are present in Turkey, Lebanon and Jordan.

The global discussion of a migration crisis has had some considerable negative consequences on the lives of migrants:

It has justified and encouraged an anti-migration rhetoric in the region and beyond, which has been in turn capitalized on to justify stricter migration policies and stricter border control measures.

It has been exploited by states to mainstream an erosion of migrants and refugees' rights and to classify migrants in large movement as posing an exception to the human rights framework where old rules do not apply.

We stress that migrants whether displaced by conflict, climate, or economically motivated do not constitute a crisis. Migrants regardless of circumstance must fall under the human rights framework. The global compact on migration is an opportunity to re-affirm commitments to existing human rights principles, improve the protection of migrants, and include actionable commitments. Migrants displaced by crisis whether internationally or internally, and migrants in countries in crisis have special needs and vulnerabilities that states must attend to.

First, states must acknowledge the vulnerabilities facing refugees and migrants in the context of a crisis and must identify successful direct impact initiatives to address initial emergencies situations and to simultaneously devise long term locally sustainable programs or responses.

Second, states must acknowledge the protection crisis facing labor migrants and take immediate steps to improve access to justice by strengthening consular capacities, providing free legal services, launching labor inspections and implementing alternatives to detention.

Third, states must improve access to humanitarian protection. This can be done by improving the documentation of refugees (for example by granting temporary visas for asylum seekers until their status is determined), and applying consistent and transparent status determination procedure.

Fourth, in the context of internal displacement states should develop specific standards for identification and protection of IDPs with a special attention for women and children. Safe zones must also be created to protect those who are internally displaced.

Fifth, increased coordination between law enforcement and CSOs is essential in the context of a crisis to mainstream a human rights approach.

Finally, states in the region face multiple constraints and have limited capacities. The responsibility to protect does not only extend only to states in geographical proximity. States that have played a role in causing and sustaining conflicts in the region have a greater moral obligation of care to those who are affected (people and countries). That's why coordinated and targeted migration plans which reinforce responsibility sharing must

be strengthened. Resettlement to countries that have more resources and can offer decent living conditions for refugees must also be increased.

(7) Children on the Move

Children in the context of migration have needs and vulnerabilities that deserve particular attention. *A child is a child* regardless of migration status and children ought to enjoy the equal rights whether they are refugees or migrants or children of migrants.

Generally speaking, and as a result of discriminatory policies that exists in the region, children in the context of migration are not afforded equal rights. Children in the context of migration are discriminated against in their access to services including health care and education. When children are given the rights to access services, requirements for valid residence and documentation makes it very difficult for a large number of children to access their basic rights.

As a result of the recent crisis in Syria and the large displacement in which has resulted, neighboring states have grappled to find adequate responses. The education of children displaced by the conflict was designated as a top priority both nationally and internationally. However, the response of a number of states including Jordan and Lebanon has been in practice far from adequate. In early 2016, the United Nations estimated that 715 000 Syrian refugee children between the ages of 5 and 17 are not receiving any education in Turkey, Lebanon and Jordan. To address this problem, Jordan and Lebanon have been operating special afternoon shifts for Syrian Refugees for a number of years now. However, this approach has had limited success. Teachers in public schools in Lebanon were faced with longer shifts, while Jordan employed less experienced teachers to teach the second shift. Lower quality of education and failure to integrate schools as a result of difference in curriculum and language of instruction, high indirect cost (such as transportation) are among the main problems. In Turkey, the incidence of violence in schools is a major barrier to education. Furthermore, the separate schools approach has also discouraged the integration of refugee children and families in their host environment.

Refugees who are displaced by conflict have difficulty registering the birth of their children as result of the policies at home and in the destination countries. Countries such as Lebanon require valid residence permit to register children in the state registry. Syrians with lost documentation face a major difficulty in replacing them.

Reports of child labor and child marriages are particularly rampant in refugees hosting countries. Child marriages are economically and socially motivated, where girls are perceived as an added economic burden on the family. Child brides are particularly prone to exploitation and face heightened risks of gender based violence, trafficking and health complications.

The majority of children who work do so in unsafe conditions, with no checks on minimum age or work conditions. Employers prefer to employ children because they are

paid less, while parents send their children to work because they are less prone to arrest at check points than their undocumented fathers. Laws on child labor in the region fall short of international standards, however in certain cases involving the economic exploitation of children have been prosecuted under national anti-trafficking laws.

In many countries in the region, multiple restrictions are also placed on the ability of migrant workers and particularly domestic workers to have children. In Bahrain and Kuwait, unmarried foreign women who become pregnant are detained and deported. Unmarried domestic workers in particular in Kuwait, Qatar and Saudi Arabia are detained and deported. In Lebanon, domestic workers whether married or unmarried are denied the right to have children and are detained and deported. Multiple cases of the detention of children with parents for the purposes of deportation have been reported in this context.

When domestic workers do have children, they try to avoid detection by the authorities as they can face detention and deportation. The consequences of this is catastrophic on children who often remain unregistered (and sometimes stateless), and cannot access basic services including education, health care etc. Being undocumented, those children also face the threat of indefinite detention if detected by the authorities.

To address discrimination in services,

Children regardless of status (refugee, migrants etc, documented or undocumented) must have access to the same quality services. To this end, states must harmonize their laws to ensure that the principle of non-discrimination (Article 2, Convention on the Rights of the Child) is realized.

States must pay particular attention to the right to education and eliminate all barriers to education including documentation requirements to ensure that no child is left behind. Programs targeting families must also be designed to raise awareness on the importance of education. States must also be responsive in adapting its curriculum to the needs of children who have to integrate the educational system (including language of instruction, support classes for refugees and informal education). States must also establish quality controls to ensure that the quality of education that children in the context of migration receive is equal to that of local children. Special efforts must be made to increase school retention rates and to target children who are out of school. All diplomas given to children in the context of migration must be officially recognized both in the destination country and upon possible return.

Finally, firewalls prohibiting service providers from sharing information with immigration must be set up in all sectors.

A good practice can be observed in Morocco where Islamic studies are obligatory part of Moroccan programme. Faced with the needs of migrant children of the Christian faith, schools in Morocco incorporated the instruction of Christianity into its program.

Vocational training possibilities must also be explored for children of working age and states must invest in durable solutions for families including investments in providing economic opportunities and access to employment.

To address problems with birth registration,

All children have the right to birth registration and nationality (Article 7, CRC). States must relax the requirements for acceptable documentation for birth registration. Any requirement for valid residence permits to complete the registration process must be waived and mechanisms must be put in place to ensure children with no documentation and stateless children could be registered.

To address child labor, child marriage and the exploitation of children,

Children have the right to be protected from economic exploitation and from performing hazardous work or work which interferes with the child's education, or that is harmful to the child's health or physical, mental, spiritual, moral or social development (Article 32, CRC). Laws on child labor in the region must be strengthened and harmonized with international instruments on child labor (ILO C138; ILO C182), including limitation on the minimum age of employment and work hours and conditions, and prohibition on the employment of children in certain occupations. States must also put in place mechanisms to monitor the employment of children especially in the informal sector such as agriculture, including establishing hotlines and strengthening labor inspections. States must also combat the exploitation of children by setting up safe, child friendly spaces along common migration routes, in particularly in transit countries.

Programs to raise awareness on child marriages need to be developed, this must be coupled with increased sustainable economic opportunities for refugee communities to address the economic incentives of child marriages. The minimum age for marriage needs to be raised to 18.

Care arrangements in the form of integration into existing foster care systems or specialized shelters, must be put in place for exploited, trafficked and unaccompanied and separated children.

To address the deportation of migrants especially women with children,

All individuals within the borders of a state have the right to family life; this is a fundamental principle that applies to migrants and nationals (article 16, UDHR; Article 23, 26 and 31, ICCPR; article 10, ICESCR). Further, the Convention on the Elimination of All forms of Discrimination Against Women (Article 16 d) states that men and women should enjoy *“the same rights and responsibility as parents, irrespective of their marital status, in matters relating to their children”*.

The deportation of foreign women for having children constitutes a double discrimination. States should take action to amend existing legislation or regulations to ensure that all migrant workers especially women, married or unmarried, the right to start families and/or have children. State should also promote the right to family reunification for all migrants of both genders.

The detention of children should also be abolished, children should never be detained for immigration breaches, and children should not be separated from their parents. The protection of children should also extend to their parents to ensure that the best interest of the child not to be separated from their parents is realized.

In all determinations concerning children the best interest of the child should be the primary consideration. States must put institute independent best interest assessment and best interest determination procedures in all cases involving children.