

# International Migration Review Forum: Informal Interactive Multi-Stakeholder Hearing

Michele LeVoy – PICUM – 16 May 2022

## Introduction

- Throughout the past two months as states have negotiated the Progress Declaration, there have been many welcome attempts by the co-facilitators to include progressive language and references on a number of key issues.
- Yet some states – including those within the European region – wished to pull back on some of the progressive wording. In the end, some of the human rights references have been weakened.
- I would like to highlight three key areas where states, civil society and other actors can work together to ensure that some of the more challenging areas in the Global Compact on Migration can be realized. Each of these key areas draw on the laws, policies and practices from the Europe region. The areas are: child detention; regularisation; and access to services.

## 1. Detention of children

- On first reading, the wording in **Para. 31** seems acceptable:  
“Some Member States have taken steps to end child immigration detention, advancing efforts to protect and respect the best interests of the child.”
- Yet as civil society and other partners accompanied the five versions of the Progress Declaration from Zero Draft to Rev 4, we sadly noted that the child rights standards concerning non-detention of children were reflected more clearly in previous drafts.
- [196 UN Member States have ratified the Convention on the Rights of the Child](#) – almost 100% global ratification of this instrument. The Committee overseeing its implementation together with the Migrant Workers Committee, [clarified](#) in 2017 in a joint general comment that immigration detention of children is always a child rights violation and never in the best interests of the child.
- In Paragraph B.5 of the joint general comment, the Committees state:  
“Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.”
- It is thus disheartening to see the final wording in **Para. 32** of the Progress Declaration:  
“Some policies, practices and conditions associated with immigration detention, including arbitrary deprivation of liberty, overcrowding and poor access to basic services have affected the physical and mental health and well-being of migrants, as well as child development.”
- The wording in Paragraph 32 suggests that if the conditions of detention were improved, then children’s development wouldn’t be harmed. But we already have the world’s eminent child rights body that says that detention itself is harmful for the child. Unfortunately this wording reflects a downgrade of child rights standards.

- Also - in **Para 57**, in previous versions states had indicated that they would “evaluate” progress and challenges in working to end detention of children. Now the wording is simply that they will “consider” them, which is much weaker.

“We will consider, through appropriate mechanisms, progress and challenges in working to end the practice of child detention in the context of international migration.”

- Since the adoption of the Global Compact on Migration in 2018, the European Parliament has on four different occasions called on EU member states to end immigration detention of children (in [2018](#), [2019](#), [2020](#) and [2021](#)).
- In Europe, [a report by the Quakers found in 2018](#) that Ireland did not detain children for immigration purposes, and 8 EU member states did not detain unaccompanied children (Belgium, Hungary, Slovakia, Spain, Italy, Germany, Portugal, Bulgaria).
- **We recommend going forward that in order to look at both the challenges as well as progress made in ending detention of children, that states work closely with civil society. This could also be through a peer learning mechanism.**

## 2. Regularisation

- We commend the commitments to access to a secure residence status and regular pathways throughout the Global Compact and the Progress Declaration and in **Para 59** which says that “states will strengthen their efforts to regularize migrants in an irregular situation.”

59. We will strengthen our efforts to ... and regularizing migrants in an irregular situation, in line with national laws. .... [AD REF]

- Despite the addition of “in line with national laws” (one of two places in the text where this has been added, which weakens it) – the Progress Declaration recognizes that governments are extending or issuing secure residence and work permits as a way to prevent further irregularity and social exclusion.
- Since the adoption of the Global Compact on Regular Migration, countries around the world have adopted regularisation programmes, including [Colombia](#) and [Thailand](#).
- In Europe, [Ireland](#) is currently carrying out a regularisation scheme that will run until the end of July 2022 for adults who have lived in Ireland for four years or children who have been residing there for three years.
- In October 2021, Spain passed a [law](#) that simplifies and accelerates procedures to issue residence and work permits for unaccompanied children, as well as those who arrived as children and are now between 18 and 23 years old. The reform also extends the validity of such permits, and grants access to basic income support for aged out young adults.
- Portugal and [Italy](#) launched their own respective regularisation measures in the past two years during the pandemic.
- A recent [study](#) by the European Commission’s European Migration Network found that 60 different national protection procedures existed in the 24 EU Member States, the UK and Norway surveyed at the end of 2018. The survey included procedures based on humanitarian grounds, exceptional circumstances, medical grounds, childhood, non-refoulement and climate change.

- Going forward, we recommend that there be a structured, whole of government and whole of society exchange on the experience of regularization mechanisms implemented in many regions and states, both before and during the COVID-19 response and recovery, to examine their contribution to sustainable solutions in economic and human development, integration, and formal employment and economies.
- States can draw on the Action Committee’s document “12 Key Ways” which lists [nine components](#) of regularisation programs and laws based on civil society’s experience in various global regions on working with governments on regularisation programs (including clear eligibility criteria, accessibility, independent and secure residence permit).

### 3. Access to services

- We commend the numerous references to migrants’ access to services, regardless of migration status, throughout the text. There is one mention of accessing these services “without risk of arrest, detention and deportation” (in **Para 38**). The Progress Declaration would have been stronger if there were more mentions of this as the fear of being detained and deported is one of the greatest barriers that undocumented migrants face in accessing services.
- Eleven years ago, in 2011, the Committee of Ministers of the Council of Europe [issued a recommendation](#) to member states that they should provide undocumented migrants with health care, and further stipulated the following:

“Individuals or agencies responsible for health care should not be required to inform the authorities when irregular migrants come to them for help. An exception to this rule should apply to cases where there is reason to suspect that a serious crime has been committed. Irregular migrants should also receive concrete assurances that, apart from this exception, they will not run the risk of denunciation if they seek medical help. Individuals or agencies providing health care to irregular migrants should not be liable to prosecution.”

- The ICESCR Committee underlined more than two decades ago (in 2000) in its [General Comment no. 14](#) on the right to health that this right extends to migrants, regardless of residence status, and elaborated on this duty [more recently](#) in 2017.
- We are thus concerned that there were several attempts by member states to take out references to “regardless of status.” This would not only be contrary to the wording of the Global Compact on Migration itself, which recognizes the human rights of undocumented migrants, but also the law and practice for nearly 30 years in UN member states, especially in Europe.
- In 2011, the EU Fundamental Rights Agency (FRA) carried out a [study](#) that was the first comprehensive report covering a range of human rights of undocumented migrants in the EU 27. The FRA recommended that EU member states ensure undocumented migrants access to health care, and disconnect health care from immigration control policies.

- [Three EU member states](#) have nearly 30 years each of legislation and implementation and practice concerning access to health care for undocumented migrants: [Belgium's law](#) dates from 1996; [Italy's law](#) from 1998, and [France's law](#) from 1999.
- In 2013, [Sweden adopted a law](#) enabling undocumented migrants access to health care.
- In the new German government coalition [agreement](#) (Dec. 2021) there is a pledge to [abolish the obligation](#) for health care providers to report undocumented patients to immigration authorities.
- In Norway, the [law on communicable diseases](#) entitles everyone, regardless of residence status, to health care related to communicable diseases. In 2021, the [Norwegian Directorate of Health published guidance](#) on COVID-19-related care for undocumented migrants. [It addressed a letter](#) to all local and regional health authorities, both primary and specialist healthcare services, calling on them to make Covid tests and treatment freely available for all undocumented migrants in Norway.
- [Greece](#) also adopted a national law, and corresponding inter-ministerial decisions, explicitly granting access to Covid-19 vaccines for UDM and safeguarding their right to data protection and exposure to immigration enforcement when getting the vaccine.
- In March 2022, nearly 40 Ministers of Health as well as representatives of Member States of the WHO European, African and Eastern Mediterranean regions adopted an [Outcome Document](#) of the [High-Level Meeting on Health and Migration](#) which indicated in its first Action Pillar for future action that states should

“strengthen the provision of universal health coverage, ensuring that all people who are present in the territory of the Member State, [regardless of migration or citizenship status](#), have access to quality health care, including mental health care and psychosocial support, medicines, and vaccines without exposure to financial hardship, as enshrined in the right to health.”

- The European region is unique when it comes to access to health care services regardless of migration status – it has decades of law and practice, ample research and evidence on the ground of what works and what doesn't work in providing these health care services, and even recommendations by governmental bodies to strengthen this care.
- It also has a strong body of local authorities – the City Initiative on Irregular Migrants (coordinated by Compas at the University of Oxford) – which has issued [guidance for municipalities](#) on ensuring access to services for undocumented migrants in their cities, including health care.
- **Going forward, we recommend that various stakeholders – national and local governments, civil society, and researchers, the WHO and other health professional bodies – work together to ensure that undocumented migrants can safely access health care services, to ensure that the potential of the Global Compact on Migration is adequately fulfilled.**