

On 5 February 2018, the Zero Draft of the [UN Global Compact for Safe, Orderly and Regular Migration](#) (GCM) was published, five days after the publication of the Zero Draft of the [UN Global Compact on Refugees](#) (GCR). In April 2017, ISI contributed to the drafting process of the GCM by submitting this [Short Note on Migrant Children and Statelessness](#). In this short commentary, the Institute on Statelessness and Inclusion (ISI) provides a preliminary response to the manner in which the Zero Draft of the GCM views and addresses the issue of statelessness. This commentary looks closely at the manner in which statelessness is addressed under Objective 4 of the Draft GCM, but also identifies other areas of the draft, which would have benefited from stronger reference to statelessness.¹

SUMMARY ANALYSIS OF THE ZERO DRAFT OF THE GCM FROM A STATELESSNESS PERSPECTIVE

Positive

The Zero Draft...

- Makes four explicit references to statelessness
- Commits to *“equip migrants with proof of legal identity ... in order to end statelessness...”* marking an important improvement on SDG 16.9 which targets *“legal identity for all”*.
- Reinforces the prohibition of discrimination against women in nationality law as a fundamental human rights principle.
- Emphasises the importance of registering the births of all migrant children.
- Commits to ensuring *“adequate, timely, reliable and accessible consular documentation to all migrants”*.
- Restates and commits to ensuring every person’s right to socio-economic rights and services, regardless of nationality or documentation.

Negative

The Zero Draft...

- Fails to reiterate obligation of countries of birth to grant nationality to children born in their territory who would otherwise be stateless.
- Fails to reinforce the prohibition of discrimination in nationality law more generally (against fathers, children born outside of marriage, racial or religious discrimination etc.).
- Misses opportunity to address the specific situation of stateless persons who have no consular protection, or to reiterate the obligation of receiving states to protect those who are denied consular protection.
- Places great importance on biometrics, without addressing risks to privacy, data protection and abuse.
- Fails to directly address statelessness in relation to other key Objectives such as data, status determination, detention, consular protection and return.

¹ A version of the analysis of Objective 4 presented in this Commentary, is also available as the contribution by ISI Co-Director Amal de Chickera to the Queen Mary University of London publication edited by Elspeth Guild and Tugba Basaran, *First Perspectives on the Zero Draft for the UN Global Compact on Safe, Orderly and Regular Migration*, available at: <http://eumigrationlawblog.eu/wp-content/uploads/2018/02/First-Perspectives-on-the-Zero-Draft.pdf>

For further reading on this issue, see also, Tendayi Bloom, *Statelessness and the global compacts: initial thoughts on the zero drafts*, 20.20.2018, RLI Blogs, available at: <https://rli.blogs.sas.ac.uk/2018/02/20/statelessness-and-the-global-compacts-initial-thoughts-on-the-zero-drafts/>

The Zero Draft of the GCM on Migration – Structure and Focus

The Zero Draft of the GCM begins by setting out its Vision and Guiding Principles, articulated as “*our common understanding, shared responsibilities and unity of purpose regarding migration*”. The Guiding Principles: are people centeredness, international cooperation, national sovereignty, rule of law and due process, sustainable development, human rights, gender responsiveness, child sensitive, what has been described as ‘whole-of-government approach’ and ‘whole-of-society approach’.

The Draft GCM then sets out its Cooperative Framework and Objectives - 22 ‘Objectives for Safe, Orderly and Regular Migration’ (see the Annex), each with a set of ‘Actionable Commitments’. The draft concludes with sections on ‘Implementation’ and ‘Follow-up and Review’.

The Place of Statelessness in the Zero Draft of the GCM

There are **four explicit references to statelessness in the Zero Draft of the GCM**, all under Objective 4, which is to “Provide all migrants with proof of legal identity, proper identification and documentation.” While most, if not all, of the other Objectives are also relevant to statelessness, they do not directly refer to statelessness or set out what steps are to be taken to protect stateless migrants or prevent/reduce statelessness. This is understandable in relation to some of these Objectives (for example, Objectives 15 “provide access to basic social services” and 18 “invest in skills development”). A general approach, in these cases, should stand to benefit stateless migrants as well, if implemented in a comprehensive and non-discriminatory manner. However, for other Objectives, the failure to identify statelessness as a unique issue with specific challenges, can be viewed as a missed opportunity to holistically address all facets of statelessness as a migration phenomenon. This is the case, for example, with Objectives 3 “minimise adverse drivers and structural factors that compel people to leave their country...”, 12 “strengthen procedures and mechanisms for status determination”, 13 “use migration detention only as a last resort” and 14 “enhance consular protection”.

Objective 4: Provide all migrants with proof of legal identity, proper identification and documentation²

Paragraph 18 of the Draft GCM, with its sub-paras a-g, sets out the actionable commitments under Objective 4. Importantly, Para 18 sets out a commitment to “*equip migrants with **proof of legal identity ... in order to end statelessness...***” This marks an important improvement on Target 16.9 of the [Sustainable Development Goals](#), which only refers to a “*Legal identity for all*”. The phrasing of the Draft GCM is an acknowledgement that the identity of every person is inherent to their personality and dignity, and that the lack of documentation is not to be equated with a lack of legal identity. It is ‘proof’ of identity which must be secured and preserved. Particularly as ‘nationality’ is one component of a person’s legal identity - as set out in Article 8.1 of the UN Convention on the Rights of the Child (CRC) - this is an important distinction to be made.

The commitment under para 18(a) makes the above more concrete, focusing on providing identity documents to all migrants “*by registering migrant births and reaching undocumented populations*”. This commitment directly relates to existing state obligations under Article 7 of the CRC to ensure every child’s right to acquire a nationality and avoid statelessness, including by immediately registering the birth of every child. Despite this clear international human rights norm, in many countries around the world stateless persons and irregular migrants are wrongly denied birth registration either directly or indirectly. The explicit commitment in the Draft GCM to addressing this large-scale problem is therefore significant.

Para 18(b) calls for strengthened measures to “*facilitate citizenship to children born in another State’s territory in situations where a child would otherwise be stateless, including by allowing women to confer their nationality to their children*”. This commitment relates to Article 9 of the CEDAW, reminding states whose

² See annex for the full text of Objective 4

citizen's children are born in third countries that they have an obligation to address structural discrimination against women in their nationality laws. However, this commitment is silent on the corresponding obligation (under Article 7 of the CRC and the 1961 Convention on the Reduction of Statelessness) of countries of birth / migration to grant nationality to children born on their territories, if they would otherwise be stateless. Furthermore, while it is noteworthy that discrimination against women has been highlighted, it is unfortunate that discrimination against fathers and other forms of discrimination (race, disability etc.) which also do cause statelessness, have not been included in this text.

Para 18(d) on ensuring “adequate, timely, reliable and accessible consular documentation to all migrants” sets an important standard. However, there are three gaps in this text, which leave stateless persons unprotected:

1. General state practice is to offer protection and documentation to *nationals* abroad. This does not extend to stateless persons. However, the text is silent on how stateless persons would benefit from this commitment.
2. It is often the case that individuals find out they are stateless (or become stateless) in a migrant context, when their own country fails or refuses to protect or document them. This commitment therefore does address one of the most common challenges in the context of statelessness and migration, namely the situation in which an individual is caught between a failure/refusal of the country of origin to take responsibility and a failure/refusal of the country of migration to identify and protect. However, this text only addresses one side of the problem (emphasising the role of the country of origin to provide consular documentation). It is silent on the responsibility of the host state to protect individuals when their country of origin has failed to provide such protection and documentation.
3. Finally, the text does not cross-refer this commitment with Objectives 12 (status determination), 13 (detention) and 14 (consular protection), thereby creating a protection gap.

Para 18(f) sets out a commitment to “abolish requirements to prove citizenship or nationality at service delivery centres ...” Despite international human rights law clearly setting out that people should not be discriminated against, or denied access to basic socio-economic rights due to their lack of a nationality, stateless migrants are routinely denied access to basic services and rights because of their lack of a nationality. Therefore, this is a timely and important restatement of the commitment to respect and protect the universal application of human rights to all persons. The related commitment in para 18(g) to issue identity cards to all migrants (regardless of their status) is a practical recommendation, which could increase the ability of stateless migrants to access their rights.

However, this can also place people in harm's way. Both para 18(a) and 18(c) call for the rolling out and sharing of biometric data, without any reference to protection against potential abuses. This promotion of biometrics, without due emphasis on privacy, data protection and the prevention of abuses, is perhaps the greatest concern. Furthermore, para 18(g) speaks of providing all migrants with identity cards *as a means of enabling their access to services and rights*. There are important questions to address in the rolling out and sharing of biometric data and the linking of the possession of biometric cards to access to socio-economic rights, as has been the experience in relation to India's [Aadhar cards](#). There is also the concern as well, that, in the absence of clear connection of para 18(g) with Objective 12 on status determination, the process of providing stateless persons with identity cards could serve as a precursor to attempted removal, and not, as a means of facilitating access to socio-economic rights and integration. This will particularly be so, if stateless migrants are issued with identity cards which do not recognise their statelessness – a status which affords them protection under international law.

The Other Objectives

As set out above, nowhere else in the Zero Draft of the GCM, is statelessness explicitly referred to. However, most (if not all) of the other Objectives are highly relevant to the position, treatment and protection of stateless migrants. In some instances, specific reference to statelessness is not a necessary pre-requisite to interpreting and implementing the GCM in a manner which would include and protect the stateless. However, in others, specific reference to statelessness would help address some of the unique characteristics

and challenges that the phenomenon presents. The below table highlights some of the key statelessness related issues which should specifically addressed under these Objectives going forward.

| Objective | Relevance to Statelessness |
|--|--|
| (1) Collect and utilize accurate and disaggregated data as a basis for evidence-based policies | Statelessness is – almost by definition – a hidden issue, with many stateless persons being undocumented and not included in national data and statistics. As an example of the scale of this difficulty, even though UNHCR estimates there to be at least 10 million (non-refugee) stateless persons in the world, UNHCR has statistical information on just over 3.5 million. While there are clearly statistical challenges related to migration in general, statelessness poses an added challenge – both in the country of origin and the country of migration - which must also be addressed. |
| (2) Minimize the adverse drivers and structural factors that compel people to leave their country of origin | Statelessness is inextricably linked with discrimination. It is often discrimination on the basis of sex, race, ethnicity, religion, disability, socio-economic disadvantage or other factors, which causes statelessness. Furthermore, statelessness leads to additional discrimination. Thus, the experience of stateless persons is often one of disadvantage, exclusion and disenfranchisement. It can even be one of persecution. These factors, combined with their lack of a legal status (and related protection) at home, can compel stateless persons to migrate. |
| (5) Enhance availability and flexibility of pathways for regular migration | Many stateless persons are undocumented. Most do not have passports or travel documents. Consequently, stateless persons are often left with no option but to travel irregularly, transgressing the law and placing themselves in danger. Furthermore, their irregular travel means that they often have no legal status in migration contexts. |
| (10) Prevent and combat trafficking in persons in the context of international migration | Due to a combination of some of the factors described above, the fact that stateless persons are more likely to be undocumented, disadvantaged and excluded, as well as the discrimination they face; all make them more vulnerable to falling victim to traffickers. Stateless persons fleeing persecution are particularly vulnerable. |
| (12) Strengthen procedures and mechanisms for status determination | Implicit to the 1954 Convention Relating to the Status of Stateless Persons, is the obligation to identify stateless persons so they can be protected. Countries that are not party to the 1954 Convention also have human rights obligations – including the obligation to not discriminate – which require that statelessness is identified so that the rights of stateless persons can be ensured. Hence, it is extremely important to identify statelessness through procedures and mechanisms for status determination. |
| (13) Use migration detention only as a last resort and work towards alternatives | Stateless persons are often unlawfully detained due to the lack of statelessness determination procedures and protection status (or the failure to makes these avenues available to persons who may be stateless and/or are facing detention). Detaining stateless persons for the purposes of removal is likely to be arbitrary and in contravention of international law, due to difficulties associated with removing stateless persons in compliance with international human rights standards. Consequently, statelessness should be routinely determined as part of the detention decision making procedure. |
| (14) Enhance consular protection, assistance and cooperation throughout the migration cycle | The denial of consular protection in removal proceedings is often the point at which the statelessness of an individual becomes evident. This is more likely to happen when an individual is caught between two countries with strained diplomatic relations. In this context, the cost of the denial of consular protection is often borne by the individual, who falls between the gaps created by a stand off between two states. The responsibility of states to provide consular protection to their own citizens, and to protect stateless persons who have no consular protection must be equally emphasised. |
| (21) Cooperate in facilitating dignified and sustainable return, readmission and reintegration | The removal of stateless persons is often not possible, due to the lack of a country to which they can be safely removed. Consequently, commitments to facilitate return, readmission and reintegration must be complemented with further commitments to protect and integrate those who cannot or should not be removed, due to their statelessness (or other protection status). |

Objectives for Safe, Orderly and Regular Migration

- (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 adequate and timely information at all stages of migration
- (4) Provide all migrants with proof of legal identity, proper identification and 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 and combat trafficking in persons in the context of international migration
- (11) Manage borders in an integrated, secure and coordinated manner
- (12) Strengthen procedures and mechanisms for status determination
- (13) Use migration detention only as a last resort and work towards alternatives
- (14) Enhance consular protection, assistance and cooperation throughout the migration cycle
- (15) Provide access to basic social services for migrants
- (16) Empower migrants and societies to realize full inclusion and social cohesion
- (17) Eliminate all forms of discrimination and promote fact-based public discourse to shape perceptions of migration
- (18) Invest in skills development and facilitate recognition of skills, qualifications and competences
- (19) Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries
- (20) Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants
- (21) Cooperate in facilitating dignified and sustainable return, readmission and reintegration
- (22) Establish mechanisms for the portability of social security entitlements and earned benefits

Objective 4

18. We commit to equip migrants with **proof of legal identity** and other relevant documentation, including birth, marriage and death certificates, at all stages of migration in order to **end statelessness** and avoid other vulnerabilities. We further commit to ensure this documentation allows all migrants to have access to services and exercise their human rights, and States can identify a person's nationality upon entry and for return. In this regard, the following actions are instrumental:

- a) Provide identity documents to all migrants, by registering migrant births and reaching undocumented populations, improving registration of citizens and sharing biometric registration, including as a measure to **avoid statelessness** in accordance with the fundamental human right to a nationality
- b) Strengthen measures to facilitate citizenship to children born in another State's territory in situations where a child would otherwise be **stateless**, including by allowing women to confer their nationality to their children
- c) Harmonize travel documents in line with the International Civil Aviation Organization standards, through mechanisms for sharing biometric data, and by aligning visa requirements
- d) Ensure adequate, timely, reliable and accessible consular documentation to all migrants, including identification and travel documents, and make use of innovative technology, as well as community outreach, particularly in remote areas
- e) Determine status autonomously, independently and individually, and provide access to individual documentation for female migrants and children, including by ensuring that citizenship or access to a passport or visa is not tied to the spouse or parent
- f) Abolish requirements to prove citizenship or nationality at service delivery centres to ensure that **stateless migrants** are not precluded from accessing basic services nor denied other basic human rights
- g) Institute an identification card for all persons residing in a particular country or city, regardless of their nationality, ethnicity, immigration status or any other characteristic, to access services, conduct business and participate in community life