

Article

GCM Objective 13: In Search of Synergies with the UN Human Rights Regime to Foster the Rule of Law in the Area of Immigration Detention

Izabella Majcher 

Visiting Fellow at the Global Migration Centre, Graduate Institute of International and Development Studies,
1202 Geneva, Switzerland; izabella.majcher@graduateinstitute.ch

Abstract: Reflecting the focus of this Special Issue on “Rule of Law and Human Mobility in the Age of the Global Compacts,” this article contributes to the discussion on the threats to the rule of law posed by immigration detention through the lens of the Global Compact for Safe, Orderly and Regular Migration (GCM). In GCM’s Objective 13, states committed to use immigration detention only as a measure of last resort, work towards alternatives and draw from eight sets of actions to realise this commitment. Given the attention the GCM attracts, its nonbinding character and the voluntary nature of its review can be used by states as justification for their inadequate implementation of binding human rights obligations and insufficient reporting on implementation to the supervising bodies. While acknowledging these challenges to the rule of law, this article explores the ways the GCM can actually foster the rule of law in the area of immigration detention. To strengthen the rule of law principles of legality, legal certainty, prohibition of arbitrariness, access to justice and the right to an effective remedy, Objective 13 needs to support a binding human rights regime by preventing arbitrary detention and its implementation at the domestic level. The article discusses the interplay between Objective 13 on the one hand, and, on the other, the International Covenant on Civil and Political Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Convention on the Rights of the Child at three levels—the detention provisions, the support provided to states for the implementation of these provisions and the monitoring of states’ implementation—and it proposes means to strengthen the synergies between the two frameworks.

Keywords: administrative detention; rule of law; proportionality; alternatives to detention; review of detention; Global Compact for Migration; human rights treaty bodies



Citation: Majcher, Izabella. 2022. GCM Objective 13: In Search of Synergies with the UN Human Rights Regime to Foster the Rule of Law in the Area of Immigration Detention. *Laws* 11: 52. <https://doi.org/10.3390/laws11040052>

Academic Editors: Marion Panizzon, Daniela Vitiello and Tamas Molnar

Received: 23 February 2022

Accepted: 15 June 2022

Published: 23 June 2022

Publisher’s Note: MDPI stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.



Copyright: © 2022 by the author. Licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

1. Introduction

The deprivation of liberty of refugees, asylum seekers and migrants¹ for reasons related to their migration status² is one of the most controversial measures states apply in the pursuit of border control, migration management and asylum policies. Reliable reports from all world regions, including recurrent recommendations from all UN human rights treaty monitoring bodies (OHCHR 2022b)³ document the widespread use of immigration detention, including in relation to children and other vulnerable groups, often without adequate opportunity to seek judicial review of their detention and in substandard conditions.

¹ The article will use the term “migrants” in an inclusive manner to also encompass refugees and asylum seekers, although these categories of persons benefit from additional safeguards under refugee law instruments. For a discussion on the detention-related provisions of the Global Compact on Refugees applicable to asylum seekers and refugees, see (Majcher 2019a, p. 101–4).

² This is the definition of immigration detention used by the UN Committee on Migrant Workers, see (CMW 2021, para. 15).

³ See Section 4.1.

In some cases, persons are subjected to immigration detention, but authorities refuse to qualify the measure as deprivation of liberty. Rather, they adopted a euphemistic narrative (Grange 2013), arguing that they merely restrict persons' freedom of movement. Such informal (de facto) detention is often applied in border contexts and results in persons being detained in unofficial places and in inadequate conditions. However, in other contexts, immigration detention is clearly regulated in domestic law and carried out in generally adequate conditions. Yet, as a corollary, this particular transparency and compliance with domestic law often leads to the normalisation (trivialisation) of deprivation of liberty. What all forms of immigration detention have in common is that the persons subject to it are ultimately detained for who they are rather than for what they have done. Even in the case of persons breaching conditions of entry or residence, the conditions apply solely to migrants, especially those subject to entry visa requirements.

Immigration detention is usually administrative in character. Regulated in administrative migration or asylum legislation, immigration detention is said to merely be an adjunct of immigration status-related procedures. To support this stance, states argue that this measure is nonpunitive and truly "administrative" (Leerkes and Broeders 2013). Yet, in practice, due to the duration and conditions of and treatment in detention, these arguments do not hold. Worse even, the administrative characterisation of immigration detention removes important detention safeguards that otherwise apply (Majcher 2020, 2021a). Unlike penal detention, administrative immigration detention is primarily imposed by the executive, and the decision power rests with the administrative authorities (Joinet 1990, para. 22). It requires neither criminal charges nor trial, so fair trial guarantees do not typically apply. Administrative detention is not in itself prohibited under international law, but it should be used solely as an exceptional measure (Joinet 1990, para. 19). Since it involves deprivation of liberty without judicial guarantees and leaves broad discretionary powers to the executive, it leads to a serious risk of fundamental human rights violations (Joinet 1990, para. 51, 67 and 82(a)). The widespread use of administrative detention arguably poses a danger beyond the violation of individual rights; it could subvert the regular penal justice system and ultimately undermine the rule of law (International Commission of Jurists 2012, pp. 10–11). Indeed, immigration detention risks violating several principles that are the necessary elements of the rule of law, including legality, legal certainty, prohibition of arbitrariness (including prevention of misuse of powers), access to justice and respect for human rights (including the right to an effective remedy) ((Venice Commission 2011, pp. 10–16)). Thus, there is an underlying tension between immigration detention and the rule of law. To mitigate this tension, immigration detention should be used exceptionally, as a very last resort, and be subject to review by courts.⁴

This article contributes to the discussion on the challenges posed by immigration detention to the principles embraced by the rule of law. It does so through the lens of the Global Compact for Safe, Orderly and Regular Migration (GCM) (UN General Assembly 2018), in line with the focus of this Special Issue dedicated to the "Rule of Law and Human Mobility in the Age of the Global Compacts." The GCM devotes one of its 23 objectives to immigration detention: Objective 13. In the objective, states committed to use immigration detention only as a measure of last resort and to work towards alternatives to detention.⁵ To fulfil this commitment, states will draw from eight sets of actions. However, a question arises: Does Objective 13 undermine or strengthen the rule of law in the area of immigration

⁴ According to the UN Special Rapporteur against Torture, "judicial control of interference by the executive power with the individual's right to liberty is an essential feature of the rule of law" (Special Rapporteur of the Commission on Human Rights on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002, para. 15), and the same view was expressed by the European Court of Human Rights, see (ECtHR 2001, para. 22). According to the UN Working Group on Arbitrary Detention, "habeas corpus is indispensable in a State governed by the rule of law as a safeguard against arbitrary detention", see (WGAD 2011, para. 61). These two requirements can be broken down into several detailed requirements, see (Fordham et al. 2013, p. 6)

⁵ Compared to the zero draft, the final version of Objective 13 offers stronger safeguards overall, except for the detention of children, see (Majcher 2019a, p. 94–100; Stefanelli 2018).

detention? Arguably, the GCM has the capacity to impact the rule of law in both contrasting manners. First, it may weaken the rule of law in the framework of immigration detention since the fulfilment of its objectives can be construed as optional.⁶ The GCM explicitly highlights the fact that it is a nonbinding cooperation framework (para. 15(b)); the content of Objective 13 (like all the GCM objectives) is framed as “commitment” and the eight sets of implementing actions are understood as policy instruments and best practices (para. 16). Thus, given the nonbinding character of the GCM⁷ and the voluntary nature of the review of the GCM’s implementation, it could be assumed that the GCM renders it optional for states to observe and report on the implementation of their pre-existing and binding international human rights obligations related to immigration detention (Grange and Majcher 2020). This would directly impede the rule of law principles of legality, legal certainty and the prohibition of arbitrariness.

On the other hand, it can be argued that Objective 13 has the ability to strengthen the rule of law in the field of immigration detention.⁸ This article aims to explore this proposition. To indeed foster the rule of law in the context of immigration detention, the GCM, and Objective 13 in particular, would need to support, rather than weaken, the binding human rights framework regulating immigration detention⁹ and its implementation at the domestic level. Specifically, it should further the very objective of this binding framework to ensure that immigration detention, as administrative detention, is used exceptionally, as a last resort. Further, in line with the rule of law principles of the prohibition of arbitrariness, access to justice and the right to an effective remedy, it should ensure that immigration detention is subject to a judicial review. In this light, this article aims to identify synergies between the GCM and the existing normative regime protecting migrants from arbitrary detention. To this end, the interplay between the GCM and the UN human rights treaty regime will be assessed at three levels, namely, the detention provisions (Section 2), the support provided to states in their implementation of the relevant detention provisions (Section 3) and the mechanisms for monitoring states’ implementation (Section 4). The discussion will end with a few concluding thoughts (Section 5).

2. Detention Provisions

To reconcile immigration detention with the rule of law principles of legality, legal certainty, prohibition of arbitrariness, access to justice and right to a remedy, immigration detention, as administrative detention imposed without charges and trial, should be used exceptionally and be liable to a judicial review. These two requirements are laid down in the international legal framework regulating immigration detention, which is based on the prohibition of arbitrary deprivation of liberty. Indeed, Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone has the right to liberty and no one should be subjected to arbitrary arrest or detention.¹⁰ The right to liberty has been subsequently enshrined in conventions addressing specific categories of persons. The detention provisions of these treaties build upon and expand Article 9 of the ICCPR. Relevant for the present assessment are Article 16 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

⁶ For a broader discussion on the rule of law under the GCM and the Global Compact on Refugees, see (Favi 2022, p. 2–4).

⁷ The legal nature of the GCM triggered debates in academia; for instance, see (Farahat and Bast 2022; Gammeltoft-Hansen et al. 2017; Hilpold 2021; Panizzon and Vitiello 2019).

⁸ Indeed, the GCM explicitly refers to the rule of law among its guiding principles. Specifically, it recognises that “respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance. This means that the State, public and private institutions and entities, as well as persons themselves, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and are consistent with international law” (para. 15(d)).

⁹ Legal scholars agree that the GCM restates and even reinforces existing legal standards regulating migration and that the international human rights framework remains crucial for the GCM implementation, see (Chetail 2020, p. 334–35; Guild 2020, p. 249; Guild et al. 2019; Molnár 2020, p. 322–23).

¹⁰ The UN Human Rights Committee has explicitly highlighted that “everyone” also includes refugees, asylum seekers and migrants (HRC 2014, para. 3).

(Grange 2018, pp. 72–73) and Article 37 of the Convention on the Rights of the Child (CRC), which prohibit the arbitrary detention of migrant workers (and their families) and children, respectively. Under the international human rights framework regulating immigration detention, in order for detention not to amount to the prohibited arbitrary detention, it should at least be a measure of last resort, in line with the principles of lawfulness, necessity and proportionality (2.1) and be subject to a review and accompanied by the necessary procedural safeguards (2.2).¹¹ Do the provisions of Objective 13 of the GCM conform to these requirements?¹²

2.1. Last Resort

For immigration detention to be a measure of last resort, it should comply with the requirements of legality, necessity and proportionality stemming from international human rights law.

The requirement of legality (lawfulness) is explicitly spelled out in Article 9(1) of the ICCPR and Article 16(4) of the ICRMW, which provide that no one should be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law. Regarding the grounds for detention, under the aforementioned articles of the ICCPR and ICRMW, immigration detention would be arbitrary in the absence of particular reasons specific to the individual (legitimate objective), such as an individualised likelihood of absconding, a danger of crimes against others or a risk of acts against national security (HRC 2014, para. 18; CMW 2021, para. 20). The principle of legality goes beyond mere conformity with domestic law, however. According to the settled jurisprudence of the European Court of Human Rights, which can inspire other monitoring bodies due to the similar phrasing of the relevant detention provisions, the requirement of legality entails that domestic legislation authorising detention should satisfy the general principle of legal certainty. This means that it should be sufficiently accessible, precise and foreseeable in its application in order to avoid any risk of arbitrariness (ECtHR 2008a, para. 23, 2008b, para. 110–1). The requirement of legal certainty then implies that the grounds (reasons) for detention should be clearly and exhaustively listed in the legislation (WGAD 2018, para. 22). Indeed, the law authorising detention should not leave ample room for the authorities' discretion to decide on and apply detention (CMW 2021, para. 23). Moreover, to ensure that detention is an exceptional measure of last resort, the legislation should contain a presumption in favour of liberty (CMW 2021, para. 24). These standards should guide the understanding of the requirement of lawfulness under the GCM. Indeed, Objective 13 of the GCM provides that states will ensure that any immigration detention is based on law, and in the implementing actions, states committed to ensure that detention decisions have a legitimate purpose (para. 29(c)).

Besides lawfulness, the requirements of necessity and proportionality circumscribe the use of immigration detention. In order not to be considered arbitrary, immigration detention should be necessary in all the circumstances of the case and proportionate to the ends sought, for example, to prevent absconding (HRC 2006, para. 7(2)). In line with the authoritative interpretation of Article 9(1) of the ICCPR, the decision must consider relevant factors on a case-by-case basis and not be based on a mandatory rule for a broad category. It must also take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding (HRC 2014, para. 18). Likewise, under Article 16(4) of the ICRMW, migrants may be detained only as a last resort and states should implement all available alternative measures before resorting to detention. Alternatives to detention are thus a practical expression of the requirements of necessity and proportionality and ensure that detention is applied as an exceptional measure (CMW 2013, para. 26, 2021, para. 25, 47; WGAD 2018, para. 16, 23 and

¹¹ The third set of requirements stemming from the prohibition of arbitrary detention relates to the conditions and regime of detention, see (Majcher 2019b, p. 490–531).

¹² This section builds upon the assessment in (Grange and Majcher 2020, pp. 294–98) and (Majcher 2019a, pp. 94–100). For a concise discussion on Objective 13, see (Chetail 2020, pp. 259–60).

24). Objective 13 of the GCM contains detailed provisions on alternatives to detention. It provides that states will ensure that detention complies with the requirements of necessity, proportionality and individual assessment and will use detention only as a measure of last resort. States also commit to prioritise noncustodial alternatives to detention that are in line with international law. The implementing actions further detail the approach to alternatives to detention. Accordingly, states will promote, implement and expand alternatives to detention, favouring noncustodial measures and community-based care arrangements, especially in the case of families and children (para. 29(a)). Furthermore, states will consolidate a comprehensive repository to disseminate the best practices of alternatives to detention, including by facilitating regular exchanges and the development of initiatives based on successful practices among states and between states and relevant stakeholders (para. 29(b)). This effective commitment to alternatives to detention can help states comply with their obligations under the ICCPR and ICRMW to use detention only when there are no available alternatives to detention in a given case.

As regards children, initially, the last resort principle guided the approach in international human rights law. It relied on Article 37(b) of the CRC, which provides that children could be detained only exceptionally, as a last resort. By implication, as with respect to adults, states had to strive to place migrant children in alternatives to detention. The Human Rights Committee (HRC) still adheres to this approach. Accordingly, under Article 9(1) of the ICCPR, migrant children should not be deprived of liberty except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also considering the extreme vulnerability and need for care of unaccompanied children (HRC 2014, para. 18). The stance of the international community has evolved, with increasing emphasis being placed on the principle of the best interests of the child under Article 3(1) of the CRC rather than that of the last resort. This has triggered the gradual emergence of a norm against the detention of migrant children (Grange and Majcher 2017, pp. 281–82). Detaining a child is at variance with the ICRMW and CRC. According to the Committee on Migrant Workers (CMW) and Committee on the Rights of the Child (CRC Committee), the last resort principle that applies to juvenile criminal justice is not applicable to immigration proceedings because it conflicts with the best interests of the child. Thus, immigration detention is *never* in the child’s best interests and, hence, should be forbidden. By implication, since the immigration detention of children is not lawful, alternatives to detention are not applicable. Rather, according to the CMW and CRC Committee, unaccompanied children are entitled to special protection and assistance and, like citizen children deprived of their family environment, should be placed in alternative care and accommodation. For families with children, states should develop noncustodial, community-based solutions (CMW 2021, para. 40–45; CMW and CRC Committee 2017, para. 10–13). Over the past few years, the prohibition of child immigration detention has been called for by several other human rights bodies and mechanisms, including the UN Special Rapporteur on Torture (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2015, para. 80), the UNHCR (UN High Commissioner for Refugees (UNHCR) 2017), the UN Working Group on Arbitrary Detention (WGAD) (WGAD 2018, para. 40), and the Special Rapporteur on the Human Rights of Migrants (SRHRM) (SRHRM 2020, para. 86(a)).

Objective 13 of the GCM does not fully reflect the current approach of the international community towards the prohibition of child immigration detention (Muntarbhorn 2019). It still calls for alternatives to detention, hence relying on the last resort principle. More specifically, among the implementing actions, Objective 13 commits states to ensure the availability and accessibility of a viable range of alternatives to detention in noncustodial contexts, favouring community-based care arrangements that guarantee access to education and healthcare, and to respect the right to family life and family unity. Therefore, states are merely expected to work to end child immigration detention (para. 29(h)) rather than forbid

it completely.¹³ Despite the language reflecting the traditional approach towards child detention based on the last resort principle, Objective 13 can be interpreted as prohibiting child immigration detention in line with the above-discussed interpretation of the principle of the best interests of the child. In fact, the GCM explicitly promotes existing international legal obligations in relation to the rights of the child and upholds the principle of the best interests of the child as a primary consideration in all situations concerning children in the context of international migration (para. 15(h)). In combination with the principle of non-regression, explicitly affirmed by the GCM (para. 15(f)), this means that the GCM cannot be used as a justification for states to set aside the non-detention rule under the ICRMW and CRC. Rather, to paraphrase the text of the relevant implementing action under Objective 13, states should end child immigration detention immediately and place children in community-based care arrangements (which would then not be alternatives to detention).

2.2. Review of Detention

In line with both the rule of law principle of access to justice and the prohibition of arbitrary detention under international human rights law, immigration detention should be subject to review. To be able to seek review of the lawfulness of their detention, migrants need to have access to several procedural safeguards.

Information is a very basic precondition for access to justice. Under Article 9(2) of the ICCPR, anyone who is arrested should be informed, at the time of arrest, of the reasons for their arrest and of any charges against them. Similarly worded, Article 16(5) of the ICRMW requires that this information be provided, as far as possible, in a language that the person understands. Therefore, the detention order should contain information on the factual and legal basis for the detention and the available remedies (CMW 2021, para. 60, 61 and 70). This safeguard is also provided in the GCM. Among the implementing actions, states committed to ensure that all immigration detainees are informed about the reasons for their detention in a language that they understand (para. 29).

To initiate and participate in the review or appeal proceedings, migrants often need legal and linguistic assistance. According to the CMW's authoritative interpretation of Article 16(4) of the ICRMW, detained migrants must have access to legal representation and advice to challenge the detention decision. If necessary, access to free and effective legal aid should be ensured to render access to justice truly operational (CMW 2013, para. 27, 2021, para. 68). This principle is upheld by international human rights mechanisms, including the WGAD (WGAD 2018, para. 35) and the SRHRM (SRHRM 2012, para. 72(a)). Likewise, under the implementing actions of Objective 13 of the GCM, states committed to ensure that immigration detainees have access to legal orientation, assistance and information. In addition, detainees are to have access to free or affordable legal advice and the assistance of a qualified and independent lawyer (para. 29(f) and (d)). Unlike Article 9(4) of the ICCPR, Article 16(8) of the ICRMW explicitly provides for linguistic assistance. Accordingly, when migrants attend review proceedings, they should have the assistance, if necessary and without cost to them, of an interpreter if they cannot understand or speak the language being used. The same requirement was spelled out by the SRHRM (SRHRM 2012, para. 72(a)). The GCM, on the other hand, does not address the pivotal issue of linguistic assistance. However, states should not interpret this silence as the absence of relevant principles in that regard.

As regards the review of detention, under Article 9(4) of the ICCPR and Article 16(8) of the ICRMW, migrants are entitled to take proceedings before a court so that it decides without delay on the lawfulness, necessity and proportionality of detention and orders

¹³ Among all the provisions of Objective 13, the question of the detention of children triggered the most heated debate during the negotiations, and child detention provisions in Objective 13 were subsequently watered down. Initially, states fundamentally committed to end the practice of child immigration detention. However, they still committed to provide alternatives to detention, which in itself contradicts ending child detention, see (Majcher 2019a, pp. 96–97).

release if the detention is unlawful. States need to ensure automatic review, as the HRC and CMW require that immigration detention be reassessed at reasonable periods of time as it extends in time (HRC 2014, para. 18; CMW 2021, para. 63). The scope of judicial review should not be confined to a formal assessment of the person's migration status since review should individually examine the elements pertaining to the arbitrariness of detention (CMW 2021, para. 63). Under the implementing actions of Objective 13, detainees should have access to justice and the right to regular review of detention (para. 29(d)). Reflecting Article 9(5) of the ICCPR, Article 16(9) of the ICRMW provides that migrants who have been victims of unlawful arrest or detention should have an enforceable right to compensation. This is absent from the GCM, which is a gap and presents the risk of norms not being respected.

In summary, overall, Objective 13 reflects the detention norms and standards under the international legal framework, ensuring that detention is a measure of last resort subject to a judicial review. The few gaps in the objective are highlighted above. The nonmandatory nature of the GCM should not lead to an understanding that respecting migrants' right to liberty is optional for states. Given the existing binding detention framework, the provisions of Objective 13 and most of the implementing actions are not optional, as similar requirements stem from international treaties or principles laid down by international human rights mechanisms. Thus, Objective 13 can be seen as a tool for states to practically implement already existing human rights norms and standards.

3. Support for States' Implementation

As human rights detention norms and standards under the HRC, ICRMW and CRC on the one hand, and Objective 13 on the other, are generally aligned, it is worth comparing what type of assistance states can benefit from for the implementation of these provisions. This section looks at forms of support for the interpretation of the relevant provisions (3.1) and capacity building (3.2).

3.1. Interpretation of Detention Provisions

All nine core human rights international treaties, including the ICCPR, ICRMW and CRC, established "treaty bodies" charged with monitoring treaty implementation by state parties. Serviced by the Office of the High Commissioner for Human Rights (OHCHR), the treaty bodies are committees of independent experts who are persons of high moral character, impartiality and recognised competence in human rights and the field covered by the relevant convention. These experts, nationals from states party to the relevant treaty, are nominated and elected for fixed, renewable terms of four years, having regard to equitable geographical distribution and balanced gender representation. Although elected by state parties, experts serve in their personal capacity. The 18-member HRC, the 14-member CMW and the 18-member CRC Committee monitor the implementation of the ICCPR, ICRMW and CRC, respectively (OHCHR 2021b). Treaty bodies work by consensus. Given their composition and work methods, treaty bodies are independent, expert bodies competent in providing authoritative interpretations of their treaty provisions. Indeed, among the functions of the treaty bodies is the adoption of the so-called General Comments, which provide for the authoritative interpretation of the content of the provisions of the respective human rights treaty and state party obligations, or address broader, cross-cutting issues (OHCHR 2021a). To strengthen and harmonise their work and increase clout, some treaty bodies have adopted Joint General Comments. The HRC, CMW and CRC Committee have adopted General Comments addressing the question of immigration detention under the relevant provisions. In fact, the analysis of the detention provisions in the previous section relied mainly on these documents.

In 2014, the HRC adopted General Comment No.35 on Article 9 of the ICCPR, which includes one paragraph specifically addressing immigration detention, underscoring the principles of lawfulness, necessity, proportionality, review of detention, detention condi-

tions and the question of child detention (HRC 2014, para. 18). In 2017, the CMW and CRC Committee issued a Joint General Comment on states' obligations regarding the human rights of children in the context of migration. Both committees affirmed that the principle of the best interests of the child supersedes the last resort principle in the context of immigration detention and, since detention is never in the child's best interests, children should never be placed in immigration detention. This interpretation is based on Articles 16 and 17 of the ICRMW and Article 37(b) of the CRC (CMW and CRC Committee 2017, para. 5–13). Most recently, in 2021, the CMW adopted General Comment No. 5 on migrants' right to liberty and freedom from arbitrary detention, which provides a detailed guidance to states on fulfilling their obligations under Articles 16 and 17 of the ICRMW. The General Comment reaffirms the requirements of lawfulness (legality), necessity, proportionality, priority of alternatives to detention, non-detention of migrant children and vulnerable persons, review of detention, conditions of detention and monitoring of detention places. Crucially, the CMW seeks to ensure that the implementation of the GCM detention provisions is in line with the interpretation of the relevant provisions of the ICRMW, as it stressed that one of the aims of the General Comments is to provide guidance to states on implementing the GCM (CMW 2021, para. 8). Given the authoritative interpretation of the detention provisions under the relevant treaties by the treaty bodies and the express commitment of the GCM to implement its objectives in a manner consistent with states' obligations under international law (para. 41), not only the CMW's General Comment No. 5, but also the HRC's General Comment No. 35 and the CMW and CRC Committee's Joint General Comment should guide the understanding of the provisions of Objective 13.

To support GCM implementation, in 2019, the UN Secretary General established the UN Network on Migration. As of early 2022, the Network consisted of 39 members of the UN system for whom migration is relevant, nine of which formed the Executive Committee, including the OHCHR (UN Network on Migration 2022e, 2022g).¹⁴ This convoluted, multitiered construction to support states in their implementation, including interpretation, of the GCM contrasts with the authoritative interpretation of the UN human rights treaties by small-sized independent expert bodies. Further, the International Organization for Migration (IOM) serves as both Coordinator and Secretariat of the Network. This double role empowers the organisation to steer the approach to the understanding of the GCM provisions and set priorities around its implementation and programming. Traditionally dependent on states' funding and implementing states' policies, the IOM is not a UN agency. Despite becoming a related organisation within the UN system, it remains an intergovernmental organisation neither based on an international treaty nor bound to comply with the UN Charter (Guild et al. 2017; Pécoud and Grange 2018). Hence, the risk is that the interpretation of the GCM objectives, Objective 13 in particular, will be informed by states' practices and preferences—reflecting the nonbinding nature of the GCM—and risks watering down the authoritative interpretation of detention provisions of human rights treaties by the HRC, CMW and CRC Committee.

However, as the GCM explicitly underscores, it is based on international human rights law (para. 15(f)) and it should be implemented consistently with states' obligations under international law (para. 41). In line with the Migration Network Terms of Reference, the Network's actions should promote the application of relevant international and regional norms and standards and the protection of the human rights of migrants. Further, the Network should collaborate with other existing "UN system coordination mechanisms" addressing migration-related issues to actively seek out synergies and avoid duplication

¹⁴ Executive Committee provides overall guidance to the work of the Network, setting strategic priorities to support states in the effective implementation, follow-up and review of the GCM. The members of the Executive Committee include: the Department of Economic and Social Affairs (DESA), the International Labour Organization (ILO), the International Organization for Migration (IOM), the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO), see (UN Network on Migration 2022g).

(UN Network on Migration 2022f).¹⁵ In its role as the Secretariat and Coordinator of the Network, the IOM is tasked with ensuring effective collaboration with these mechanisms. The same role is also foreseen for the Executive Committee, as it is mandated with supporting the IOM in coordinating the work of the Network. Considering the above analysis, in the context of Objective 13, it can be argued that the Executive Committee, particularly the OHCHR, should ensure collaboration with the treaty bodies so that their authoritative interpretation of detention provisions in the ICCPR, ICRMW and CRC guides the interpretation of Objective 13.

As of early 2022, the Network had eight working groups, five of which were thematic, addressing specific GCM objectives (UN Network on Migration 2022h).¹⁶ Dedicated to supporting the implementation of Objective 13, the Working Group on Alternatives to Immigration Detention (WG) is tasked with promoting the development and implementation of noncustodial, human rights-based alternatives to detention in the migration context.¹⁷ The WG is led by the UNHCR, UNICEF and the civil society organisation International Detention Coalition. The members include UN bodies and mechanisms (including the SRHRM), other international organisations (IOM, OSCE), research institutions and civil society organisations (UN Network on Migration 2020d). The OHCHR is a mere WG member. As a coleader, however, it would be in a position to contribute institutional knowledge and relevant perspectives as it services the HRC, CMW and CRC Committee. It would also be helpful to include a member of each committee in the WG to ensure synergies with the work of the treaty bodies. Indeed, in February 2020, the Executive Committee did encourage the WG to ensure synergies with the related work of the CMW (UN Network on Migration 2020b).

Given that a key objective of the work of the WG is to support states in preventing and reducing instances of arbitrary detention, the WG should align its understanding of arbitrary detention with the interpretation of this concept by the HRC, CMW and CRC Committee. As already noted, the approach to child immigration detention under Objective 13 does not fully reflect the position of the CMW and CRC Committee, as encapsulated in their Joint General Comment. The WG's ultimate objective is to end the practice of child immigration detention by prioritising alternatives to detention and adequate care arrangements. In line with the human rights framework discussed in the previous section, alternatives to detention are measures applied instead of lawful detention pursuant to the necessity and proportionality requirements. As such, they ensure that detention is a measure of last resort rather than putting an end to detention all together. It would thus be helpful to clarify what is understood under the notion of alternatives to detention in the work of the WG and the Migration Network in general and how this understanding relates to the stance taken by the CMW and CRC Committee. Initially, the WG planned to issue a "common position" on the concept of alternatives to detention (UN Network on Migration 2020c). However, given the WG's lack of a mandate to interpret this term, this initiative was limited to internal discussions. To overcome this obstacle, the Network should officially adopt the authoritative understanding of the concept of arbitrary detention (and, by implication, alternatives to detention) under the relevant HRC and CMW's General Comments and the approach to child immigration detention under the CMW and CRC Committee's Joint General Comment.

¹⁵ These mechanisms are mentioned nine times in the Network Terms of Reference without any details on what they are. There are UN coordination mechanisms on development and humanitarian action, but this seems like a complex labyrinth to navigate when it comes to issues of migration, let alone the protection of the human rights of migrants.

¹⁶ Indeed, the Network may establish Working Groups focusing on specific issues, providing technical advice and inputs to the Network as a whole, including by providing tools and guidelines and facilitating joint action at the regional and national levels (UN Network on Migration 2022f).

¹⁷ More precisely, it aims "at supporting States to prevent and reduce instances of arbitrary detention and to end the practice of child immigration detention by prioritizing rights-based and community-based alternatives to detention and adequate care arrangements for all children, whether unaccompanied and separated or in families."

In 2020, the WG issued a policy guidance on immigration detention in the context of the COVID-19 pandemic to help states implement Objective 13. In this policy brief, the Network calls on states to stop new detentions of migrants for migration- or health-related reasons and to introduce a moratorium on the use of immigration detention, scale up alternatives to detention, release all detained migrants into alternatives to detention and, pending that release, improve conditions in places of immigration detention. The policy brief then sets out several practical recommendations clustered under five headings (prevention, release, placement and case management, regularisation and access to services and conditions in immigration detention) and shares promising practices whereby some governments have released migrants from detention and provided access to healthcare, housing and other services ([UN Network on Migration 2020a, 2021a](#)).¹⁸ The policy brief, particularly the positive and negative examples of states' responses, could be helpful for the HRC, CMW and CRC Committee as they review states' implementation of the relevant provisions in the framework of the monitoring procedure discussed below.¹⁹

3.2. Capacity Building

Established in 2015, the Treaty Body Capacity Building Programme builds on long-existing capacity building programmes developed by the OHCHR. It supports states' engagement with UN human rights mechanisms, including treaty bodies. All 152 signatory states of the GCM are members of the UN and are thus entitled to benefit from the programme. Through its human rights officers, based in the OHCHR regional offices around the world and a dedicated team based in Geneva, the Programme supports the implementation of treaty bodies' recommendations and offers general assistance with ratifications, reporting, follow-up and the implementation of human rights treaties ([OHCHR 2021c](#)). The technical cooperation for building state capacity in treaty bodies' reporting usually involves supporting the establishment and strengthening the National Mechanisms for Reporting and Follow-Up (NMRFs). Based within the foreign ministry, the NMRFs are government mechanisms that are charged with engaging with international human rights mechanisms (including treaty bodies), including reporting to these mechanisms and tracking national follow-up, the implementation of the treaty obligations and recommendations emanating from such mechanisms ([OHCHR 2016](#), p. 2–4, [2022a](#)). To ensure coherence in the reporting on the implementation of detention-related provisions under the ICCPR, CMW and CRC on the one hand, and Objective 13 on the other, the NMRFs should be charged with also preparing reports on GCM implementation in the context of the review mechanisms, discussed below,²⁰ which is currently performed by interior ministries.

A key objective of the UN Migration Network's WG is to facilitate government peer learning activities on the development of alternatives to detention ([UN Network on Migration 2020c](#)). So far, the WG has organised three "peer learning exchanges", in November 2020, June 2021 and January 2022. These were closed workshops that brought together government officials from different regions with the aim of offering space for states to discuss their experiences in using alternatives to detention.²¹ Given that treaty bodies frequently recommend that states use alternatives to detention,²² OHCHR officers from the Treaty Body Capacity Building Programme should be present during these peer learning exchanges. It would ensure that the discussions between states are informed by relevant, binding norms stemming from the human rights framework. As demonstrated above,

¹⁸ An annex to the policy brief provides an update of domestic measures to detention during the COVID-19 pandemic, particularly by fleshing out worrying trends and the opportunities to address them.

¹⁹ See Section 4.1.

²⁰ See Section 4.1.

²¹ Although the meetings were closed, WG members were present during the discussions and active in preparing them. The themes of the three consecutive meetings were alternatives to detention in the context of the COVID-19 pandemic; case management for case resolution and leveraging technology in an ethical way in order to scale up alternatives to detention; and the International Migration Review Forum ([UN Network on Migration 2022a](#)).

²² See Section 4.1.

irrespective of the nonbinding form of the GCM, the use of alternatives to detention is derived from binding international human rights norms. Practical solutions shared during the peer learning discussions would also be helpful for the Treaty Body Capacity Building Programme, as it supports states' implementation of the human right treaties.

Based on these peer learning activities, the WG provides input and resources on alternatives to detention to the Capacity Building Mechanism (CBM). Called for directly in the GCM (para. 43), the CBM is meant to support states' implementation of the GCM.²³ It includes an online open data source with migration-related practices (called a global knowledge platform) and a connection hub that facilitates demand-driven and tailor-made solutions for states, including peer-to-peer exchanges, and identifies funding opportunities.²⁴ Ultimately, these two components of the CBM were merged into the "Migration Network Hub," which was launched in March 2021 to support states in the implementation, follow-up and review of the GCM. This tool is intended to share migration knowledge, expertise, good practices and initiatives related to the GCM among states, practitioners and the UN system via online discussions with peers, webinars, resources and publications and the showcasing of flagship initiatives (IOM 2021). To genuinely support states in their implementation of the GCM, including Objective 13, the Hub should include detention-related recommendations that the treaty bodies, specifically the HRC, CMW and CRC Committee, have addressed to states in the framework of the monitoring procedure discussed below.²⁵

The CBM also includes a start-up fund (referred to as the Multi-Partner Trust Fund (MPTF)) for the initial financing of projects supporting states' implementation of the GCM.²⁶ As of early 2022, the MPTF generated over 28 million USD from donors, mainly member states (Multi-Partner Trust Fund Office 2022). The fund's multi-partner decision-making body consists of Migration Network members, donor and recipient countries and other stakeholders, on a rotating basis, and is chaired by the Coordinator of the Network and supported by the Secretariat of the Network—the role bestowed upon the IOM (UN Network on Migration 2022d). From a rule of law perspective, the financing of projects should be dependent upon the beneficiary countries' compliance with international human rights standards. UN entities at the country level work with national partners to identify their needs through joint analysis and to design joint programmes. To foster synergies, the UN entities applying for financing could link projects based on Objective 13 with supporting states' implementation of detention-related recommendations formulated by the treaty bodies.

In conclusion, there are opportunities to increase the synergies between the support given to states in the implementation of the detention provisions of the HRC, ICRMW and CRC on the one hand, and Objective 13 of the GCM on the other. The first step would be for the WG and the Migration Network in general to endorse and start using the relevant General Comments of the treaty bodies to align the interpretation of Objective 13 with detention-related safeguards stemming from the binding treaties. Conversely, the policy brief on COVID-19 and immigration detention, with its practical recommendation, can be useful for treaty bodies as they review states' policies so that they adopt a coherent approach. To help align the work of the WG with the treaty bodies, a member of each Committee could become a member of the WG. Furthermore, the capacity-building support under both

²³ Precisely, as established in the GCM, the CBM allows states, the UN and other relevant stakeholders, including the private sector and philanthropic foundations, to contribute technical, financial and human resources on a voluntary basis in order to strengthen capacities and foster multi-partner cooperation in pursuit of GCM implementation.

²⁴ The connection hub was meant to process country requests for the development of solutions, identify adequate implementing partners, connect the request to similar initiatives and solutions for peer-to-peer exchange and potential replication, ensure effective set-up for multi-agency and multi-stakeholder implementation and identify funding opportunities, including by initiating the start-up fund.

²⁵ See Section 4.1.

²⁶ It is a UN financing mechanism receiving voluntary financial contributions from states, the UN, international financial institutions and other stakeholders, including the private sector and philanthropic foundations.

frameworks should be coordinated. The Treaty Body Capacity Building Programme could be involved in the peer-learning discussions between states on alternatives to detention convened and facilitated by the WG. To ensure that the capacity-building assistance to states for their implementation of the GCM is contingent on their respect for detention-related obligations under the human rights treaties, the Migration Network Hub should include detention-related recommendations that the HRC, CMW and CRC Committee issued to states within the monitoring procedure. Further, MPTF funding for projects implementing Objective 13 should be dependent upon the beneficiary countries' compliance with relevant international detention-related human rights standards.

4. Monitoring of States' Implementation of the Detention Provisions

Whereas the content of detention standards under the ICCPR, ICRMW and CRC on the one hand, and Objective 13 on the other, is generally aligned, their implementation at the domestic level differs considerably. With the ICCPR, ICRMW and CRC being treaties, each state party to these conventions has an obligation to take steps to ensure that everyone in its territory can enjoy the rights set out therein. In contrast, the implementation of the GCM reflects its nonbinding character. Accordingly, states commit to fulfil the objectives of the GCM through bilateral, regional and multilateral cooperation while respecting national policies and priorities (para. 41). To foster the rule of law in the context of immigration detention, the GCM, and Objective 13 in particular, would need to support, rather than weaken, the implementation of the binding detention-standards at the domestic level. Furthermore, the review of the implementation of Objective 13 should assist in the monitoring of the implementation of the detention provisions of the ICCPR, ICRMW and CRC. The following discussion compares procedures to monitor the implementation of human rights treaties and the GCM (4.1) and presents another review procedure that could inspire improvements in the GCM review (4.2).

4.1. Treaty Bodies Monitoring vs. GCM Review

The key mandate of the nine treaty bodies, including the HRC, CMW and CRC Committee, is to monitor how states implement the relevant conventions. Within the monitoring procedure, states are obliged to submit periodic reports to the relevant treaty body on their domestic implementation of the conventions.²⁷ In light of all the information available, the relevant treaty body reviews the report in the presence of a state party's delegation by engaging in "constructive dialogue." The committee spends two half-day sessions examining each country and concludes the review by adopting "concluding observations" that set out its concerns and recommendations. To close the reporting cycle, in each periodic report, states are required to report on concrete measures aimed at implementing the treaty body's recommendations laid down in the previous concluding observations (OHCHR 2012, p. 22–30).²⁸ The procedure offers ample possibility for civil society engagement. In fact, at three stages of the monitoring cycle, NGOs can submit written information on their states' human rights performance, and, during the review, they can meet with the committee ahead of the session concerning their country. In the past five years (2017–2021), the nine treaty bodies addressed immigration detention in approximately 137 concluding observations in total, of which 47 percent concerned European and Western countries, 21 percent concerned Asia-Pacific countries, 17 percent concerned Latin American and Caribbean countries and 15 percent concerned African countries.²⁹ Out of the total number of concluding observations, 23 percent were issued

²⁷ States are obliged to submit reports on the implementation of the ICCPR every four years, and on the implementation of the ICRMW and CRC every five years.

²⁸ Some treaty bodies, including the HRC, have introduced a follow-up procedure within which they request, in their concluding observations, that states report back within a year on the measures taken in response to specific recommendations or "priority concerns".

²⁹ Figures and estimates in these paragraphs are based on concluding observations retrieved using the search function of the Universal Human Rights Index database (OHCHR 2022b). Keywords to identify issues relating to immigration detention in the concluding observations, namely "Arbitrary arrest & detention," "Conditions

by the Committee against Torture, 18 percent each by the HRC and Committee on the Elimination of Racial Discrimination, 14 percent by the CRC, 12 percent by the CMW and 11 percent by the Committee on the Elimination of Discrimination against Women (OHCHR 2022b).³⁰ This demonstrates that immigration detention is a cross-cutting issue for the nine core human rights treaties, and all the committees are sensitive to detention practices in countries under their review. This body of recommendations clarifies and details the international human rights framework regulating immigration detention, and the GCM's Objective 13 should be interpreted in accordance with it.

The HRC, CMW and CRC Committee regularly look at the question of immigration detention within the monitoring procedure and issue specific recommendations to states. Like the General Comments discussed above, the concluding observations help interpret the relevant detention provisions under the ICCPR, ICRMW and CRC and, in addition, adapt them to the domestic context. In its 25 relevant concluding observations, the HRC urged 14 countries to apply alternatives to detention and 11 countries to ensure that detention is a measure of last resort, explicitly relying on the principles of necessity and proportionality regarding seven countries. In six cases, the HRC recommended that detention be subject to a review, and in five cases, it recommended that detainees have access to legal assistance. The HRC is still inconsistent regarding the detention of children: in six cases, the Committee urged the country to ensure that the detention of children is a measure of last resort, whereas five countries were called upon not to detain children at all. For its part, in 17 relevant concluding observations, the CMW urged 12 countries to ensure that detention is an exceptional measure of last resort and 11 countries to apply alternatives to detention. The Committee is precise as regards the requirements of alternatives to detention. Countries should give clear reasons why alternatives cannot be implemented in the specific case. The Committee addressed the review of detention in at least four concluding observations. The CMW requires that detention be reviewed within 24 h by an independent and impartial judicial authority. In five cases, the Committee called upon the country not to detain children. Finally, in its 19 relevant concluding observations, the CRC Committee urged 10 countries not to detain children. However, at the same time, the Committee urged five countries to place children in alternatives to detention, so more coherence would be helpful. Crucial to benefiting from child-specific rights is identification as a child, and the Committee frequently recommends that states put in place adequate age determination procedures.

In contrast to the monitoring procedure of the treaty bodies, the review of states' implementation of the GCM is based on a voluntary "state-led approach" (GCM, para. 48).³¹ The key review mechanism is the International Migration Review Forum (IMRF), serving as an "intergovernmental global platform" open to states to discuss and share progress in the implementation of the GCM (GCM, para. 49).³² Organised and supported by the Migration Network, the IMRF is convened under the auspices of the UN General Assembly every four years and held "at the highest possible political level." There is a risk that CMW (and even HRC) sessions taking place in Geneva might eventually be overshadowed by New York-based meetings, carried out at the highest political level and outside of the relevant authoritative and binding legal framework. The role of the treaty bodies in the monitoring of states' implementation of their immigration detention

of detention," "Persons deprived of liberty: definition of torture & ill-treatment" and "Persons deprived of liberty: concept of places of deprivation of liberty," were cross-filtered through the "Concerned persons/groups" category by selecting "Migrants," "Non-citizens," "Refugees & asylum seekers" and "Stateless persons."

³⁰ The remaining three treaty bodies (the Committee on Enforced Disappearances, Committee on the Rights of Persons with Disabilities and Committee on Economic, Social and Cultural Rights) issued very few recommendations on immigration detention during that period.

³¹ This triggered concerns in academia; for instance, see (Desmond 2020, p. 235; Grange and Majcher 2020, p. 300; Guild and Grundler 2022).

³² The IMRF will alternate with regional reviews, which will inform each edition of the IMRF (GCM, para. 54). The regional reviews, organised across five regions, took place in late 2020/early 2021. For a discussion of the review of the implementation of Objective 13 in the UN Economic Commission for Europe countries, see (Majcher 2021b).

obligations may be diminished as states may feel they can avoid their obligations under the ICCPR, ICRMW and CRC through participation in the GCM review mechanism. A trend whereby UN member states would bypass this framework poses a general threat to the rule of law. It is regrettable that no role was foreseen for the CMW or HRC in the GCM review, as their monitoring would be a relevant input to the review process and a reminder of the existing binding legal framework and monitoring of its implementation by the treaty bodies.

Ahead of the IMRF, states are invited to submit “voluntary GCM reviews”, which are understood to be voluntary stocktaking of the implementation of the GCM. These reports should provide brief information on the status of the implementation of all 23 objectives of the GCM, including difficulties in reaching them and measures to address these challenges. For the first IMRF, which took place on 17–20 May 2022, 47 countries submitted their reports—only around 30 percent of the countries signatory to the GCM (UN 2022). Out of the 46 reports the author was able to read,³³ 57 percent did not address detention or Objective 13, and 24 percent addressed detention but either inconclusively explained or did not explain at all how they strive to apply it as a measure of last resort. One country, for instance, highlighted that detention is defined in its legislation as a measure of last resort, but then it explained that, in practice, migrants in an irregular situation are detained until their expulsion. Such a measure looks like a mandatory detention applied for the mere fact of being in an irregular situation or as a measure mandatorily accompanying removal. It breaches the requirement to use detention exceptionally as a measure of last resort based on the individual circumstances of the case—as the requirements of necessity and proportionality stipulate. In the same vein, several reports mentioned that, under Objective 13, they work with the IOM on voluntary returns, implying that this measure is considered an alternative to detention. Such an approach is not based on the international human rights framework regulating detention. So-called voluntary departure is an alternative to a forced return, not to detention. Suggesting otherwise would mean that foreseen forced return is always accompanied by detention (which would then be mandatory and, hence, arbitrary detention) and a way to leave detention would be by accepting so-called voluntary departure. There is a risk that such an approach is presented to migrants in detention to compel them to accept a so-called voluntary departure in order to be released from detention (by leaving the host country).³⁴

Only four reports addressed the application of alternatives to detention. Turkey provides for alternatives to detention in its legislation. The Republic of Korea has a policy to temporarily suspend detention if it leads to a substantial threat to the person’s life, physical well-being or financial security. Mauritania set up a system in 2021 to place vulnerable persons (such as children, women, ill persons, persons with a disability and the aged) in alternatives to detention, such as the state’s protection centres, welcome centres run by NGOs or families or communities of the persons’ countries of origin. In Kenya, the National Commission on Human Rights issued a report on immigration detention with a view to advocate for alternatives to detention and facilitated high-level meetings on alternatives to detention. Alternatives to detention as an expression of the requirements of necessity and proportionality should be used in practice, rather than merely being provided in law, and should benefit all migrants, not only those in a vulnerable situation. Crucially, discussions on the alternatives to detention and programmes promoting their use in practice should not be detached from the normative framework regulating detention. Specifically, alternatives to detention should be used instead of a lawful detention. If a detention lacks precise grounds, the persons should not be detained at all. Indeed, alternatives to detention are not alternatives to liberty. Personal liberty should be the default option. In this light, it is commendable that five countries stressed that they do not practice immigration detention.³⁵

³³ The report of Turkmenistan was submitted in Russian only.

³⁴ Indeed, such a practice was reported in hotspots on the Greek Aegean Islands, see (Hänsel 2020).

³⁵ These countries are Ecuador, Guinea Bissau, Kyrgyzstan, Portugal and Uruguay.

The treaty bodies' monitoring procedure shows the importance of independent sources being involved in the process as they often challenge overly positive self-assessment in a state's report. Frequently, concerns expressed by NGOs were reflected in the concluding observations of the treaty bodies. In the context of the GCM review, according to the Migration Network, NGOs with consultative status with the UN Economic and Social Council (ECOSOC) may submit written submissions to be posted on the dedicated website ([UN Network on Migration 2021c](#)). Whereas NGO submissions were posted on the website in the framework of the regional reviews, for instance, the UN Economic Commission for Europe (UNECE) region ([UN Network on Migration 2022b](#)), they do not seem to be made accessible in the context of the IMRF. As of mid-June 2022, the dedicated website listed, alongside the states' reports, only the submissions of international organisations ([UN 2022](#)).

Each IMRF lasts four days, but the review of the implementation of the GCM takes place only during four multi-stakeholder round tables, each grouping together between five and seven objectives of the GCM. At the 2022 IMRF, Objective 13 was discussed at the second round table, which covered seven objectives of the GCM. The round table spanned three hours, most of it devoted to the speeches of high-level panellists, with only around 45 min reserved for an "interactive discussion" open to interventions from the floor. The underlying objective of the round tables is to provide an opportunity for states (and other relevant stakeholders) to discuss and share progress on the implementation of the GCM ([UN Network on Migration 2021c](#)). Although the panellists at the second round table were from IOs and NGOs, there was no country-specific discussion leading to recommendations ([UN Network on Migration 2022c](#)). Ultimately, the states' implementation of the objectives of the GCM is not veritably reviewed, and hence, the GCM process should be considered a self-review. This contrasts with the day that the treaty bodies spend on the examination of the implementation of their treaty by states under their review, engaging in discussions with the states' delegations. The treaty bodies' monitoring and the GCM review can be seen as complementary. Whereas the HRC, CMW and CRC Committee review the implementation of the detention provisions by the countries under their review, the IMRF offers a space for debate, commitments and pledges around Objective 13.³⁶

At the end of each IMRF, a Progress Declaration will be issued and agreed upon through intergovernmental consultations. Among its functions is to provide an "evaluation of overall progress in respect of the implementation of the GCM." Detention is mentioned in the 2022 IMRF Progress Declaration on a few occasions. The Declaration highlights that "efforts are being made to modernize border-crossing points, including by simplifying procedures and upgrading infrastructure and equipment, to reduce immigration detention, including by implementing noncustodial alternatives to detention in the COVID-19 context." It also underscores that "some states have taken steps to end child immigration detention, advancing efforts to protect and respect the best interests of the child" ([UN General Assembly 2022](#), para. 31). According to the 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" ([UN General Assembly 2022](#), para. 32). Further, "in some instances, public health considerations were used to justify detention or unlawful deportation. States also faced practical challenges in ensuring alternatives to detention with full respect for human rights, particularly with regard to providing adequate living conditions and access to gender-responsive and people-centred services for migrants" ([UN General Assembly 2022](#), para. 36). Among the "Recommended actions to accelerate the implementation of the Global Compact," one concerns detention. Accordingly, states "will consider, through appropriate mechanisms, progress and challenges in working to end the practice of child detention in the context of international migration" ([UN General Assembly 2022](#), para. 57). Whereas this commitment is arguably

³⁶ Pledges were an important element of the IMRF, see ([UN Network on Migration 2021b](#)). The IMRF also provided opportunities for IOs and NGOs to organise side events devoted to specific topics, including alternatives to detention organised by the WG.

weak, the zero draft of the Declaration did not contain it at all. The Declaration contrasts with the concluding observations issued by the treaty bodies to each state under their review in terms of both the manner of adoption and content.

4.2. *The Universal Periodic Review as a Source of Inspiration for the IMRF*

The Universal Periodic Review (UPR), which is a periodic assessment of the human rights records of all the UN member states, can be relevant to the review of the GCM implementation. Like the IMRF, and in contrast to the treaty bodies' monitoring process, the UPR is a state-led, voluntary, political process. Due to the similarities between the UPR and the IMRF (and regional GCM reviews), the UPR provides inspiration for legal and policy innovations for the improvement of the GCM review. Notwithstanding the political character of the UPR, the review is carried out under the auspices of the UN Human Rights Council and is based on the human rights framework.³⁷ Since the GCM rests on the Universal Declaration of Human Rights, ICCPR, International Covenant on Economic, Social and Cultural Rights and other core international human rights treaties (para. 2), is based on international human rights law (para. 15(f)) and should be implemented consistently with states' international law obligations (para. 41), it can be argued that several features of the UPR can be replicated within the GCM review to increase the effectiveness of the process.

Specifically, there are at least four features of the UPR (OHCHR 2020) that could be introduced into the GCM review. First of all, in contrast to self-review and general discussion not addressing specific countries in the framework of the IMRF, within the UPR, each state is reviewed by its peers. The human rights performance of each UN member state is reviewed by the UPR Working Group, consisting of the 47 members of the UN Human Rights Council, but any UN member state can make recommendations to the country under review. The review is led by three states (troika) serving as rapporteurs. This peer-to-peer form of review could be introduced to the GCM review. The review could be performed by the states signatory to the GCM, with a few states, on a rotational basis, in charge of leading the review of each state. The voluntary aspect of the process is preserved in the framework of the UPR as the state under review is not obliged to formally accept any recommendation. Second, the UPR devotes a three-and-a-half-hour session to each state under review. Extending time available for the review of each state's implementation of the GCM would increase the effectiveness of the process.

Third, alongside the states' reports, the discussions during the UPR sessions are based on two compilations prepared by the OHCHR Secretariat: "Compilation of UN information" (information contained in the reports of UN entities) and "Summary of stakeholders' information," which includes input from independent sources (including national human rights institutions and NGOs). The IOM, as the Secretariat of the Migration Network, could cooperate with the OHCHR Secretariat to use excerpts from the "Compilation of UN information," which are relevant to GCM objectives. Crucially, it should include relevant concluding observations issued by the treaty bodies. It would be helpful if the IOM produced a document modelled on the "Summary of stakeholders' information," which would contain information from submissions from independent organisations that are currently supposed to be posted on the dedicated website.³⁸ Fourth, the country-specific UPR "outcome report" contains all recommendations issued to the state under review, indicating which were accepted by it. The proposed changes to the GCM review would have implications for the outcome document (Progress Declaration), which could draw from the UPR outcome document.

These proposed modifications would require adapting legal and policy bases for the GCM review. However, this would not be unprecedented. The Anti-Personnel Landmines

³⁷ Similar to the IMRF, the UPR also aims to provide technical assistance, offer capacity-building measures and share best practices in the field of human rights.

³⁸ However, as noted above, NGO submissions to the IMRF have not yet been posted on this website, see Section 4.1.

Convention initially did not include measures for a review mechanism, but over the years, a strong, multi-tiered mechanism was developed. Alternatively, the UPR itself could review states' implementation of their commitments under the GCM. The UPR evaluates states' respect for their human rights obligations set out in the UN Charter, the Universal Declaration of Human Rights, human rights treaties ratified by the country and voluntary pledges and commitments made by the state. This framework could include the GCM, as it *rests* on the Universal Declaration of Human Rights, ICCPR, International Covenant on Economic, Social and Cultural Rights and other core international human rights treaties (para. 2) and is *based* on international human rights law (para. 15(f)). This would avoid the costly duplication of work and build upon an existing, well-tested model. The current parallel mechanisms reflect the long-standing position of some states, supported by the IOM, as illustrated in the creation of the Global Forum on Migration and Development (GFMD) process in 2007 to deal with migration issues outside of the UN framework.

In a nutshell, the treaty bodies' monitoring process and the GCM review are complementary, and synergies between these processes should be fostered to improve the supervision of states' implementation of their detention-related obligations and commitments. Indeed, in the "voluntary GCM review," states are encouraged to describe efforts to leverage synergies across the various reporting mechanisms of other international agreements ([UN Network on Migration 2021c](#)). In addition, the UN General Assembly requested the Secretary-General to ensure that the expertise of the UN system as a whole, including treaty bodies and particularly Geneva-based expertise, is coordinated to support the IMRF and facilitate states' participation in the GCM review ([UN General Assembly 2019](#), para. 7). To prevent creating parallel processes, the IOM, as the Network Secretariat, and the OHCHR, as the treaty bodies' Secretariat, should strengthen the links between their monitoring tasks. The relevant excerpts of the concluding observations should be submitted for the GCM reviews, and the treaty bodies' recommendations should be included in the outcome document of the GCM review. Furthermore, states' voluntary input to the GCM and submissions by other stakeholders could be used by the treaty bodies during the "constructive dialogue" with the state delegation during their review. Beyond treaty bodies, the UPR can inspire several changes in the GCM reviews to make it more effective and can itself be used to review the implementation of GCM commitments.

5. Conclusions

This article contributed, through the lens of the GCM, to the long-standing discussion on the threats to the rule of law posed by the practice of immigration detention, despite the existence of a corpus of relevant provisions stemming from human rights norms and standards. The GCM and Objective 13 may undermine the rule of law in migration governance, including immigration detention regimes. In fact, given the attention the GCM attracts, its nonbinding character and the voluntary nature of its review can be used by states as justification for patchy implementation of their binding human rights obligations and inadequate reporting on this implementation to the supervising bodies. While acknowledging these challenges to the rule of law, this article sought to explore the ways the GCM can actually foster the rule of law in the area of immigration detention. Arguably, to strengthen rule of law principles, Objective 13 would need to support the binding human rights regime preventing arbitrary detention and its implementation at the domestic level by ensuring that detention is used exceptionally, as a measure of last resort, and is subject to a judicial review. In search of synergies between human rights and GCM frameworks, this article discussed the interplay between the ICCPR, ICRMW and CRC on the one hand, and Objective 13 on the other, at three levels. First, as regards detention provisions, Objective 13 overall reflects the detention norms and standards under the international legal framework. Thus, the content of the provisions of Objective 13 and most of the implementing actions are not optional for states. Second, to increase complementarities between the support given to states for the implementation of the

detention provisions of the HRC, ICRMW and CRC on the one hand, and Objective 13 on the other, the Migration Network should align the interpretation of Objective 13 with an authoritative interpretation of detention provisions by the HRC, CMW and CRC Committee. The capacity-building assistance and funds from the Multi-Partner Trust Fund for the projects implementing Objective 13 should be dependent on the beneficiary countries' compliance with international detention-related human rights standards. Third, concerning supervision of the implementation, the treaty bodies' monitoring process and the GCM review are complementary. Whereas the HRC, CMW and CRC Committee veritably review the implementation of the detention provisions by the countries under review, the IMRF offers states a space for debate and to share good practices, challenges and commitments regarding implementation of the GCM. The IMRF should support treaty bodies' monitoring by involving members of the HRC, CMW and CRC Committee, reminding states of their binding human rights obligations and referring to treaty bodies' recommendations in the GCM Progress Declaration. The UPR can inspire several changes to the GCM review to make it more effective, or it could itself review the GCM implementation. Aligning the interpretation, implementation and review of the implementation of Objective 13 within the existing legal framework is necessary for upholding the rule of law in the area of immigration detention and, thus, for the GCM to adhere to its own guiding principles, which include the recognition of respect for the rule of law, due process and access to justice as "fundamental to all aspects of migration governance."

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: Not applicable.

Acknowledgments: The author would like to thank Mariette Grange and Silvia Gómez for the constructive comments that helped to improve this article. Any errors and conclusions remain the author's alone.

Conflicts of Interest: The author declares no conflict of interest.

References

- Chetail, Vincent. 2020. The Global Compact for Safe, Orderly and Regular Migration: A Kaleidoscope of International Law. *International Journal of Law in Context* 16: 253–68. [\[CrossRef\]](#)
- Committee on Migrant Workers (CMW). 2013. *General Comment No. 2 on the Rights of Migrant Workers in an Irregular Situation and Members of Their Families*. CMW/C/GC/2. Geneva: CMW.
- Committee on Migrant Workers (CMW). 2021. *General Comment No. 5 on Migrants' Rights to Liberty, Freedom from Arbitrary Detention and Their Connection with Other Human Rights*. CMW/C/GC/5. Geneva: CMW.
- Committee on Migrant Workers (CMW), and Committee on the Rights of the Child (CRC Committee). 2017. *Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return*. CMW/C/GC/4-CRC/C/GC/23. Geneva: CMW.
- Desmond, Alan. 2020. A New Dawn for the Human Rights of International Migrants? Protection of Migrants' Rights in Light of the UN's SDGs and Global Compact for Migration. *International Journal of Law in Context* 16: 222–38. [\[CrossRef\]](#)
- European Court of Human Rights (ECtHR). 2001. *Gunay and Others v. Turkey*. 31850/96. Strasbourg Cedex: European Court of Human Rights.
- European Court of Human Rights (ECtHR). 2008a. *Sadaykov v. Bulgaria*. 75157/01. Strasbourg Cedex: European Court of Human Rights.
- European Court of Human Rights (ECtHR). 2008b. *Soldatenko v. Ukraine*. 2440/07. Strasbourg Cedex: European Court of Human Rights.
- European Commission for Democracy Through Law (Venice Commission). 2011. *Report on the Rule of Law*. CDL-AD(2011)003rev. Strasbourg: Venice Commission.
- Farahat, Anuscheh, and Jürgen Bast. 2022. A Global View on the Global Compact for Migration: Introduction. *VRÜ Verfassung und Recht in Übersee* 55: 3–18. [\[CrossRef\]](#)
- Favi, Alessandra. 2022. Protecting Asylum Seekers and Migrants in the Context of the Rule of Law Crisis in EU Member States: The Recent Approach of the Court of Justice of the EU through the Lens of the Global Compacts on Refugees and Migration. *Laus* 11: 37. [\[CrossRef\]](#)
- Fordham, Michael, Justine N Stefaneli, and Sophie Eser. 2013. *Immigration Detention and the Rule of Law: Safeguarding Principles*. London: Bingham Centre for the Rule of Law.

- Gammeltoft-Hansen, Thomas, Elspeth Guild, Violeta Moreno-Lax, Marion Panizzon, and Isobel Roele. 2017. *WHAT IS A COMPACT?: Migrants' Rights and State Responsibilities Regarding the Design of the UN Global Compact for Safe, Orderly and Regular Migration*. Lund: Raoul Wallenberg Institute of Human Rights and Humanitarian Law.
- Grange, Mariette. 2013. *Smoke Screens: Is There a Correlation between Migration Euphemisms and the Language of Detention?* Global Detention Project Working Paper No. 5. Geneva: Global Detention Project.
- Grange, Mariette. 2018. The Migrant Workers Convention: A Legal Tool to Safeguard Migrants against Arbitrary Detention. In *Shining New Light on the UN Migrant Workers Convention*. Edited by Alan Desmond. Pretoria: PULP, pp. 72–100.
- Grange, Mariette, and Izabella Majcher. 2017. Immigration Detention under International Human Rights Law: The Legal Framework and the Litmus Test of Human Rights Treaty Bodies Monitoring. In *Challenging Immigration Detention: Academics, Activists and Policy-Makers*. Edited by Michael J. Flynn and Matthew B. Flynn. Cheltenham: Elgar, pp. 265–92.
- Grange, Mariette, and Izabella Majcher. 2020. Using Detention to Talk about the Elephant in the Room: The Global Compact for Migration and the Significance of Its Neglect of the UN Migrant Workers Convention. *International Journal of Law in Context* 16: 287–303. [CrossRef]
- Guild, Elspeth. 2020. The UN Global Compact for Safe, Orderly and Regular Migration: To What Extent Are Human Rights and Sustainable Development Mutually Compatible in the Field of Migration? *International Journal of Law in Context* 16: 239–52. [CrossRef]
- Guild, Elspeth, and Maja Grundler. 2022. A Template for Government-Led Compliance?—A Closer Look at the 'Six-Step Process for GCM Implementation'. *Refugee Law Initiative*. Available online: <https://rli.blogs.sas.ac.uk/2022/02/07/a-template-for-government-led-compliance-a-closer-look-at-the-six-step-process-for-gcm-implementation/> (accessed on 12 June 2022).
- Guild, Elspeth, Stephanie Grant, and Kees Groenendijk. 2017. *IOM and the UN: Unfinished Business*. Legal Studies Research Paper No. 255/2017. London: Queen Mary University of London, School of Law.
- Guild, Elspeth, Tugba Basaran, and Kathryn Allinson. 2019. From Zero to Hero? An Analysis of the Human Rights Protections within the Global Compact for Safe, Orderly and Regular Migration (GCM). *International Migration* 57: 43–59. [CrossRef]
- Hänsel, Valeria. 2020. Returns Without Warranty—The Grey Zone of 'Voluntary Return' in the Framework of the EU-Turkey Deal. In *La Question de l'expulsion Des Étrangers Dans Les Relations Euro-Méditerranéennes: Faire La Lumière Sur La Zone Grise, Les cahiers de Tunisie*. Edited by Jean-Pierre Cassarino. pp. 33–38. Available online: https://www.academia.edu/45050538/Returns_Without_Warranty_The_Grey_Zone_of_Voluntary_Return_in_the_Framework_of_the_EU_Turkey_Deal_Retours_sans_garantie_La_zone_grise_du_retour_volontaire_dans_le_cadre_de_la_d%C3%A9claration_UE_Turquie (accessed on 14 June 2022).
- Hilpold, Peter. 2021. Opening up a New Chapter of Law-Making in International Law: The Global Compacts on Migration and for Refugees of 2018. *European Law Journal* 26: 226–44. [CrossRef]
- Human Rights Committee (HRC). 2006. *Danyal Shafiq v. Australia*. 1324/2004. Geneva: HRC.
- Human Rights Committee (HRC). 2014. *General Comment No. 35: Liberty and Security of Person*. CCPR/C/GC/35. Geneva: HRC.
- International Commission of Jurists. 2012. *The Definition and Scope of Arbitrary Deprivation of Liberty in Customary International Law: International Commission of Jurists (ICJ) Submission to the Working Group on Arbitrary Detention*. Ottawa: International Commission of Jurists.
- International Organization for Migration (IOM). 2021. UN Network on Migration Launches 'Migration Network Hub', a Knowledge and Solutions Platform on the Global Compact for Safe, Orderly and Regular Migration. Available online: <https://www.iom.int/news/un-network-migration-launches-migration-network-hub-knowledge-and-solutions-platform-global-compact-safe-orderly-and-regular-migration> (accessed on 12 June 2022).
- Joinet, Louis. 1990. *Report on the Practice of Administrative Detention: The Administration of Justice and the Human Rights of Detainees*. E/CN.4/Sub.2/1990/29. Available online: <https://digitallibrary.un.org/record/73097> (accessed on 14 June 2022).
- Leerkes, Arjen, and Dennis Broeders. 2013. Deportable and Not so Deportable: Formal and Informal Functions of Administrative Immigration Detention. In *The Social, Political and Historical Contours of Deportation*. Edited by Bridget Anderson, Matthew J. Gibney and Emanuela Paoletti. New York: Springer, pp. 79–104.
- Majcher, Izabella. 2019a. Immigration Detention under the Global Compacts in the Light of Refugee and Human Rights Law Standards. *International Migration* 57: 91–114. [CrossRef]
- Majcher, Izabella. 2019b. *The European Union Returns Directive and Its Compatibility with International Human Rights Law: Analysis of Return Decision, Entry Ban, Detention, and Removal*. Leiden: Martinus Nijhoff.
- Majcher, Izabella. 2020. The Effectiveness of the EU Return Policy at All Costs: The Punitive Use of Administrative Pre-Removal Detention. In *Causes and Consequences of Migrant Criminalisation*. Edited by Neža Kogovšek Šalamon. Switzerland: Springer, pp. 109–29.
- Majcher, Izabella. 2021a. Creeping Crimmigration in CEAS Reform: Detention of Asylum-Seekers and Restrictions on Their Movement under EU Law. *Refugee Survey Quarterly* 40: 82–105. [CrossRef]
- Majcher, Izabella. 2021b. Implementation of GCM Objective 13 in the UNECE Region: Little Added Value Provided by the Compact in Making Immigration Detention a Last Resort. *Refugee Law Initiative*. Available online: <https://rli.blogs.sas.ac.uk/2021/05/14/implementation-of-gcm-objective-13-in-the-unece-region-little-added-value-provided-by-the-compact-in-making-immigration-detention-a-last-resort/> (accessed on 12 June 2022).
- Molnár, Tamás. 2020. The EU Shaping the Global Compact for Safe, Orderly and Regular Migration: The Glass Half Full or Half Empty? *International Journal of Law in Context* 16: 321–38. [CrossRef]

- Multi-Partner Trust Fund (MPTF) Office. 2022. Start-up Fund for Safe, Orderly and Regular Migration. Available online: <https://mptf.undp.org/factsheet/fund/MIG00> (accessed on 12 June 2022).
- Muntarbhorn, Vitit. 2019. The Global Compacts and the Dilemma of Children in Immigration Detention. *International Journal of Refugee Law* 30: 668–73. [CrossRef]
- Office of the UN High Commissioner for Human Rights (OHCHR). 2012. *The United Nations Human Rights Treaty System*. Fact Sheet No.30. Geneva: Office of the UN High Commissioner for Human Rights.
- Office of the UN High Commissioner for Human Rights (OHCHR). 2016. *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms*. HR/PUB/16/1. Geneva: Office of the UN High Commissioner for Human Rights.
- Office of the UN High Commissioner for Human Rights (OHCHR). 2020. Basic Facts about the UPR. Available online: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (accessed on 12 June 2022).
- Office of the UN High Commissioner for Human Rights (OHCHR). 2021a. Human Rights Treaty Bodies—General Comments. Available online: <https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx> (accessed on 12 June 2022).
- Office of the UN High Commissioner for Human Rights (OHCHR). 2021b. Monitoring the Core International Human Rights Treaties. Available online: <https://www.ohchr.org/EN/HRBodies/Pages/Overview.aspx> (accessed on 12 June 2022).
- Office of the UN High Commissioner for Human Rights (OHCHR). 2021c. Treaty Body Capacity Building Programme. Available online: <https://www.ohchr.org/EN/HRBodies/Pages/TBCapacityBuilding.aspx> (accessed on 12 June 2022).
- Office of the UN High Commissioner for Human Rights (OHCHR). 2022a. *Regional Consultations on Experiences and Good Practices Relating to the Establishment and Development of National Mechanisms for Implementation, Reporting and Follow-Up*. A/HRC/50/64. Geneva: Office of the UN High Commissioner for Human Rights.
- Office of the UN High Commissioner for Human Rights (OHCHR). 2022b. Universal Human Rights Index. Available online: <https://uhri.ohchr.org/en/> (accessed on 12 June 2022).
- Panizzon, Marion, and Daniela Vitiello. 2019. Governance and the UN Global Compact on Migration: Just Another Soft Law Cooperation Framework or a New Legal Regime Governing International Migration? *EJIL Talk*. Available online: <https://www.ejiltalk.org/governance-and-the-un-global-compact-on-migration-just-another-soft-law-cooperation-framework-or-a-new-legal-regime-governing-international-migration/> (accessed on 12 June 2022).
- Pécoud, Antoine, and Mariette Grange. 2018. Les Dilemmes de l'Organisation Internationale Pour Les Migrations. *The Conversation*. Available online: <http://theconversation.com/les-dilemmes-de-lorganisation-internationale-pour-les-migrations-99170> (accessed on 12 June 2022).
- Special Rapporteur of the Commission on Human Rights on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 2002. *The Prohibition of Torture and Other Forms of Ill-Treatment in the Context of Anti-Terrorism Measure*. A/57/173. Geneva: Special Rapporteur of the Commission on Human Rights on the Question of Torture.
- Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 2015. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez: Torture and Ill-Treatment of Children Deprived of Their Liberty*. A/HRC/28/68. Geneva: Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Special Rapporteur on the Human Rights of Migrants (SRHRM). 2012. *Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau: Detention of Migrants in an Irregular Situation*. A/HRC/20/24. Geneva: SRHRM.
- Special Rapporteur on the Human Rights of Migrants (SRHRM). 2020. *Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales: Ending Immigration Detention of Children and Providing Adequate Care and Reception for Them*. A/75/183. Geneva: SRHRM.
- Stefanelli, Justine N. 2018. GCM Commentary: Objective 13: Use Immigration Detention Only as a Measure of Last Resort and Work towards Alternatives. *Refugee Law Initiative*. Available online: <https://rli.blogs.sas.ac.uk/2018/09/27/gcm-commentary-objective-13/> (accessed on 12 June 2022).
- UN. 2022. International Migration Review Forum 2022: Voluntary GCM Reviews. Available online: <https://www.un.org/en/migration2022/voluntary-GCM-reviews> (accessed on 12 June 2022).
- UN General Assembly. 2018. *Global Compact for Safe, Orderly and Regular Migration*. A/RES/73/195. Geneva: UN General Assembly.
- UN General Assembly. 2019. *Format and Organizational Aspects of the International Migration Review Forums*. A/RES/73/326. Geneva: UN General Assembly.
- UN General Assembly. 2022. *Progress Declaration of the International Migration Review Forum*. A/AC.293/2022/L.1. Geneva: UN General Assembly.
- UN Network on Migration. 2020a. *COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?: Statement by the United Nations Network on Migration*. Geneva: UN Network on Migration.
- UN Network on Migration. 2020b. *Executive Committee Working Level: Working Group Reviews: TWG 2/Alternatives to Detention*. Geneva: UN Network on Migration.
- UN Network on Migration. 2020c. *TWG 2 Workplan*. Geneva: UN Network on Migration.
- UN Network on Migration. 2020d. *UN Network on Migration Briefing with Member States: Thematic Working Group 2 on Alternatives to Immigration Detention*. Geneva: UN Network on Migration.

- UN Network on Migration. 2021a. *COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?: Annex to Policy Brief*. Geneva: UN Network on Migration.
- UN Network on Migration. 2021b. *International Migration Review Forum: Concept Note on a Pledging Initiative*. Geneva: UN Network on Migration.
- UN Network on Migration. 2021c. *Proposed Roadmap for the UN Network on Migration's Support to the International Migration Review Forum (IMRF)*. Geneva: UN Network on Migration.
- UN Network on Migration. 2022a. Alternatives to Detention. Available online: <https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention> (accessed on 12 June 2022).
- UN Network on Migration. 2022b. Europe and North America. Available online: <https://migrationnetwork.un.org/country-regional-network/europe-north-america> (accessed on 12 June 2022).
- UN Network on Migration. 2022c. *International Migration Review Forum: Round Table Two: Information Note and Programme*. Geneva: UN Network on Migration.
- UN Network on Migration. 2022d. Multi-Partner Trust Fund for Safe, Orderly and Regular Migration. Available online: <https://migrationnetwork.un.org/mptf> (accessed on 12 June 2022).
- UN Network on Migration. 2022e. Network Members. Available online: <https://migrationnetwork.un.org/network-members> (accessed on 12 June 2022).
- UN Network on Migration. 2022f. Terms of Reference of the Network. Available online: <https://migrationnetwork.un.org/network-terms-of-reference> (accessed on 12 June 2022).
- UN Network on Migration. 2022g. The Executive Committee. Available online: <https://migrationnetwork.un.org/executive-committee> (accessed on 12 June 2022).
- UN Network on Migration. 2022h. Working Groups. Available online: <https://migrationnetwork.un.org/working-groups> (accessed on 12 June 2022).
- UN High Commissioner for Refugees (UNHCR). 2017. *UNHCR's Position Regarding the Detention of Refugee and Migrant Children in the Migration Context*. Geneva: UNHCR.
- Working Group on Arbitrary Detention (WGAD). 2011. *Report of the Working Group on Arbitrary Detention: Thematic Considerations: Habeas Corpus*. A/HRC/19/57. Geneva: WGAD.
- Working Group on Arbitrary Detention (WGAD). 2018. *Revised Deliberation No. 5 on Deprivation of Liberty of Migrants*. A/HRC/39/45. Geneva: WGAD.