

Report of German Civil Society Organisations for the
International Migration Review Forum (IMRF)
taking place on 17 – 20 May 2022

Implementation of the Global Compact on Migration

Priority Recommendations



SECTION I

A. Introduction

This report represents the “voice” of German Civil Society concerning the implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM), which the Federal Republic of Germany adopted in 2018 alongside the majority of UN Member States and thus committed to its implementation.

Although Germany adopted the GCM, the pact’s influence on political processes or impact on German policy making on migration has so far been limited. In its implementation efforts, the German Government has chosen an external rather than a domestic focus: Germany is the biggest donor to the Multi-Partner Trust Fund for Safe, Orderly and Regular Migration, and it supports civil society activities at the global level. This stands in stark contrast to the fact that domestically there is no regular dialogue between the government and German civil society on the GCM. Moreover, relevant objectives of the GCM have not been implemented, while official statements suggest that all objectives have already been met at national level.¹

The report is an initiative and collective effort by a group of German civil society organisations, including a mix of secular and faith-based organizations as well as advocacy organizations and think tanks covering a range of thematic areas (such as social welfare, human rights, humanitarian aid and development). Additionally, several individuals participated in the process in their personal capacities. All of them devoted time to the process and value the GCM as an important reference document for migration policies, even if non-binding. Unfortunately, only very few migrant organisations responded to the invitation to write this report, probably for reasons mentioned under Objective 19. Among these actors, the Association to promote Church engagement for vulnerable migrants² provided limited funding for a short project phase (October 2021 – December 2021) to coordinate this report. After the completion of the draft report, it underwent a consultation and signing process.

While financial resources and time were limited, the participating authors decided to follow a step-by-step approach and prioritised the preparation of a report for the IMRF as an expression of the views of German civil society, highlighting the main implementation gaps. Ideally, it is hoped that the report will lead to a dialogue process involving many more civil society actors and the government in line with the “Whole-of-society approach” of the GCM. Moreover, the report can also be the basis for a regular review of the implementation of the GCM at national level, in form of a regular dialogue between civil society and the Federal Government.

The report consists of two sections and three main chapters: Following the introduction the report presents a list of the most urgent recommendations, one per objective (chapter 1). This is the main document, which was signed by 21 organisations. The second section is a discussion paper where 16 out of the GCM’s 23 objectives were discussed. For each, it analyses current gaps and makes up to 3 recommendations (chapter 2). Two cross-cutting issues were identified: the tensions between the new

¹ <https://www.auswaertiges-amt.de/blob/2411248/d20b5e24ccc3bfa2fd17fb6efaef6bd6/201030-downloaddatei-gcmbericht-data.pdf>

² The Association to promote Church engagement for vulnerable migrants is a Catholic organisation supporting the “Catholic Forum “Living in Illegality”” (www.forum-illegalitaet.de) and the Working Group against Human Trafficking of the German Bishops’ Conference

Pact on Asylum and Migration Pact presented by the European Commission in September 2020 and the GCM is treated separately (chapter 3) as well as child rights. Specific issues concerning migrant children were mentioned in relevant objectives, while at the same time there is unanimous agreement that the best interests of the child must always be considered and anchored as a primary consideration. In concrete terms, this means that investments must be made in national education, child protection and social systems and services both in countries of origin (e.g., for children of migrants left behind) as well as countries of immigration (e.g., to improve their participation).

It is important to note, that while the report was being written, Germany elected a new government. The coalition agreement, which was signed on 24 November 2021 by the Social Democratic Party, the Green Party and the Liberal Party contains statements of intent that, if implemented, would contribute towards the objectives of the GCM, and improve the situation for migrants and refugees. The agreement states that “We want to shape a new beginning in migration and integration policy that does justice to a modern immigration country. For this, we need a paradigm shift: with an active and regulative policy, we want to shape migration in a forward-looking and realistic manner. We will reduce irregular migration and enable regular migration.”³ The coalition agreement will be referenced in the text, whenever it is pertinent.

It is acknowledged that Germany has put substantial efforts into the development of adequate migration policies. Among those, integration policies and measures are probably among the successes. However, admission and welcoming need to be reinforced. Concerning the facilitation of legal pathways for labour migration, the Skilled Immigration Act⁴ constitutes the legal basis for the immigration of people with formal professional qualifications. However, legal pathways for those who have no formal qualification are needed, as there is a demand on the labour market, e.g., in live-in care or seasonal work. Moreover, there are conflicting goals between development cooperation and labour migration policies in Germany. While not formally part of the GCM and thus outside the scope of the report, it is also important to acknowledge that Germany’s migration policy has been shaped by its recent experience as a major country of asylum as well as the political and public reactions to this trend. Despite existing efforts, the effective involvement of migrant and diaspora organisations remains a challenge. Many would like to contribute to shaping the policy process, but often lack the necessary financial and human resources. Well-established and bigger civil society organisations play an instrumental role providing counselling services for migrants and engaging in integration projects for which they also receive state funding.

The authors and signatories of the report hope that they can contribute, first and foremost, to improve the situation of migrants in our country, facilitate their access to rights where there are barriers, and help shape human rights-based and inclusive migration policies which take the realities of our mobile world into account. Moreover, the report can also be the basis for a regular review of the implementation of the GCM at national level, in form of a regular dialogue between civil society and the Federal Government.

February 2022

³ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 4646

⁴ https://www.make-it-in-germany.com/en/visa-residence/skilled-immigration-act?mtm_campaign=search-inland-fkeq&cHash=73482875a6b1dd99a72aacc3b0527482

B. Overview of priority recommendations to improve the situation of migrants and implement the GCM

(GCM objective 1) German authorities are urged to set up, analyse and maintain a comprehensive and coherent statistical system for a comprehensive migration and integration reporting as an evidence base for future rights-based policy measures.

(GCM objective 2) German policies on structural drivers and their implementation should focus on a broader partnership approach and not one-sidedly on bilateral agreements with a special emphasis on return and readmission. This does not do justice to addressing structural drivers and development. Moreover, it is too state-centred while migration can only be addressed adequately when involving all parts of society.

(GCM objective 3) The Federal Government should use its Official Development Aid (ODA) to also support informed, self-determined, safe, and regular ways of migration by fostering and financing independent (from state and economic interests), high quality and tailored pre-departure counselling for potential migrants and returnees, which are also coordinated with the country of destination to allow for a well-informed decision to migrate or return.

(GCM objective 4) The Federal Government should create regulations in the civil status system, in residence and immigration law, in social law and in the naturalisation procedure on how to obtain identity documents and when to deem a prima facie case of identity sufficient, for cases in which clarifying identity or obtaining a passport cannot reasonably be expected for legal or practical reasons. It must be ensured that every child born in Germany is immediately included in the birth register and issued a birth certificate and receives proof of identity (if necessary, with an indication of the issues that still need to be clarified) and that this proof is sufficient for exercising residence, social, and other rights.

(GCM objective 5) The legal improvements for family reunification promised in the coalition agreement must be implemented as soon as possible. In addition, capacities of the visa sections of German embassies, must be expanded considerably. Alternatives to personal appointments, e.g., via digital tools, should be implemented to avoid risky border crossings in regions of war or crisis.

(GCM objective 6) The Federal Government should encourage all public and private recruitment agencies to follow the ILO "General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs". It should ratify and implement the ILO Convention No. 181 (Private Employment Agencies Convention, 1997) and ensure licensing and monitoring of recruitment agencies by the authorities. In case of governmental recruitment initiatives (e.g., in the care sector), recruitment must follow the fair recruitment standards and take place only through certified agencies. The Government should put in place effective complaints mechanisms which include the possibility of individual claims against fraudulent recruiters as well as international reporting on fraudulent recruitment.

(GCM objective 8) In cooperation with other EU member states, the Federal Government should deploy an adequate number of vessels, including some with Search and Rescue (SAR) as their primary purpose, along the routes taken by boats carrying migrants as foreseen in the coalition agreement.

(GCM objective 10) The Federal Government should fund and strengthen a nationwide sustainable support system for combatting human trafficking that guarantees the special rights of victims, such as the recovery and reflection period to decide if they want to cooperate with prosecuting authorities. It

should ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the entitlement to residency and create accessible procedures for claiming compensation and back-wages.

(GCM objective 13) Children and other vulnerable persons must not be detained. A general ban on the detention of children and adolescents should be implemented as a matter of urgency. The use of detention pending deportation in the case of persons in particular need of protection should be avoided.

(GCM objective 15) The Federal Government should suspend the statutory exclusion of job-seeking EU citizens and their family members from basic social benefits, lift the benefit reductions for asylum seekers and suspend the reporting obligation under § 87 (2) Residence Act (AufenthG) that can prevent undocumented migrants from seeking health care.

(GCM objective 16) To enable full and equal participation, avenues to obtain citizenship must be improved. Considerations in the coalitions agreement to reduce the periods of prior residence and to generally allow multiple citizenships point in the right direction. Naturalisation should also be accessible to migrant students and to holders of a humanitarian residence permit if they fulfil the criteria for it.

(GCM objective 17) In order to promote inclusion and a sense of belonging in a society characterised by diversity, as well as to advance diversity-oriented organisational development in public institutions and services of general interest, a participation act at federal level could be a suitable instrument. It should promote stronger representation of interests through the participation of migrant organisations.

(GCM objective 18) The Federal Government should commission the development of a database of best practices in informal skills recognition that employers and companies can draw upon.

(GCM objective 19) The Parliament should strengthen the ability of transnational networks of diaspora organisations to execute projects by allocating more funds to them and by encouraging the cooperation between various stakeholders.

(GCM objective 21) Counselling on voluntary return programmes must be open-ended and carried out by independent and well-trained professionals, also from civil society including diaspora organisations. The training for skills should continue after the repatriation, with individual monitoring about the reintegration.

(GCM objective 23) A critical stocktaking and evaluation of existing international and bilateral partnership programmes and a broad discussion should take place involving the Parliament, research institutions and civil society. The concepts, approaches and methods used to date should be reassessed with a view to creating larger-scale and more effective programmes.

(Cross-cutting: Tensions between the EU Asylum and Migration Pact and the GCM)

In the negotiations on the EU Asylum and Migration Pact, the Federal Government should only support those elements that are in line with the GCM - in particular the improvement of standards for protection seekers in asylum procedures as agreed in the Coalition Agreement as well as the fair sharing of responsibility for reception between EU member states. Regarding those elements which, in their current form, are fundamentally at odds with the objectives of the GCM, it should press at the EU level for a corresponding change.

Signatory Organisations

Afrikanisch-Deutsche Arbeitsgemeinschaft (A.D.A.G.E.)

Arbeit und Leben Berlin-Brandenburg DGB/VHS

AWO International

Bischöfliches Hilfswerk MISEREOR (the German Catholic Bishops' Organisation for Development Cooperation)

Brot für die Welt, Protestant Agency for Diakonie and Development

Catholic Forum "Living in Illegality"

DaMigra, Dachverband der Migrantinnenorganisationen

Deutscher Paritätischer Wohlfahrtsverband - Gesamtverband (The Paritätische)

Diakonie Deutschland, Protestant Agency for Diakonie and Development

German Caritas Association

INGEFF (Indo-German Friendship Forum, Berlin)

Institut für angewandte Kulturforschung ifak

KOK – German NGO Network against Trafficking in Human Beings

MEPa Migration-Entwicklung-Partizipation

Nuremberg Human Rights Center

Oxfam Germany

PLAN INTERNATIONAL

SOLWODI Germany

Sprungbrett Zukunft Berlin

terre des hommes Germany

Transnational Corridors

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This section is an additional discussion paper to reflect on further aspects of the GCM and its implementation in the German context. This section was written by different German civil society organisations and individuals, but it is not part of the signatory process, as its content does not necessarily reflect the position of all signatories. Nevertheless, German civil society wanted to share this second section within the IMRF process to support a broader and richer reflection about the GCM implementation at the international level and to provide more insights for a discussion with governmental bodies.

SECTION II – Discussion paper

C. Objectives, gaps, and recommendations

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

Implementation gap:

There are many gaps regarding data collection in the area of migration both globally and nationally: For instance, there is no global data collection mechanism for displacement caused by slow-onset climate change such as desertification or soil degradation (Obj. 2). For Germany, there is a lack of data on the number of people working as carers in private households. Data is similarly incomplete on the number of returns, both voluntary or forced (Obj. 21); on minor migrants; and on the prevalence of trafficking in human beings (THB) and exploitation in Germany (Obj. 10). The following text focuses on the latter -collection of data on the prevalence of THB and exploitation - as an important area where data are missing and an example to show why the collection of data is important. The only reliable data in this area is collected in connection with the Federal Situation Report on Human Trafficking⁵ drawn up by the German Federal Criminal Police Office. However, this situation report only tells part of the story, as it relies on cases known to the police in which investigations have been opened and subsequently concluded. Both in Germany and at the international level, reports on THB that are currently available and based on verified sources draw on cases reported by law enforcement agencies. Consequently, they focus solely on investigations and data on the trafficked persons and perpetrators involved. Though this information is important, it nonetheless paints a very limited picture. Data provided by counselling centres⁶ clearly show that many of the individuals in Germany who are affected by THB and exploitation do not come into contact with the prosecuting authorities or cooperate with them. Finally, the importance of collecting data (on THB cases) is to determine the extent to which (trafficked) persons have access to their rights and can exercise them.

Recommendations:

1) Collating data must help to draw up reports that reflect the humanitarian and human rights situation of rights holders, e.g. victims of THB or returnees.

⁵ Report of the Federal Criminal Police Office (BKA): Menschenhandel und Ausbeutung

⁶ KOK data report on human trafficking and labour exploitation, March 2021, <https://www.kok-gegen-menschenhandel.de/en/news/news/kok-news/kok-data-report-on-human-trafficking-and-exploitation-in-germany>, last retrieved 28.12.21

- 2) Collected data should allow for an insight into the barriers to accessing support services and the implementation of rights of affected persons, and highlight examples of best practices, while at the same time respecting data protection laws.
- 3) German authorities are urged to set up, analyse and maintain a comprehensive and coherent statistical system for a comprehensive migration and integration reporting as an evidence base for future rights-based policy measures.

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

Implementation gap:

The German Federal Government and the EU are supporting development programmes to tackle root causes of forced migration in countries of origin. Germany is a committed donor to the 2030 Agenda for Sustainable Development and supports many relevant development measures around the globe, for instance on vocational training and skills development, education, health care and protection and many other aspects. Nevertheless, there is a risk that domestic policy objectives (such as reducing irregular migration) will be pursued at the expense of tackling the root causes of forced migration, and that ultimately fewer financial resources and less political commitment will be dedicated to addressing root causes.

Structural drivers of migration, such as economic inequality, environmental degradation, corruption/lack of good governance in countries of origin, were neglected when Germany and other EU member states negotiated partnership agreements and other agreements such as the Post Cotonou Agreement with countries of origin of migration. Bilateral negotiations and financing instruments supported by Germany as the EU Emergency Trust Fund for Africa or the Neighbourhood, Development, and International Cooperation Instrument have been used one-sidedly as leverage to promote security, return and border management interests by European states, not reflecting the cooperative nature of the agreements. Also, EU subsidies on agricultural products and non-tariff trade barriers as well as political pressure to sign free trade agreements can damage local economies in the Global South, which should be strengthened not weakened. Another example are the arms exports from Germany to countries involved in conflicts.

Climate-related migration is a reality faced by millions of people around the globe – not in the future but today, in most cases internally displaced persons. The interaction of different phenomena makes it difficult to attribute forced migration exclusively to climate change. Especially as global data collection on this phenomenon is still weak and challenging (s. Obj. 1). At the international level, there are discussions to develop instruments targeting specifically those people who are forced to move outside of their country of origin due to climate change. Intergovernmental processes are underway on this matter, such as the Task Force on Displacement (TFD) initiated in 2016 in the context of the UN Framework Convention on Climate Change and the Platform on Disaster Displacement (PDD), which led to the Nansen Initiative. The recommendations of the TFD, the proposals of the PDD and emerging regional mechanisms – e.g., in the Pacific – are steps in the right direction.

The aspects mentioned have also been taken up in the “Report on the root causes of displacement” commissioned by the Federal Government, which formulated 15 recommendations, which included stopping climate change and shaping EU- and German migration and refugee policies in a coherent and humane way.⁷

⁷ Fachkommission Fluchtursachen der Bundesregierung (2021): Krisen vorbeugen, Perspektiven schaffen, Menschen schützen. Bericht der Fachkommission Fluchtursachen der Bundesregierung. Berlin. Fachkommission Fluchtursachen: Startseite V2 (www.fachkommission-fluchtursachen.de) zuletzt aufgerufen am 12.12.2021

Finally, also the coalition agreement of the new government underlines its commitment to fighting root causes of displacement in the context of a fresh start on migration and integration policy, reflecting Germany's reality as modern country of immigration.⁸

It is to be hoped that these intentions will be followed by implementation. One problem not only of the GCM and the GCR, but also of German policy is that internally displaced persons are largely ignored. Yet they represent the largest group among the displaced, numbering some 48 million people in 2020. They often lack access to basic services and are denied rights. As a result, internal displacement is often followed by forced migration or secondary flight across borders.

Recommendations:

1) Review policies for policy coherence: The Federal Government should correct contradictory approaches when it comes to the external dimension of migration policies. Development funds should be strictly distinct from funds used for border management and security measures that do not address the structural drivers of migration, as expressed in the coalition agreement.

2) German policies on structural drivers and their implementation should focus on a broader partnership approach and not one-sidedly on bilateral agreements with a special emphasis on return and readmission. This does not do justice to addressing structural drivers and development. Moreover, it is too state-centered while migration can only be addressed adequately when involving all parts of society.⁹

3) The Federal Government should devote more political attention to internal displacement and support approaches that advocate durable solutions for internally displaced persons. It should support the re-establishment of a Special Representative on Internal Displacement or the creation of a comparable position at the United Nations.¹⁰

⁸ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 4646

⁹ "Whole-of-society approach", Global Compact for Safe, Orderly and Regular Migration, p. 6, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195 last retrieved on 28.12.2021

¹⁰ Shining a Light on Internal Displacement, A Vision for the Future, Report of the UN Secretary-General's High-Level Panel on Internal Displacement, (2021), p. 19 f, https://www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/idp_report_web.pdf last retrieved on 28.12.2021

Objective 3: Provide accurate and timely information at all stages of migration

Implementation gap:

Potential migrants to Germany can access important and well-prepared information via online information services and service hotlines of various federal ministries and authorities (e.g., via “www.make-it-in-germany.com”, “www.anerkennung-in-deutschland.de”, etc.), but this is not always sufficient as it does not reach all potential beneficiaries of these services for various reasons and is not tailor-made for the individual case. Furthermore, there are various information services on return to countries of origin. What is missing are sufficient and tailored counselling services prior to a person’s departure to Germany to provide those interested in migrating to Germany with reliable and up-to-date information on their specific case. Such services should be provided by independent counselling centres that can offer guidance and clarify any specific individual issues. To build a relationship of trust with those seeking advice they must be independent from state institutions as well as economic interests. They should follow set quality standards, such as the standards of the International Federation of Social Workers and have a clear social advocacy mandate, be preferably docked with civil society organisations in the respective countries and be distinct from recruitment agencies. Good cooperation between pre-departure counselling centres and migration counselling centres as well as the advisory bodies for the recognition of professional qualifications at the place of arrival is indispensable for professional individualized counselling. In this way, individual case-related questions can be reliably clarified in advance and lead to a better preparation for the migrant. Many of the counselling centres established by Germany in countries of origin concentrate on reintegration of returnees. Concerning return counselling in Germany, counsellors often lack sufficient knowledge about the real situation in the country or region of return and thus their information is not reliable.

Recommendations:

- 1) The Federal Government should use its Overseas Development Aid to also support informed, self-determined, safe, and regular ways of migration by fostering and financing independent (from state and economic interests), high quality and tailored pre-departure counselling for potential migrants and returnees, which are also coordinated with the country of destination to allow for a well-informed decision to migrate or return.
- 2) It should involve diaspora organisations in the provision of information at all stages of migration as they may have valuable information about what migrants need.

Objective 4: Ensure that all migrants have proof of legal identity and adequate documentation

Implementation gap:

As in other countries, there are also migrants in Germany who do not have identity documents and cannot obtain them for various reasons. However, according to §3 of the residence act (AufenthG) every foreigner has the obligation to have a passport, with exceptions for asylum seekers and refugees. People fleeing, even if they are not refugees under the Geneva Refugee Convention, or migrants both in regular and irregular situation often have difficulties in obtaining proof of identity or other documents to get passports or identity cards - especially if they have been abroad for many years and no longer have ties to their country of origin. The lack of documents is an obstacle to claim rights. In this context, the announcement made in the coalition agreement to expand the possibility of making an affirmation in lieu of an oath ("Erklärung an Eides statt") to clarify the own identity is greatly welcomed.¹¹

Recommendations:

- 1) The Federal Government should create regulations in the civil status system, in residence and immigration law, in social law and in the naturalisation procedure on how to obtain identity documents and when to deem a prima facie case of identity sufficient, for cases in which clarifying identity or obtaining a passport cannot reasonably be expected for legal or practical reasons.
- 2) It must be ensured that every child born in Germany is immediately included in the birth register and issued a birth certificate and receives proof of identity (if necessary, with an indication of the issues that still need to be clarified) and that this proof is sufficient for exercising residence, social, and other rights.

¹¹ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 4679

Objective 5: Enhance availability and flexibility of pathways for regular migration

Implementation gap:

At the outset, the authors would like to echo global civil society: “Too many migrants today remain limited in their options to migrate safely (...).”¹²

In implementing the GCM, the Federal Government regards the Skilled Immigration Act (Fachkräfteeinwanderungsgesetz, FEG) which came into force in 2020, as a contribution to “strengthen pathways for regular migration”¹³. The FEG aims to facilitate opportunities for skilled workers (both those with academic credentials and with non-academic professional qualifications) from third countries to enter Germany. In addition, Germany seeks to recruit skilled workers from third countries through bilateral labour migration agreements. However, persons from third countries below these qualification levels have few legal entry opportunities for the purpose of taking up employment or training.

In the future, the German labour market will continue to need migrants from the EU as well as from third countries due to demographic trends and the associated shortage of (skilled) workers (see also Obj. 23). This is also acknowledged in the coalition agreement of the new government. The FEG makes it easier for skilled workers to immigrate to Germany, but it does not contain any additional accompanying protective measures for better labour controls and against wage dumping. Exploitative working conditions and even human trafficking are common in the agricultural sector, in the construction, logistics and cleaning industries, as well as in home care, mostly affecting people without formal qualifications. Furthermore, with increasing international competition for skilled workers, there is the threat of brain drain in many countries of origin where workers are often urgently needed, for example in the healthcare sector.

A significant number of migrants in Germany live under a precarious residence status, a so-called temporary suspension of deportation status (Duldung). Many of them earn their living and are well integrated. Switching to a more secure labour migration-related residence permit should be allowed. Furthermore, it is a welcome development that the coalition agreement promises to allow for international labour mobility while easing some procedures, such as in the area of recognition of professional qualifications (Obj. 18).¹⁴

The commitment to facilitate access to family reunification procedures in the GCM implies that existing procedural barriers should be lowered, and no new or higher barriers should be introduced. This commitment is not only limited to legislation, but also applies to administrative practices of immigration authorities and embassies, where long delays in handling applications for family reunification are common. According to the coalition agreement, the new Federal Government plans to reinstate family reunification entitlements for people with a subsidiary protection status under the same conditions than for those with a status according to the 1951 Geneva Convention. Siblings under the age of 18 shall no longer be left behind in third countries in the case where parents join their unaccompanied children who are recognized as refugees in Germany. Being reunited with their family

¹² Civil Society Action Committee: Global Civil Society Priorities towards the 2022 International Migration Review Forum (IMRF), 12 KEY WAYS FOR STATES TO GET BACK ON TRACK, URL:

https://mcusercontent.com/233fa9a0ed4257ad77ac77d14/files/c8bbbedfd-8a86-4160-dbf7-4a24618a2563/FINAL_Global_Civil_Society_Priorities_01.pdf last retrieved on 14.01.22

¹³ <https://www.auswaertiges-amt.de/blob/2411248/d20b5e24ccc3bfa2fd17fb6efaef6bd6/201030-downloaddatei-qcembericht-data.pdf>, p. 7

¹⁴ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 4655

is crucial for the mental health of children and a child-friendly and healthy upbringing. The standardisation of the family reunification application procedure according to Art. 10 CRC to ensure it is dealt with "in a positive, humane and expeditious manner" should be considered. Language tests for reuniting spouses can be provided after their arrival in Germany.

Recommendations:

- 1) Create and regularly convene a "migration cabinet" as a platform for interministerial exchange on goals and coordination of measures, in particular for the implementation of the Skilled Immigration Act. In the spirit of a holistic 360-degree approach, labour market, domestic, development and foreign policy interests should be reconciled in the best possible way. The Federal Government should develop guidelines for a rights-based and development-oriented migration policy and prepare a sector-specific needs analysis for labour migration with the participation of the social partners.
- 2) The Federal Government must align bilateral labour migration agreements with international standards, such as the core labour standards of the International Labour Organisation and the Code of Conduct of the World Health Organisation, as well as with development aspects.
- 3) Enable "lane-switching" from the asylum procedure to residence status for the purpose of (livelihood-securing) employment.
- 4) The legal improvements for family reunification promised in the coalition agreement must be implemented as soon as possible. In addition, capacities of the visa sections of German embassies, must be expanded considerably. Alternatives to personal appointments, e.g., via digital tools, should be implemented to avoid risky border crossings in regions of war or crisis.

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

Implementation gap:

Private as well as public recruitment structures both in countries of origin of migrant workers and in the country of destination are often a gateway to exploitative working conditions and even forced labour. This also applies to Germany. Informal recruitment via special websites or social media plays a major role in this. People often pay high fees for brokerage or travel expenses. Furthermore, workers are not registered in the social security system (health insurance, social security, retirement pension scheme), salaries are below minimum wage or there are wage deductions for accommodation and travel. Sometimes companies act both as recruiters and employers. There is no European or German regulation on public and private recruitment agencies to align them with international guidelines and best practices, such as the ILO "General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs"¹⁵ and to prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers. There is little research so far on the extent and practices of private job placement services to Germany in particular. Private recruitment agencies in Germany are not registered nor controlled. Moreover, public recruitment agencies do not check the real conditions of the job offer once the person starts working.

While there are relevant international instruments like the ILO principles for fair recruitment none of them are implemented in Germany due to the lack of a strong enforcement agency and political will. Within the EU there are several loopholes within migration regulations and worker rights which facilitate the shifting of responsibilities for the worker between the countries and makes it difficult to identify who is responsible for human and labour rights violations. There are few possibilities in German national laws to sanction human rights and labour rights violations. Even if counsellors learn about fraudulent recruitment, in Germany there are nearly no possibilities to react and to assist on an individual level, due to a lack of legislation and complaint mechanisms.

There is a general lack of public awareness and little effort made by the government to strengthen the enforcement of fair and ethical recruitment and enforcing compliance with decent work standards.

The coalition agreement envisages several measures in this regard which affect also migrant workers: the promotion of employment subject to social security contributions in private households; the ratification of the occupational health and safety convention in the agricultural sector (ILO Convention No. 184) and the convention against violence and harassment in the workplace (ILO Convention No. 190); and access to health insurance for seasonal workers¹⁶. Hopefully, the promise to prevent structural and systematic violations of labour law and occupational health and safety through more effective law enforcement will be implemented also for the benefit of migrants.

Recommendations:

1) The Federal Government should encourage all public and private recruitment agencies to follow the ILO "General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs". It should ratify and implement the ILO Convention No. 181 (Private Employment Agencies Convention, 1997) and ensure licensing and monitoring of recruitment agencies by the authorities. In case of governmental recruitment initiatives (e.g. in the

¹⁵ https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf

¹⁶ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 2310, 2327, 3861, 2331,

care sector), recruitment must follow the fair recruitment standards and take place only through certified agencies. The Government should put in place effective complaints mechanisms which include the possibility of individual claims against fraudulent recruiters as well as international reporting on fraudulent recruitment. Moreover, the European Union (EU) should develop a common European legal framework to improve regulation for recruitment practices in member states.

2) The Federal Government should strengthen labour inspections against exploitation of workers to verify compliance with applicable collective agreements or, in the absence of such agreements, with the rates normally paid for the work in question.

3) The Federal Government should expand information and counselling services for third-country nationals on labour rights and conditions on the labour market.

Objective 8: Save lives and establish coordinated international efforts on missing migrants

Implementation gap:

According to figures of IOM approx. 23,000 people died or disappeared in the Mediterranean since 2014.¹⁷ Deaths have also been documented on overland routes such as – most recently – the border between Poland and Belarus. EU countries not only stopped Search and Rescue (SAR) missions in the Mediterranean, but also actively hamper the work of private SAR operations by various means, e.g. hindering disembarkation, detaining rescue vessels and taking legal actions against organizations and individuals. To stop migration flows towards Europe, Germany and the EU work closely with the Libyan coast guard which has been widely criticized for its poor human rights record. Furthermore, border guards from EU member states such as Greece are violently pushing back migrants in the Mediterranean. It is likely that the European Border and Coast Guard (Frontex) has been involved in some of these pushbacks. Although the German Parliament questioned the Executive Director of Frontex on the matter in 2021, Germany has not acted against pushbacks in the Mediterranean. The same is true for pushbacks that happen at the Croatian or Polish border.

Although Germany is not situated at the EU's external border, it should take measures together with other EU member states to actively protect and save lives of migrants coming to Europe and uphold existing EU asylum law which prohibits pushbacks. The coalition agreement includes some important commitments concerning SAR, as well as a pledge to end pushbacks and suffering at the external borders, that – if implemented – will support objective 8 of the GCM.

Recommendations:

- 1) In cooperation with other EU member states, the Federal Government should deploy an adequate number of vessels, including some with SAR as their primary purpose, along the routes taken by boats carrying migrants as foreseen in the coalition agreement.
- 2) Germany should ensure that NGOs are fully able to carry out their lifesaving SAR activities and oppose actions to criminalize their activities. At the same time, EU member states including Germany should review its cooperation with Libyan authorities and the Libyan coast guard on migration and border management and base further cooperation on strict human rights standards.
- 3) Legal action must be taken against human rights violations at the EU external border (including pushbacks) by EU organizations such as Frontex or by member states. As a first step a continuous human rights monitoring mechanism should be set up to accompany the work on EU external borders to detect and report human rights violations.

¹⁷ <https://missingmigrants.iom.int/region/mediterranean> last retrieved 09.01.2022

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

Implementation gap:

The extent and nature of trafficking in human beings (THB) in Germany, including trafficking for the purpose of labour exploitation, sexual exploitation, begging, forced criminality, internal trafficking and child trafficking is not fully explored. The numeric gap between those identified by law enforcement as victims of THB and presumptive but undetected cases is wide (see Obj. 1).

In 2020, outbreaks of Covid-19 in accommodation facilities for migrant workers in the meat industry and agricultural sector brought exploitative labour conditions to light. In these sectors opaque chains of subcontractors and wages below subsistence level are commonplace, hence migrant workers are particularly susceptible to exploitation.

Authorities in charge of the implementation of the state's human rights obligation often lack knowledge, sensitization, and resources. International norms such as the "non-punishment" clause or the reflection period for deciding if to cooperate with law enforcement are not granted due to ignorance or uncertainty of their applicability.

There is neither a comprehensive national strategy nor a coordination plan to comprehensively engage all stakeholders in training or cooperation to combat trafficking and protect victims.

Not all victims of trafficking have effective access to assistance and protection. Sustainable funding for assistance services provided by NGOs is not secured sustainably in all federal states (Bundesländer).

Currently for certain groups such as male victims of human trafficking or children, lack appropriate accommodation facilities.

Access to compensation and redress is lengthy and these entitlements are rarely claimed as neither civil nor criminal proceedings are effective, and victims are often not informed in a language they can understand on their right to compensation and the procedures in place. Legal practitioners often lack capacity to support victims in claiming compensation. Commitments made in the coalition agreement to develop a national action plan and implementation of a monitoring body are important steps for improvements.¹⁸

Recommendations:

1) The Federal Government should fund and strengthen a nationwide sustainable support system for combatting human trafficking that guarantees the special rights of victims, such as the recovery and reflection period to decide if they want to cooperate with prosecuting authorities. It should ensure that victims of trafficking, regardless of the form of exploitation, can fully benefit in practice from the entitlement to residency and create accessible procedures for claiming compensation and back-wages.

2) Mainstream sensitization on THB systematically in curricula for all categories of police officers, prosecutors, judges, inspectors of the Financial Monitoring Unit to Combat Illicit Employment, diplomatic and consular staff, staff of counselling centres, health-care professionals, staff working with children, migration officials, asylum officials and staff working in accommodation centres for asylum seekers and establish cooperation structures in all federal states (Bundesländer).

¹⁸ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 3859

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

Implementation gap:

Detention pending deportation should only be used as a measure of last resort. Nevertheless, vulnerable persons such as the sick, pregnant women, minors or the elderly are also sometimes detained. The answer to a major parliamentary enquiry in the Bundestag revealed that - contrary to the recommendations in the GCM - the number of detained persons obliged to leave the country who are detained has been rising again since 2015 (with an exception for 2020), probably due to the measures taken to contain the Covid-19 pandemic.¹⁹

Overall, the enforcement of the obligation to leave the country, also by means of detention pending deportation, has become a symbol of a supposedly "orderly" asylum and migration policy. At the same time human rights aspects and the (health-related) impact on the detained persons are neglected in political discussion. The European Court of Justice has declared the temporary regulation created in 2019 to be able to place people in regular prisons until their deportation as illegal. Meanwhile, more and more federal states (Bundesländer) are building their own detention centres²⁰, hence the number of detainees can be expected to grow in future. However, detention pending deportation is by no means a prerequisite for the successful enforcement of the obligation to leave the country. The federal state of Berlin, where detention pending deportation is hardly ever used, manages to deport more people than any other federal state in Germany.²¹

Children and families are not per se excluded from such measures. The German authorities claim to always consider the best interests of the child when applying detention measures. However, this does not always seem to be the case. In Bavaria, for example, families are often separated, with the parents or guardians being placed in detention pending deportation, while the children are put into youth centres.²² This practice can have a traumatising effect on the children. The close accompaniment of children and families with minors in the deportation prisons seem not to be implemented in every detention centre. The ECJ has also ruled that accommodation in "transit zones camps", as operated in Hungary, equals detention and is incompatible with EU law.²³ Nevertheless, attempts can be observed to practically legalise such transit zones in poorly defined "exceptional situations".

Recommendations:

- 1) Children and other vulnerable persons must not be detained. The general ban on the detention of children and adolescents, as announced in the coalition agreement,²⁴ should be put into practice as a matter of urgency. The use of detention pending deportation in the case of persons in particular need of protection should be avoided.
- 2) Greater attention should be paid to the primacy of voluntary return in national law and to the GCM's recommendation to minimise detention and rely instead on other measures that do not

¹⁹ Drucksache 19/31669 Url: <https://dserver.bundestag.de/btd/19/316/1931669.pdf>

²⁰ Bundesländer bauen die Abschiebehäft aus, Mediendienst Integration, Url: <https://mediendienst-integration.de/artikel/bundeslaender-bauen-die-abschiebehäft-aus.html>

²¹ Drucksache 19/27007, Url: <https://dserver.bundestag.de/btd/19/270/1927007.pdf>

²² Eichstätt/Passau: Asylrecht trennt Mutter und Kind - Palästinenserin sitzt in Abschiebehäft in Eichstätt - und ihr dreijähriger Sohn muss ins Kinderheim, Url: <https://www.donaukurier.de/nachrichten/bayern/DKmobil-wochennl052019-Asylrecht-trennt-Mutter-und-Kind;art155371,4064256>

²³ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-05/cp200060de.pdf>

²⁴ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 4741

restrict freedom. There is a need for better coordination and investment in return counselling instead of further expansion of deportation facilities.

3)The "legalisation" of prison-like transit zones at European level should be stopped.

Objective 15: Provide access to basic services for migrants

Implementation gap:

The German constitution enshrines to a subsistence level which is rooted in the right to respect for the human dignity of each individual and is not subject to the legislator's discretion. It ensures that each person in need of assistance has the material prerequisites indispensable for his or her physical existence and for a minimum degree of participation in social, cultural and political life. In its landmark 2012 decision the constitutional court furthermore stated that "human dignity may not be relativised by migration-policy considerations."²⁵ Nevertheless, there are some legislative shortcomings for certain migrant groups that contravene these principles. In particular, the following three groups are excluded from this minimum subsistence level:

Job-seeking EU-citizens

EU citizens enjoy the right to move freely within the EU in search of employment. In some cases, job-seeking EU citizens require assistance in Germany, for instance when their savings have been used up and their job search has not yet been successful. This group of persons is, however, excluded from basic social benefits (Grundsicherung SGB II and XII) for a period of five years after their first arrival, although they reside in Germany lawfully. Moreover, occasional and precarious employment cannot lead to permanent employee status that enables access to the statutory social benefit system (SGB II) in the long-term. This exclusion from benefits creates precarious living conditions and, in some cases, calls health insurance into question. Employers in Germany can easily exploit the distress in which those concerned find themselves.

Asylum Seekers

Asylum seekers are excluded from the general social benefit system and receive reduced benefits. In addition, the Asylum Seeker Benefits Act lists 22 different possible sanctions to contraventions on the part of the asylum seeker that lead to further reductions of the already lower benefits. In the case of a person who is obliged to leave the country, benefits are cut by 47%, in other cases the person receives only in-kind benefits to fulfil his or her obligations, e.g., reporting to authorities. The announcement in the coalition agreement to ease access to health care for asylum seekers and to exempt children from reduced benefits will be an improvement.

People living in irregular situations

People living in irregular situations are entitled to basic services, in particular to basic health care (for acute illnesses) under the Asylum Seeker Benefits Act (§4 and 6 AsylbLG). Persons in an irregular situation are not allowed to work. Should they nevertheless be informally employed, they are "covered by statutory health, (...) and accident insurance"²⁶. However, when attempting to claim their rights, they risk being reported to the immigration authorities, and hence possible deportation. Public authorities are obliged under § 87 (2) Residence Act (AufenthG) to notify the immigration department if, in the course of duty, they become aware of an immigrant without a residence permit. Exceptions apply to medical staff (professional confidentiality) and administrative staff in hospitals. Ultimately the reporting obligation from §87 (2) AufenthG prevents those affected to assert their right to health, if

²⁵ https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2012/07/1s20120718_1bvl001010.html

²⁶ <https://www.auswaertiges-amt.de/blob/2411248/d20b5e24ccc3bfa2fd17fb6efae6bd6/201030-downloaddatei-qcembericht-data.pdf>, p. 14

they do not have their own financial means.²⁷ The pandemic has further exacerbated the condition of vulnerability of persons in situations of irregularity, e.g., when it comes to protection from Covid-19. While they are entitled to a vaccine, there are still practical barriers to access it, such as the unclear interpretation of regulations.

The coalition agreement promises to review the reporting obligation to remove barriers to accessing medical treatment.

Recommendations:

- 1) The statutory exclusions from benefits for job-seeking EU citizens and their family members under social benefit law (SGB II and SGB XII) should be suspended.
- 2) Asylum seekers should be entitled to full social benefits during their asylum procedure according to the constitutional requirements.
- 3) The reporting obligation (§ 87 (2) AufenthG) and connected regulations should be urgently suspended or restricted at least as regards access to health care.

²⁷ "The obligation to provide information (...) in § 87 AufenthG excludes people without a regular residence status from health care. In doing so, the federal government not only violates the human right to non-discriminatory access to health care, but also the constitutionally guaranteed right to a minimum standard of living in terms of health, the right to life and physical integrity and the right to informational self-determination. See: Gesellschaft für Freiheitsrechte/Ärzte der Welt: Ohne Angst zum Arzt – Das Recht auf Gesundheit von Menschen ohne geregelten Aufenthaltsstatus in Deutschland. Eine grund- und menschenrechtliche Bewertung der Übermittlungspflicht im Aufenthaltsgesetz, 2021 https://gleichbehandeln.de/wp-content/uploads/2021/05/210504_RZ_GFF_Studie_Recht-auf-Gesundheit_screen_DS.pdf, p. 41

Objective 16: Empower migrants and societies to realize full inclusion and social cohesion

Implementation gap:

In Germany, 21.9 million people or 26.7% of the population (2020)²⁸ have a personal or family history of immigration. The term “migrant” does not reflect the varied realities behind these biographies. Categories cannot capture this complexity which must be included in processes of participation, co-creation and co-decision at all levels of the society. These individuals want to be active subjects and shapers of their lives and contribute to the German society, not passive objects of public policies. But in reality not everyone is guaranteed “full, free and equal participation in society and the economy” as required by the GCM (see Obj. 16 e). Depending on their legal status, some migrants are excluded from integration measures, such as integration courses, from participation in training, from employment support, family benefits or basic state benefits (see Obj. 15). The possibilities of naturalisation vary also with the legal status of residence. More generally, as numerous studies show, people with a migration history in Germany face discrimination in the housing²⁹ and labour markets³⁰. Much remains to be done to foster an appreciation of diversity, mutual respect-and discrimination-sensitive approaches in public institutions as well as in civil society organisations. The racial hierarchies and paternalistic cultures of many public and private organisations need to be challenged. Also, the needs of migrant children and youth should be considered, such as creating participatory structures and collecting data. The coalition agreement foresees a series of measures to foster inclusion: (1) Easier access to the German citizenship; (2) enshrining inclusion in a “participation act”, and (3) the implementation of diversity strategies aiming to promote structural changes in public institutions. These measures are ever more urgent given the growing rejection of immigration and of equal participation that has been observed in parts of society in recent years.

Recommendations:

- 1) To enable full and equal participation, avenues to obtain citizenship must be improved. Considerations in the coalition agreement to reduce the periods of prior residence and to generally allow multiple citizenships point in the right direction. Naturalisation should also be accessible to migrant students and to holders of a humanitarian residence permit if they fulfil the criteria for it.
- 2) In order to dismantle institutional and individual discrimination, exclusionary structures and mechanisms must be analysed, and appropriate measures developed and implemented based on this evidence. Existing protection gaps in the General Equality Act must be closed, especially those related to discrimination in the housing market and the labour market.
- 3) In order to strengthen the social interaction and equal participation of foreigners in their local communities, the right to vote in municipal elections (active and passive) should be introduced for foreigners (from non-EU countries).

²⁸ Bundesministerium des Innern und für Heimat (Hrsg.): Migrationsbericht der Bundesregierung 2020, 193. Url: https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Migrationsberichte/migrationsbericht-2020.pdf?__blob=publicationFile&v=14 last retrieved 02.02.2022

²⁹ Antidiskriminierungsstelle des Bundes (Hrsg.): Rassistische Diskriminierung auf dem Wohnungsmarkt. Ergebnisse einer repräsentativen Umfrage, Berlin, Januar 2020, Url: https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Umfragen/umfrage_rass_diskr_auf_dem_wohnungsmarkt.pdf?__blob=publicationFile&v=4 last retrieved 16.01.2022

³⁰ Sekou Keita, Jérôme Valette: Zugewanderte, denen man weniger vertraut, bleiben länger arbeitslos, Institut für Arbeit und Berufsforschung; IAB Kurzbericht Arbeitsmarktdiskriminierung, <https://doku.iab.de/kurzber/2020/kb1020.pdf> last retrieved 02.02.2022

Objective 17: Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration

Implementation gap:

The German society has long been in denial about the reality of racism and its violent colonial past. Public authorities failed to properly investigate the murders of nine persons with a migration background perpetrated between 2001 and 2006 by the “Nationalsozialistische Untergrund (NSU)”, a right extreme cell that is now dissolved. It took two other racist attacks, one which targeted the Jewish community in Halle in 2019, and one against the Muslim community in Hanau killing nine more persons in 2020 for the German government to take action. The murders took place in the context of the rise of the political party Alternative für Deutschland (Afd) which shifted its anti-European to an anti-immigration and anti-immigrants’ discourse and entered the German Parliament with 12% of the votes in 2017 and 11% in 2021.

Furthermore, the colonial heritage is not a closed chapter of history but at the very heart for example of European-African relations.

The German Government accepted in 2021 that the murder of the Hereros and Namas by German troops between 1904 and 1908 in Namibia amounted to genocide and agreed to disburse 1 billion Euro in over a 30-year period to settle this issue.

To promote an evidence-based discourse in 2017 the German Center for Research on Integration and Migration (Deutsches Zentrum für Integrations - und Migrationsforschung (DeZIM))³¹ was created and is funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth with the aim to strengthen research on migration and integration in Germany. Furthermore, in 2020 the government decided to establish and to finance the Expert Council for Integration and Migration (Sachverständigenrat für Integration und Migration (SVR)) as an independent body providing research-based policy advice to policymakers, public institutions and the general public.³² In 2021, a cabinet committee identified 89 measures to combat extreme right and/or racist mindsets and organisations.³³ To what extent and how soon these measures will challenge the daily discrimination in schools, in public administrations, in private companies and in NGOs, which takes place despite the General Equal Treatment Act which entered into force in 2006, is also a question of political will. Under the headlines “combatting racism”, “antidiscrimination” and “colonial heritage”, the coalition agreement lists measures for future action. It is questionable whether this will be enough to combat the discrimination in the education system and in the labour market where racial hierarchies dominate (see previous obj. 16). This discrimination widens the wealth gap between people with and without a migration history and is a source for present and future social inequalities and tensions.

Recommendations:

1) In order to promote inclusion and a sense of belonging in a society characterised by diversity, as well as to advance diversity-oriented organisational development in public institutions and services of general interest, a participation act at the federal level could be a suitable instrument. It should promote stronger representation of interests through the participation of migrant organisations.

³¹ <https://www.dezim-institut.de/>

³² <https://www.svr-migration.de/en/about-us/mission/>

³³ Abschlussbericht des Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus, Url: https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sicherheit/abschlussbericht-kabinettausschuss-rechtsextremismus.pdf?__blob=publicationFile&v=2

- 2) The Federal Government should include provisions for more cultural diversity and participation in the terms of public grants to counter racist ideologies and discrimination.
- 3) The Federal Government should consider Germany's colonial heritage as a transversal topic pertaining also to foreign policy, international economic cooperation, education, and the research system.

Objective 18: Recognition of foreign professional qualifications

Implementation gap:

Research on highly skilled labour migration from non-EU countries to Germany has revealed that migrants frequently encounter challenges concerning the recognition of skills and qualifications that they gained in their countries of origin or in previous (non-EU) destination countries.

There is evidence³⁴ that two types of recognition processes are particularly relevant for the career and labour market success of migrants: the formal recognition of qualifications and skills by state institutions and the “de facto recognition” by employers. With respect to the former process, there is evidence that the length of procedures and the complexity of documents requested can not only prompt changes in an individual’s migration plans (e.g. early return or onward movement), but also lead to deskilling. This means that while migrants are waiting for the recognition of their certificates, they might be forced to accept jobs that are below their skill level and earning potential and remain in these jobs for a long time or even permanently.

The research also reveals that migrants’ soft skills are commonly questioned or doubted by employers or colleagues (even after the formal approval of qualifications). This, too, can significantly affect migrants’ careers. In particular, uncertified skills are questioned (e.g. work efficiency, teamwork, leadership skills in combination with language skills). This can lead to feelings of frustration and deprivation, affecting the professional trajectories, aspirations and the performance of foreign-born professionals in the German labour market.

In short, issues in the formal as well as informal recognition of qualifications and skills continue to represent important obstacles in achieving effective labour market integration. This situation might have not only consequences for migrants themselves (e.g. the gap between expected and actual working conditions, impacting aspirations and careers) but also for the German economy (e.g. short employment duration or reduced performance of migrant workers in companies). It is hoped that the plans announced in the coalition agreement to remove barriers to the recognition of foreign educational and professional qualifications, to reduce bureaucratic requirements and to accelerate procedures will be implemented.³⁵

Recommendations:

- 1) The Federal Government should continue its efforts to reduce bureaucratic burdens in the recognition process of foreign qualifications and skills and to speed up procedures.
- 2) The Government should commission the development of a database of best practices in informal skills recognition that employers and companies can draw upon.
- 3) The Government should implement programmes to accompany informal recognition processes in companies, including supporting employers in organising information events for employees, and inter- and intra-company events for exchange and networking.

³⁴ E.g., Faist, T.; Aksakal, M.; Schmidt, K. (2017): Indian high-skilled Migrants and International Students in Germany –Migration Behaviours, Intentions and Development Effects. Bertelsmann Stiftung, Gütersloh.

³⁵ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 1023

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

Implementation gap:

The text of objective 19 does not specify whether countries of origin or countries of destination are responsible for implementing diaspora policies. In 2015, 3.8 million German citizens lived abroad³⁶ and there are policies to incentivise scientists to return to Germany. For those wishing to leave Germany, there are contact points in the different federal states (Bundesländer). Regarding the diasporas of other countries in Germany, the German public programmes, such as the Migration und Diaspora Programme run by the German Agency for International Cooperation (GIZ) have not yet proved attractive enough to mobilize this potential, for example with the view to achieving the SDGs. One reason is that until recently these diaspora organisations were not considered part of German civil society, although many of their leaders are German citizens, and as a result could not benefit from the same participation opportunities and financial means. Another reason is that strengthening diaspora organisations, which are often organised along ethnic lines, conflicts with the objective of the Federal Government to integrate migrants politically and socially irrespective of ethnic categories. Trapped in these contradictions, many diaspora organisations remain in a marginal position and find it difficult to professionalise their structures. Knowledge transfers with the more professionalised part of the German civil society are not encouraged. This has also hampered the access of diaspora organisations to mainstream development programmes. Therefore, diaspora organisations deal mainly with the social integration of migrants in Germany, an activity which is also more likely to attract public funding.

Recommendations:

- 1) The Parliament should strengthen the ability of transnational networks of diaspora organisations to execute projects by allocating more funds to them and by encouraging the cooperation between various stakeholders.
- 2) In parallel, the Federal Ministry for Economic Cooperation and Development (BMZ) should implement a programme aiming to train and connect leaders of diaspora organisations. The objective is to mainstream their knowledge and perspectives and to improve the efficiency of the private and public development aid programmes.
- 3) The Federal Government should develop a coherent diaspora policy and coordinate it with its partner states within existing bilateral agreements. This would facilitate transnational knowledge transfer and social innovation.

³⁶ Bundesinstitut für Bevölkerungsforschung (Hrsg.): Gewinner der Globalisierung Individuelle Konsequenzen von Auslandsaufenthalten und internationaler Mobilität, Policy Brief, December 2019. Url: https://www.bib.bund.de/Publikation/2019/pdf/Policy-Brief-Gewinner-der-Globalisierung.pdf;jsessionid=7BCDD74A939002CE47435D5B42DB17A7.2_cid389?_blob=publicationFile&v=5, last retrieved 03.02.2022 see also https://read.oecd-ilibrary.org/social-issues-migration-health/talent-abroad-a-review-of-german-emigrants_9789264231702-en#page1.

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

Implementation gap:

Germany has extensive experience with diaspora and repatriation policies related to German ethnic minorities who used to live in Eastern and Central European countries (Spätaussiedler).³⁷ The title of the programme “Perspektive Heimat”, which started in 2018, was inspired by this national experience.³⁸ Its purpose is, firstly, to support the voluntary return of migrants (mostly failed asylum seekers) from Germany to their country of origin and, secondly, to prevent secondary and irregular migration.

A recent report by the German Government indicates that the programme has struggled to persuade potential returnees to participate and to find stable jobs for them in their country of origin.³⁹ Other programmes run by the EU, the Federal Government, the federal states (Bundesländer), and the communes face similar difficulties.

Return programmes have several shortcomings when it comes to promoting dignified return and positive developmental effects. Training of three months for returnees are too short to acquire professional skills, the incentives are too weak in terms of financial support and of embeddedness in social networks at the place of origin and the intercultural skills of the counselling professionals are often too weak. Migrants who are repatriated to unsafe countries, such as Afghanistan or Iraq, must fear for their lives. For all these reasons, trust in such public programmes is low. Another problem is the lack of reliable data on the number of people who must return and on the impacts of various return programmes that exist in parallel at national and regional level in Germany.⁴⁰ Therefore, the statistical basis to discuss their relevance and effects is weak.

Recommendations:

- 1) Counselling on voluntary return programmes must be open-ended and carried out by independent and well-trained professionals, also from civil society including diaspora organisations. The training for skills should continue after the repatriation, with individual monitoring about the reintegration.
- 2) The Federal Government should base its return policy on realistic country reports (“Lageberichte”) rather than on the objective to return as many migrants as possible. Return must not take place to unsafe countries.
- 3) Public agencies should partner more closely and on an equal footing with civil society organisations, including diaspora organisations, to better understand the mindset of migrants and to design more appropriate incentives.

³⁷ Between 1990 and 2020 more than 2,5 million people migrated to Germany in the context of the programme for repatriation for German ethnic minorities. (analogous translation). Im Zeitraum von 1990 bis 2020 wanderten über 2,5 Millionen Menschen im Rahmen des Spätaussiedlerzuzugs nach Deutschland“ Migrationsbericht der Bundesregierung 2020, S. 152

³⁸ <https://www.bmz.de/de/entwicklungspolitik/perspektive-heimat>

³⁹ Deutscher Bundestag Drucksache 19/32368, 19. Wahlperiode 08.09.2021: Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Eva-Maria Schreiber, Michel Brandt, Andrej Hunko, weiterer Abgeordneter und der Fraktion DIE LINKE.– Drucksache 19/32073 – <https://dserver.bundestag.de/btd/19/323/1932368.pdf>

⁴⁰ , p. 87/88

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

Implementation gap:

With the view to facilitating the implementation of the return programme “Perspektive Heimat” (s. Obj. 21), Germany has signed bilateral agreements with Afghanistan, Egypt, Albania, Gambia, Ghana, Iraq, Kosovo, Morocco, Nigeria, Pakistan, Senegal, Serbia, and Tunisia. At the same time, the recent Skilled Immigration Act intends to open pathways for regular migration and aims to attract qualified professionals. But its implementation remains a challenge as there is no related public-private international cooperation system or infrastructure to support this act in practice.

Within the framework of the “Compact with Africa”, launched as part of Germany’s G20 presidency in 2017, Germany has also established “reform partnerships” with Ivory Coast, Ghana (renewable energies), Tunisia (banking), Morocco (employment, renewable energies, water management), Ethiopia (employment, agriculture, governance) and Senegal with the view to addressing the root causes of emigration.⁴¹ These programmes have revealed technical and political inconsistencies and weaknesses.⁴² The rapid collapse of institutions financed by western governments in Afghanistan, the presidential coup in Tunisia where the democratic institutions blocked each other instead of cooperating, the civil war in Ethiopia, and the diplomatic crisis between Germany and Morocco due to the Western Sahara issue seem to put the value of such programmes in question. It seems that such programmes create institutions outside of their social and political contexts, which in turn does not facilitate the ownership and the sustainability of the projects. The recent coups in Mali, in Guinea, in Sudan and in Burkina-Faso which are targeted by other public programmes, could reveal a wider systemic malaise in international cooperation. The evaluation of the above-mentioned reform partnerships is underway and could shed light on what can be improved.⁴³

Recommendations:

- 1) A critical stocktaking and evaluation of the international and bilateral partnership programmes and a broad discussion should take place involving the Parliament, research institutions and the civil society. The concepts, approaches and methods used to date should be reassessed with a view to creating more focused and more effective programmes.
- 2) Local, national, and transnational organisations should be involved in the design, the implementation, and the evaluation of the public programs.
- 3) The opening of legal pathways for migration should be included in bilateral cooperation agreements.

⁴¹ <https://www.compactwithafrica.org/content/compactwithafrica/home.html>

⁴² Deutscher Bundestag Drucksache 19/18486, 19. Wahlperiode 06.04.2020: Aktueller Stand zum „Marshallplan mit Afrika“, <https://dserver.bundestag.de/btd/19/184/1918486.pdf>

⁴³ https://www.deval.org/fileadmin/Redaktion/PDF/02-Evaluierungen/DEval_Evaluierungsprogramm_2021-2023.pdf, p.3.

D. Cross-cutting Issues

Tensions between the EU Asylum and Migration Pact and the GCM

The EU Asylum and Migration Pact and the GCM are in tension with each other in several ways. This applies to three core elements of the EU proposal: the multi-level solidarity mechanism, the Europeanisation of returns and the preliminary checks at the external borders.

Conflicts with the spirit and objectives of the GCM may arise in the first two areas, especially in their concrete application: In the case of the solidarity mechanism, the danger that individual states will avoid taking in refugees; in the case of returns, the disproportionate weight of this field of action compared to other dimensions of refugee and migration policy. The third area, the planned regulations on preliminary checks at the borders, pose fundamental contradictions to several GCM goals:

GCM obj. 7: Address and reduce vulnerabilities in migration

There is a discrepancy between the EU Pact and this objective, in particular with regard to paragraph (i) "facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case by case basis and with clear and transparent criteria, especially in cases where children, youth and families (...)". On the one hand, the provisions of the EU Asylum and Migration Pact as a whole are biased towards return. On the other hand, the rule that minors who refuse an age assessment are automatically considered adults contradicts the primacy of the best interests of the child as contained in the GCM.

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

The EU Asylum and Migration Pact does not provide adequate safeguards against the current proliferation of pushbacks at the EU's external borders. The fact that the independent monitoring mechanism foreseen for the protection of fundamental rights will only be applied in the context of the integrated border procedure, but not in other contexts of external border management, is a cause for concern.

GCM obj. 13: Use immigration detention only as a measure of last resort and work towards alternatives

Previous experience with the so-called hotspot approach at the EU's external borders has shown that procedures near the border are often accompanied by de facto deprivation of liberty and that this also frequently affects minors. The planned accelerated border procedure would exacerbate this situation. Children must have the opportunity to present their reasons for fleeing under psychosocial care; this cannot be ensured in settings such as the planned asylum border procedure. Facilities in screening or border procedures contradict the rights of the children concerned and can have serious consequences for their mental health.

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

The accelerated border procedures aim, among other things, to quickly return as many people as possible who are not in need of protection to their home countries. The strict time limit of the

procedures can contradict the goal of a safe and dignified return and, in the case of minors, is contrary to the best interests of the child.

Recommendations:

1) In the negotiations on the EU Asylum and Migration Pact, the Federal Government should only support those elements that are in line with the GCM - in particular the improvement of standards for protection seekers in asylum procedures as agreed in the Coalition Agreement⁴⁴ as well as the fair sharing of responsibility for reception between EU member states. With regard to those elements which, in their current form, are fundamentally at odds with the goals of the GCM, it should press at the EU level for a corresponding change.

⁴⁴ Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Z 4763