

## ABHANDLUNGEN / ARTICLES

### The Impact of the Marrakech Compact for Migration in Morocco: The Role of the Government and of Civil Society

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**Abstract:** Whether and how the GCM will impact national migration orders depends crucially on whether and how both governments and non-state actors engage with it in practice. This article takes Morocco as a case study and focuses on the role of the government and civil society. It asks how far their practices regarding the GCM support its potential as a soft law instrument to impact national migration orders. To undertake a more fine-grained analysis, the article includes an analysis of the implementation of Objective 15 (provision of basic services) as a test case. The paper draws on government reports, civil society reports and semi-structured interviews with policy makers and members of civil society. It identifies good conditions for the GCM to have an impact, in particular Moroccan claimed leadership in migration affairs in Africa; its engagement with the GCM's review mechanism, and its reliance on the GCM to legitimise migration policies even if some of those policies, as shown by the test case regarding objective 15, are not fully in conformity with the GCM. As to the role of civil society, its impact on the implementation of the GCM is hampered by the sceptical view of most non-governmental organization regarding the GCM. The majority of civil society considers the GCM's content very problematic and even if a small number of NGOs is positive about (parts of) it, not all of them invoke the GCM in their daily work. The test case regarding Objective 15 shows that NGOs monitoring access to services do not rely on this Objective. Combined with the lack of formal involvement in the national review process, civil society actors are so far unable (or unwilling) to exploit the political potential of the GCM.

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## A. Introduction

In December 2018, the Global Compact for Safe, Orderly and Regular Migration (hereafter: GCM or ‘the Compact’) was adopted in Marrakech and endorsed by the United Nations General Assembly.<sup>1</sup> While the GCM is formally a non-binding document,<sup>2</sup> adopting states nevertheless accept the obligation to ‘give due consideration’ to it and to consider it in ‘good faith’.<sup>3</sup> The GCM, therefore, implies an expectation of compliance.<sup>4</sup> Although this expectation is not a legal duty, it should be presumed that the GCM does have effect on national migration orders.<sup>5</sup> The Compact could be utilized by governments to elaborate national migration policies, while correspondingly being employed when defending migrants’ rights by civil society, national human rights institutions and legal practitioners, as a basis for interpretation of national and international law.<sup>6</sup>

More specifically, the GCM provides for a detailed follow-up procedure including regional review processes ‘alternating with discussions at global level’.<sup>7</sup> Moreover, the Compact encourages the states to develop ambitious national responses for the implementation of the Compact, and to conduct regular reviews of progress at national level.<sup>8</sup> Notably, it emphasizes that such reviews should also take into consideration contributions from all stakeholders.<sup>9</sup> Given the ‘whole-of-society’ approach<sup>10</sup> applied throughout the GCM, this also includes civil society actors. To increase its potential, the legal ‘softness’ of the review mechanism needs to be compensated by hard political sanctions, in the sense of a strict policy of ‘naming and shaming’ in case of non-compliance.<sup>11</sup> Such a political mechanism can be actively supported and initiated by civil society actors engaging not only in the interpretation of the GCM but also challenging states wherever they fail to comply with the GCM.<sup>12</sup> Whether and how the Compact will ultimately impact national migration orders,

1 UN Doc A/RES/73/195 (11 January 2019).

2 GCM, para. 15 and 53.

3 *Vincent Chetail*, International Migration Law, Oxford 2019, p. 295. See also Article 2(2) of the UN Charter.

4 *Chetail*, note 3, pp. 299–300. Cf. *Dina Shelton*, International Law and Relative Normativity, in: Malcolm Evans (ed.), International Law, New York 2010, p. 163.

5 *Alessandro Bufalini*, The GCM: What is its contribution to International Migration Law? *QIL*, Zoom-in 58 (2019), p. 10.

6 *Bufalini*, note 5, pp. 14–16.

7 GCM, para. 50.

8 GCM, para. 53.

9 *Ibid.*

10 GCM, para. 15 and 44.

11 *Bufalini*, note 5, pp. 22–23.

12 *Carolina Gottardo/Nishadh Rego*, The Global Compact for Migration (GCM), International Solidarity and Civil Society Participation: a Stakeholder’s Perspective, *Human Rights Review* 4 (2021), p. 16. Cf. *Elsbeth Guild/Tugba Basaran/Kathryn Allinson*, From Zero to Hero? An analy-

therefore, depends crucially on whether and how both national governments and non-state actors engage with it in practice.

Against this background the present paper focuses on the role of the government and civil society and asks how far their practices regarding the GCM support its potential as a soft law instrument to impact national migration orders. To answer this question, the paper will focus on the implementation of the GCM in Morocco as a case study. The reason for this country choice is threefold. First, besides being a migrant-sending and a transit country, Morocco has increasingly been transforming into a country of destination for sub-Saharan migrants. Second, Morocco introduced a new migration policy in 2013, and has been gaining a leadership role in developing the African Union's migration policy.<sup>13</sup> Third, Morocco actively participated and supported the intergovernmental negotiations leading to the GCM.<sup>14</sup> It can therefore be expected that both the Moroccan government and the civil society actors in Morocco are already well acquainted with the GCM, its content and purposes.

To undertake a more fine-grained analysis of the impact of governmental and non-governmental engagement with the GCM, the paper will focus its analysis on Objective 15 (provision of basic services) as a test case. Examining how governmental and non-governmental actors have engaged with this specific Objective will provide more detailed knowledge about the GCM's impact on Moroccan migration policy. To undertake this assessment, the paper draws on government reports, in particular those published in the context of the GCM's review mechanism. In addition, it makes use of civil society reports addressing the situation of migrants in Morocco regarding the fulfilment of migrants' basic needs. Finally, I also conducted semi-structured interviews with policy makers and members of civil society to get a sense of how they assess the impact of the GCM on this matter so far.<sup>15</sup>

The discussion unfolds as follows. Section (B.) presents responses and practices of the government regarding the GCM as a whole. Section (C.) reconstructs the perspectives from civil society. To flesh out these responses, section (D.) discusses national practices

sis of the human rights protections within the Global Compact for Safe, Orderly and Regular Migration (GCM), International Migration 57 (2019), p. 54.

13 Mot d'introduction du Directeur Général de l'Institut Royal des Etudes Stratégiques, 'Migration: facteur de développement et d'opportunités, La gestion des flux migratoires: une priorité de l'agenda africain et mondial', Forum Crans Montana, Dakhla Mars 2018, pp. 3–4.

14 Politique Nationale d'Immigration et d'Asile, Rapport 2018, pp. 108–112.

15 Due to the COVID-19 pandemic, I conducted the interviews online. I would also like to mention that I was involved in Moroccan civil society as advocacy officer for the PNPM in 2018 and 2019. I represented this platform in its GCM-related activities as mentioned in this paper. I was not involved in the GCM's negotiation process. In addition, I'm involved in the *Clinique Juridique Hijra Maroc* as volunteer president. This field experience helped me to gain insight into how civil society and state-actors address migration issues. I'm conscious of the fact that this may influence how I look at the GCM and migrants' rights in Morocco. This risk is mitigated by a conscious decision not to make any normative statement regarding the GCM.

regarding Objective 15 GCM. In section (E.), I analyse how far national practices support the GCM's potential to impact the Moroccan migration order. I close with an outlook for the future of the GCM in Morocco (F.).

## B. The practice of the Government regarding the GCM

In 2013, Morocco introduced a new migration policy.<sup>16</sup> It basically consisted of two campaigns to regularise irregular migrants and a legislative reform. The law on human trafficking entered into force in 2016, while the other two laws are still pending.<sup>17</sup> The pre-existing migration law is still applicable.<sup>18</sup> While this law has been qualified as being security-based,<sup>19</sup> Morocco regularly presents its policy as adopting a 'humanist' approach.<sup>20</sup> This approach has regularly been used by Morocco to present itself as one of 'the first countries of the South' that developed a 'solidarity policy welcoming sub-Saharan migrants'.<sup>21</sup> It also enabled Morocco to gain a leadership position in developing the African Union's migration policy as it was in charge of the development of the 'African Agenda for Migration'. This agenda was meant to be used as a framework for the African's participation in the GCM's negotiation process.<sup>22</sup>

In the following, I present an overview of the (I.) pre-Compact and (II.) post-Compact practices of the Moroccan government.

16 For an analysis of this policy, see *Sara Benjelloun, Nouvelle politique migratoire et opérations de régularisation* in: Konrad-Adenauer-Stiftung (ed.), *La nouvelle politique migratoire marocaine*, Rabat 2017, pp. 35–75.

17 Loi n° 27-14 du 25 août 2016 relative à la lutte contre la traite des êtres humains, Bulletin officiel, 2016-12-15, n° 6526, pp. 1952–1955; Projet de loi 66-17 relatif au droit d'asile et aux conditions de son octroi ; Loi n°72-17 relatif à la migration.

18 Loi n° 02-03 du 11 novembre 2003 relative à l'entrée et au séjour des étrangers au Royaume du Maroc, à l'émigration et l'immigration irrégulières.

19 Communiqué de Presse GADEM, Pour les dix ans de la loi sécuritaire 02-02, en finir avec la vision répressive de la migration, 27 Novembre 2013, <https://www.lacimade.org/cp-gadem-pour-le-s-dix-ans-de-la-loi-securitaire-02-%E2%80%9003-en-finir-avec-la-vision-repressive-de-la-migration/> (last accessed on 3 January 2022).

20 Delegate Ministry in charge of Moroccans Living Abroad and Migration Affairs, Politique Nationale d'Immigration et d'Asile, Rapport, Rabat 2017, p. 11, 13, 29, 50, 95 and 96, [https://marocainsdumonde.gov.ma/ewhatis/2018/03/POLITIQUE-NATIONALE\\_Rapport-2017.pdf](https://marocainsdumonde.gov.ma/ewhatis/2018/03/POLITIQUE-NATIONALE_Rapport-2017.pdf); Ibid., Rapport 2018, [https://marocainsdumonde.gov.ma/wp-content/uploads/2019/01/Politique-Nationale-dimmigration-et-dAsile-\\_Rapport-2018.pdf](https://marocainsdumonde.gov.ma/wp-content/uploads/2019/01/Politique-Nationale-dimmigration-et-dAsile-_Rapport-2018.pdf).

21 Ibid.

22 Christophe Bertossi/Amal El Ouassif/Matthieu Tardis, L'agenda de l'Union africaine sur les migrations: une alternative aux priorités européennes en Afrique?, Notes de l'Ifri (Institut Français des Relations Internationales), 2021, pp. 12–13.

### *I. Morocco's pre-Compact practices: encouraging the GCM*

Along with the introduction of the new migration policy, Morocco invited the international community 'to come up with an international and regional migration governance framework'.<sup>23</sup> Morocco actively participated in and supported the intergovernmental negotiation process leading to the GCM. In collaboration with the International Organization for Migration (IOM), it organized national consultation rounds for various civil society actors and submitted drafting recommendations. In addition, Morocco organized and co-chaired the 2018 Global Forum on Migration and Development (GFMD) which organized Civil Society Days shortly before GCM's adoption.<sup>24</sup> Furthermore, the government conducted a 'preliminary review' of national migration policy in the light of the GCM.<sup>25</sup> This pre-review addresses national policy in the light of each of the twenty-three Objectives of the GCM and provides a draft plan for each Objective to further implementation. Also, the Moroccan Parliament hosted the inter-parliamentary conference about the GCM during which Parliaments expressed their engagement in fully using their political powers to contribute to the implementation of the GCM.<sup>26</sup> Finally, Morocco hosted the Intergovernmental Conference during which the GCM was adopted.<sup>27</sup> During the General Assembly endorsing it, the government maintained that the GCM's adoption 'was a historic moment' and that it 'now is up to the international community to ensure its proper implementation'.<sup>28</sup> Overall, the Moroccan government played a significant and active role in the process leading the adoption of the GCM.

### *II. Post-Compact engagement: between defending the status quo and becoming a 'Champion Country'*

This sub-section looks at (1.) the extent to which the government engaged with the GCM's review mechanism and (2.) the steps it took to implement the GCM.

23 Delegate Ministry in charge of Moroccans Living Abroad and Migration Affairs, Morocco's Migration Policies and the GCM, Rabat 2018, p. 8. (hereafter: Delegate Ministry 2018).

24 Delegate Ministry, Rapport 2018, note 20, pp. 107–112.

25 Delegate Ministry 2018, note 23.

26 Déclaration finale de la Conférence parlementaire à l'occasion de l'adoption du Pacte mondial pour des migrations sûres, ordonnées et régulières, Organisée conjointement par l'Union interparlementaire et le Parlement du Royaume du Maroc, Rabat 6-7 décembre 2018.

27 United Nations, Intergovernmental Conference on the Global Compact for Migration, Marrakech 2018, <https://www.un.org/en/conf/migration/> (last accessed on 14 March 2021).

28 United Nations, General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants, New York 2018, <https://www.un.org/press/en/2018/ga12113.doc.htm> (last accessed on 14 March 2021).

## 1. Participation in the review mechanism

In June 2020, Morocco accepted<sup>29</sup> the UN Network on Migration's (UNMN) invitation to join the 'Champion Countries Initiative' group. This is a group of states who 'lead by example in serving as "Champion countries" for the implementation' of the GCM. The idea is that the governments of these countries regularly meet to discuss their experiences with the GCM. In addition, they will be specifically supported by the UNMN.<sup>30</sup> In this context, the government expressed its firm support and engagement with the mission and work of this network. It also reported that it will actively support the GCM's implementation in the African and Arab region.<sup>31</sup> Morocco participated in subsequent meetings<sup>32</sup> of 'Champions' during which it communicated its four priorities in terms of implementation: (1) access to knowledge and information on migration; (2) border management; (3) reducing vulnerabilities; and (4) migrants' integration and their contribution to development.<sup>33</sup>

With regard to the first<sup>34</sup>, the government mentions the creation of a website for Moroccans abroad and for migrants residing in Morocco in order to provide them with relevant information on migration. In this context, the government stresses the need to promote 'living together' and 'success stories'. As to border management<sup>35</sup>, the government refers to its efforts regarding the fight against human trafficking. As to reducing vulnerabilities<sup>36</sup>, the government mentions the efforts made in the context of the COVID-19 pandemic to ensure access to health care for refugees and asylum seekers. It also mentions the need to support development opportunities in sub-Saharan countries of origin. It adds that there is a programme aiming to assist sub-Saharan migrants after their return to their home countries. As to integration<sup>37</sup>, the government stresses the need to facilitate migrants' access to the labour market. The government then concludes by stating that 'as a country of origin,

29 Letter by the Moroccan ambassador to the UN Network on Migration, 26 June 2020, [https://migrationnetwork.un.org/sites/default/files/docs/morocco\\_confirmation\\_champion\\_country.pdf](https://migrationnetwork.un.org/sites/default/files/docs/morocco_confirmation_champion_country.pdf) (last accessed on 3 January 2022). See also Letter by the Moroccan ambassador to the UN Network on Migration, 27 August 2020, [https://migrationnetwork.un.org/sites/default/files/docs/morocco\\_reflections\\_on\\_champions.pdf](https://migrationnetwork.un.org/sites/default/files/docs/morocco_reflections_on_champions.pdf) (last accessed on 3 January 2022). (Hereafter: 'Ambassador June 2020'; 'Ambassador August 2020').

30 UNMN, Champion countries Initiative, <https://migrationnetwork.un.org/champion-countries-initiative> (last accessed on 3 January 2022).

31 Ambassador June 2020, note 29.

32 UNMN, on Migration Champions Meeting, 26 May 2021, [https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/champions\\_summary\\_26may21\\_final.pdf](https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/champions_summary_26may21_final.pdf); UNMN, Informal Consultation on the role of 'Champion Countries' in the implementation of the GCM, 03 September 2020, <https://migrationnetwork.un.org/champion-countries> (last accessed on 3 January 2022).

33 Ambassador August 2020, note 29. See in particular the government's reflections attached to the ambassador letter, pp. 1–2.

34 Ibid.

35 Ibid.

36 Ibid.

37 Ibid.

transit, and destination', Morocco 'believes that the GCM sets out a common understanding of migration, shared responsibilities and a common goal of raising together, in a win-win spirit, the challenges of migration and exploiting its opportunities'.<sup>38</sup>

With respect to the regional review mechanism, the government submitted in 2020 a 'voluntary review' in the context of the first regional review of GCM's implementation in the Arab region.<sup>39</sup> It also hosted the African regional review in 2021.<sup>40</sup> The voluntary review reflects the above-mentioned government's priorities. Unlike the above-mentioned preliminary review, the voluntary review does not address each of the GCM's Objectives. Even if it refers to a draft of a national implementation plan, no final version of that plan is included. Also, it remains silent as to whether or not the planned actions mentioned in the preliminary review have been undertaken. Further, no specific mechanism was established to coordinate the review process. The pre-existing governmental mechanism in charge of the implementation of national migration policy shouldered this task and was also in charge of the coordination and reviewing the implementation of the GCM.<sup>41</sup> Finally, the voluntary review does not mention any concrete input from civil society.

## 2. Implementation indicators

The voluntary review mentions that efforts have been made to align national migration policy with the GCM and that the country had reached an advanced stage in the GCM's implementation process, thanks to its leadership in the region.<sup>42</sup> It is stated in the report that 'significant progress' had been made in implementing the GCM and that its Objectives have been 'largely achieved'.<sup>43</sup> During the first regional review conference, the government qualified national migration policy as being aligned to the GCM.<sup>44</sup> However, the voluntary review does not provide any post-Compact concrete implementation indicators, as it basi-

38 Ibid.

39 Voluntary National Report – Morocco, Rabat 2020: [https://migrationnetwork.un.org/sites/default/files/docs/gcm\\_regional\\_review\\_morocco.pdf](https://migrationnetwork.un.org/sites/default/files/docs/gcm_regional_review_morocco.pdf) (last accessed on 14 March 2021), (hereafter: Voluntary National Report).

40 African regional review of implementation of the GCM in Rabat, 31 August-1 September 2021, <https://migrationnetwork.un.org/country-regional-network/africa> (last accessed on 4 January 2022).

41 Voluntary National Report – Morocco, note 39, pp. 1–2.

42 Ibid., p. 3 and 7.

43 Ibid., pp. 9–10.

44 Statement of Director of the Migration Department and International Affair during the first Regional Review of the GCM in the Arab Region. This information is based on an internal report of 'Clinique Juridique Hijra' which participated at the conference.

cally refers to pre-Compact measures, in particular those taken in the context of the 2013 immigration and asylum policy.<sup>45</sup>

The only exception concerns Objective 1 which encourages states to intensify and harmonise the collection and exchange of data about migration in order to develop evidence-based policies. In this regard, the voluntary review mentions the establishment of the African Migration Observatory (AMO). The government repeats that the implementation of Objective 1 has been one of the priorities in terms of implementing the GCM.<sup>46</sup> The idea of creating the AMO was introduced by Morocco in the context of the African Agenda for migration.<sup>47</sup> This proposal was accepted and then integrated into the 2018 African Union Migration Policy Framework and its Action Plan.<sup>48</sup> In 2020, the AMO was inaugurated<sup>49</sup> in Morocco as a specialized technical agency<sup>50</sup> of the African Union Commission. Its mission is to facilitate the implementation of the GCM through the collection and analysis of data on migration in Africa and to guide African countries in the development of evidence-based migration policies.<sup>51</sup>

While the Moroccan government has been particularly active in the process leading to the GCM's adoption, its post-adoption implementation activities provide mixed results. On the one hand, the government has participated in the 'Champion Countries Initiative' and has pro-actively submitted a voluntary review already in 2020. On the other hand, the government did not take much effort to create specific institutions to coordinate the regular review process in the country and did not specify concrete indicators that would help assessing migration policies compliance with the GCM in more detail. The next section will

45 Voluntary National Report – Morocco, note 39, pp. 5–7. See also *Arbaoui, Le Maroc: 'champion' de la mise en œuvre du Pacte de Marrakech?*, Revue Hijra 1 (2021), <https://www.cjhm.org/revue-numeros> (last accessed on 4 January 2022).

46 Voluntary National Report – Morocco, note 39, p. 3, 4, 8, 11 and 16. It should be mentioned that the voluntary review is silent on the right to privacy and protecting personal data as included under Objective 1 of the GCM. For a discussion of this issue, see *Arbaoui, La protection de la vie privée des migrants en Afrique: que peut faire l'Observatoire Africain des Migrations?*, in: Elkbir Atouf (ed.), *Le Maroc et l'Afrique subsaharienne à travers les rapports migratoires*, Ministère de l'éducation nationale, de la formation professionnelle, de l'enseignement supérieur et de la recherche scientifique, en collaboration avec CNRST, Marrakech 2022.(forthcoming).

47 *Bertossi/El Ouassif/Tardis*, note 22. See also the King's speech during the African Union Conference, January 2018, <https://www.maroc.ma/fr/discours-royaux/sm-le-roi-adresse-un-message-au-30e-sommet-de-lunion-africaine-ua> (last accessed on 3 January 2022).

48 Commission de l'Union Africaine, Cadre de politique migratoire pour l'Afrique révisé et Plan d'Action (2018–2030), Addis-Abeba Mai 2018, pp. 76 and 104.

49 African Union, Official Inauguration of the African Observatory for Migration in Morocco, Press release Addis-Abeba 17 December 2020, p. 1. See also: African Union, Assemblée/AU/Dec.695 (XXXI), 31ème session ordinaire, Nouakchott, Maruitanie 1–2 Juillet 2018.

50 See Article 2 (1) of the AMO's Statute, <https://archives.au.int/handle/123456789/8436?locale-attr=fr> (last accessed on 3 January 2022).

51 African Union, Press release December 2020, note 49, pp. 1–2. See also Article 3 AMO Statute, note 50.

now turn to the activities of non-governmental actors in the early implementation period in Morocco.

### C. Responses from Moroccan civil society to the GCM

Members of the Moroccan civil society contributed in various forms to the national debate preceding the adoption of the Compact: they took part in national consultation rounds organized by the government and the IOM; they organized events to debate on the GCM; they published reports and press releases communicating their positions and participated in the 2018 GFMD's Civil Society Days as well as in the GCM's Intergovernmental Conference. In the following sub-sections, I first give an overview of the perspectives from civil society (I.) and then illustrate to what extent they engage with the GCM in their daily work (II.).

#### *I. Between profound scepticism and a glimpse of hope*

Pre- and post-Compact perspectives from civil society show that the GCM inspired a wide spectrum of reactions: the majority strongly opposes the Compact because it would exclusively serve the interest of the Global North; others acknowledge the GCM's limitations but simultaneously stress its positive aspects; and a small group welcomes the GCM but did not yet engage with it.

To begin with, the association 'Groupe Antiraciste d'Accompagnement et de Défense des Étrangers et Migrants' raised its concern that the Revised Draft of the GCM<sup>52</sup> did not include any improvement to migrant rights. It went on to claim that it even fails to maintain pre-existing rights included in international conventions such as the UN Migrant Workers Convention (ICRMW)<sup>53</sup>. The association adds that the GCM favours the interests of the global North, in particular those served by border control, readmission and forced returns of irregular migrants. It also criticized national consultation rounds. In its views, although civil society was involved, its participation was influenced by the organizers (government and IOM) in the sense that the debate was 'oriented' towards a specific reading of migration issues.<sup>54</sup>

52 Revised draft of the GCM, 28 May 2018, <https://refugeesmigrants.un.org/intergovernmental-negotiations> (last accessed on 3 January 2022).

53 OHCHR, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), New York 1990. Morocco ratified this convention in 1993. For the status of ratification of this convention, see <https://indicators.ohchr.org/> (last accessed on 3 January 2022).

54 GADEM, L'alternatif et le parallèle dans le processus des pactes mondiaux, Rabat 31 May 2018, p. 1.

In the same vein, ‘Peoples Global Action-Morocco’ (PGA) is of the opinion that the different revisions<sup>55</sup> of the GCM undermine migrants’ rights and constitute an ‘attempt by the global North to impose its security-oriented approach’ using development aid as a diplomatic tool. This platform advocated for the inclusion of the following norms in the final text of the GCM: the ICRMW should be a ‘pillar’ of the GCM; the GCM should prohibit migrant detention; it should avoid the differentiation between regular and irregular migrants; it should confirm ‘the right to mobility and free movement of persons’.<sup>56</sup> The reactions in the PGA regarding the final version of the GCM<sup>57</sup> were split: while the majority strongly opposed the Compact because it would exclusively serve the interest of the Global North, a minority viewed it as a protective text, granting minimum protection standards despite its limitations.<sup>58</sup>

‘Migration Justice’ labelled the final version of the GCM as a ‘security tool’ that overlooks the interests of the global South since it stimulates detention and forced return as well as readmission of irregular migrants. It adds that the GCM legitimizes stern treatment of ‘undocumented’ migrants, unlike the ICRMW that also protects them. It adds that ‘rich countries’, through the GCM, have obtained the ability to limit access to services to regular migrants because otherwise their efforts to combat irregular migration would be frustrated.<sup>59</sup>

*The ‘Comité de Suivi du Forum Social Maghreb’* stated that the final version of the Compact is strongly inspired by European and North American interests since it would stimulate intensified border control, migrant detention, data collection, and selective immigration. The GCM thus ignores the needs of migrants and their countries of origin in the global South, according to the Comité. This organization further expressed its regret that the GCM fails to create an ‘international right to freedom of movement’ in the light of Article 13 of the Universal Declaration of Human Rights. Finally, it stressed that the GCM offers ineffective protection in comparison with the ICRMW.<sup>60</sup>

55 UN Refugees and Migrants, Intergovernmental Negotiations, <https://refugeesmigrants.un.org/intergovernmental-negotiations> (last accessed on 3 January 2022).

56 PGA-Maroc, Report - Agadir Meeting, Agadir 21–22 June 2018, pp. 13–14, <https://ftdes.net/com/Rapport%20Agadir%20Eng.pdf> (last accessed on 14 March 2021).

57 Intergovernmentally negotiated and agreed outcome of the GCM, Marrakech 13 July 2018, <https://refugeesmigrants.un.org/intergovernmental-negotiations> (last accessed on 3 January 2022).

58 PGA-Maroc, Conclusions of the People Global Action, Marrakech 2018, p. 4, <https://transnationalmigrantplatform.net/conclusions-peoples-global-action-on-international-migration-development-and-human-rights/> (last accessed on 14 March 2021).

59 This statement is included in an unpublished media interview with ‘Justice Migratoire’, which is an informal group of activists advocating for a global freedom of movement and open borders. I got access to the interview because it was circulated within the mailing list called ‘Forum-Migrants’ in October 2018.

60 Comité de Suivi du Forum Social Maghreb, *Halte à la guerre aux migrations! Oui à un Pacte mondial qui protège la dignité et les droits humains des migrants*, Marrakech 8 Décembre 2018,

‘Forum des alternatives Maroc’ considered that the final version of the GCM is a mechanism favouring the interests of industrialized countries, while ignoring the needs of the global South. In this context, reference is made to selective immigration policies and the related risk of brain drain.<sup>61</sup> This platform added that although the GCM contains ‘good intentions’ vis-à-vis the global South, in particular those related to climate change and migration (Objective 2), those ‘intentions’ are not concrete.<sup>62</sup> It regretted that the GCM criminalises irregular migration and allows migrant detention.<sup>63</sup> Further, this organization viewed Objective 1 of the GCM, according to which states are encouraged to collect and share data on migration, as a tool to further control irregular migrants since it would facilitate identification and subsequent forced return, which is in the benefit of the global North.<sup>64</sup> It then stresses that by referring to the legally binding ICRMW only in a footnote, the GCM marginalises this convention and favours the interest of rich and immigration countries, such as the Gulf states and the European Union refusing to sign it.<sup>65</sup> It concludes that the GCM is of very limited added value for migrants and civil society defending their rights, because it is not legally binding.<sup>66</sup>

Such sceptical views were also reiterated during a public demonstration in Marrakech on the day of the GCM’s adoption. In this context, ‘Alarm Phone Morocco’, for instance, expressed concerns about the GCM and stated that “security issues have become the main issue and the Compact’s text makes that a priority”.<sup>67</sup>

However, scepticism about the role and impact of the GCM was not shared by all Moroccan civil society organizations in the field of migration. The ‘Plateforme Nationale Protection Migrants’ (PNPM)<sup>68</sup>, a network of thirteen organizations defending migrants and refugees in Morocco, communicated<sup>69</sup> that although the final version of the GCM

<https://ftdes.net/halte-a-la-guerre-aux-migrations-oui-a-un-pacte-mondial-qui-protege-la-dignite-et-les-droits-humains-des-migrants/> (last accessed on 14 March 2021).

61 Forum des alternatives Maroc, Déclaration de la société civile, le «Pacte Mondial pour une Migration Sure, Ordonnée et Régulière», Rabat 2018, p. 5, <https://ftdes.net/rapports/Declaration%20-sur%20le%20Pacte.pdf> (last accessed on 14 March 2021).

62 Ibid., p. 5.

63 Ibid., p. 3.

64 Ibid., p. 3.

65 Ibid., p. 3.

66 Ibid., p. 5.

67 *Salaheddine Lemaiz*, Reactions on the Ground to the Global Compact for Migration, Inter Press service, Marrakech December 2018, <http://www.ipsnews.net/2018/12/reactions-ground-global-compact-migration/> (last accessed on 3 January 2022).

68 <https://www.facebook.com/PNPM.MA/>.

69 PNPM, Positionnement autour du Pacte: Le Pacte comme un cadre de référence pour les acteurs de plaidoyer, Rabat 2018, p. 3 (not published; available with the author). See also *Youssef Lakhder*, Q&A: The Global Compact that Respects Human Rights During all Stages of Migration, Inter Press Service, Marrakech December 2018, <http://www.ipsnews.net/2018/12/qa-global-compact-respects-human-rights-stages-migration/> (last accessed on 3 January 2022).

contains some shortcomings, it was a ‘relatively progressive instrument’ that could be used as an advocacy framework even if it is not legally binding. In terms of shortcomings, the PNPM regrets the GCM’s criminalisation of irregular migration and stresses that the differentiation between regular and irregular migrants could lead to human rights violations. In this context, it also regrets that Objective 15 of the GCM does not include a firewall prohibiting information sharing between service providers and immigration authorities. In spite of this, the PNPM is of the opinion that since the GCM rests on existing international human rights instruments, civil society can use it as an advocacy framework. According to this platform, since the GCM prescribes that states should respect fundamental rights at every stage of migration, it could have a positive impact on migrant people’s lives, especially if civil society strategically employs it. In its view, the Compact provides a positive vocabulary to rely on, in particular the elements concerning respect of fundamental rights of all migrant’s lives, whatever their status.<sup>70</sup> In terms of GCM’s Objectives, the PNPM welcomed those regarding creating pathways for regular migration, vulnerability of migrants, missing migrants, access to basic services, and dignified return.<sup>71</sup>

Likewise, the ‘Association Lumière sur l’Emigration au Maroc’ observed during the 2021 conference organized by the ‘Collectif des Communautés Subsahariennes au Maroc’ (CCSM)<sup>72</sup> about Moroccan migration policy, that even if the GCM is non-binding, it involves an important moral commitment and can be used as a reference framework. It then refers to the importance of the GCM’s review mechanism.<sup>73</sup> Similarly, ‘Association Interculturelle Kirikou’ working on children’s education welcomes the GCM and observes that access to education has been improving since its adoption.<sup>74</sup>

The generally rather sceptic attitude towards the potential of the GCM on migration policies in Morocco suggest that civil society actors were also hesitant to refer to the GCM in their campaigning and strategic action. The next section will examine to what extent civil society actors in Morocco nevertheless made use of the GCM in their daily work.

## *II. The GCM in practice: a hesitant stance on using the GCM for advocacy purposes*

In this sub-section, I illustrate to what extent the GCM has been relied on by civil society in its advocacy practice. To begin with, in 2019, the PNPM published two reports in which reference is made to the GCM. The first concerns migrants’ access to basic services and

<sup>70</sup> Ibid.

<sup>71</sup> GCM, Objectives 5, 7, 8, 15 and 21.

<sup>72</sup> CCSM, Retour sur la conférence du 17 avril 2021: La mise en application du Pacte Mondial sur les migrations et ses limites, Rabat 2021: <https://www.facebook.com/events/3970936989627609/?ref=newsfeed> (last accessed on 1 March 2022).

<sup>73</sup> Conference report, pp. 6–7 (not yet published, available with the author).

<sup>74</sup> Interview with the president of ‘Association Interculturelle Kirikou’.

refers to Objective 15, even if only in the introduction.<sup>75</sup> The second report concerns border deaths and refers to Objective 8, although only in a footnote.<sup>76</sup> The PNPM presented (drafts of) these reports during the 2018 GFMD's Civil Society Days.<sup>77</sup> In addition, the PNPM presented its position on the GCM during a national conference in 2019.<sup>78</sup> It organized a radio programme in which civil society and academics were invited to debate on the GCM.<sup>79</sup> Within the same dynamic, 'Clinique Juridique Hijra' shares the PNPM's position and has recently been active in sensitizing civil society on the usefulness of the GCM.<sup>80</sup> In one of its recent blog posts, based on the views of civil society actors who participated in trainings offered by this association, reference is made to Objectives 1, 8, 15 and 16 GCM.<sup>81</sup>

Furthermore, the first edition of the "5 + 5 Civil Society Dialogue" has been held in 2019 in Agadir. The main theme of this meeting was 'the role of civil society organizations in the Western Mediterranean in the implementation of the GCM'. This meeting aimed to promote regional cooperation between the countries of both shores of the Western Mediterranean.<sup>82</sup> In this context, *Comité régional des Migration Agadir* stated that the meeting

75 PNPM, *Etat des lieux de l'accès aux services pour les personnes migrantes au Maroc*, Rabat 2019, p. 7, <https://www.cjhm.org/wp-content/uploads/2021/04/PNPM-rapport-2019.pdf> (last accessed on 3 January 2022).

76 PNPM, *Identification des personnes migrantes décédées aux frontières maritimes marocaines*, Rabat 2019, p. 6, <https://www.cjhm.org/wp-content/uploads/2019/03/Rapport-Morts-aux-Frontieres-PNPM28-2-2019-Version-Finale.pdf> (last accessed on 14 March 2021).

77 <https://www.un.org/en/conf/migration/assets/pdf/PNPM-PNPM-ActionAid-Programme.pdf>.

78 Maroc diplomatique, SIEL 2019: Près de 30 000 visiteurs au stand du CNDH consacré à la promotion des droits des migrants, Casablanca 18 Février 2019, <https://maroc-diplomatique.net/siel-2019-pres-de-30-000-visiteurs-au-stand/> (last accessed on 3 January 2022).

79 Portail e-Joussour, Radio Interview, Rabat 8 November 2018, <https://www.facebook.com/ejoussour.portal/videos/116543748361022/> (last accessed on 3 January 2022).

80 This association co-published a Handbook including an analysis of the twenty-three objectives of the GCM: Refugee Law Initiative/Plateforme national Protection Migrants/Clinique Juridique Hijra, *Analyse des Objectifs du Pacte mondial pour des migrations sûres, ordonnées et régulières –version française*, Rabat 2019, <https://www.cjhm.org/wp-content/uploads/2019/03/Analyse-des-Objectifs-du-Pacte-mondial-pour-des-migrations-s%C3%BBres-ordonn%C3%A9es-et-r%C3%A9guli%C3%A8res-%C3%A8re-1.pdf> (last accessed on 3 January 2022). It also organized trainings for the benefit of civil society and human rights institutions: Clinique Juridique Hijra, le Pacte Mondial pour des Migrations sûres, ordonnées et régulières: analyse et indicateurs d'implémentation, Ecole d'Hiver-1ère Edition, Rabat 2021, [https://www.linkedin.com/posts/clinique-juridique-hijra\\_appel-%C3%A0-inscription-formation-pacte-mondial-activity-6744241279170875392-XkTl](https://www.linkedin.com/posts/clinique-juridique-hijra_appel-%C3%A0-inscription-formation-pacte-mondial-activity-6744241279170875392-XkTl) (last accessed on 3 January 2022). In December 2021, this association published a special issue about the GCM in its journal *Revue Hijra*, <https://www.cjhm.org/revue-numeros> (last accessed on 3 January 2022).

81 Clinique Juridique Hijra, *Recommandations d'implémentation du Pacte de Marrakech au Maroc*, Novembre 2021, <https://www.cjhm.org/archives/2827> (last accessed on 3 January 2022).

82 Fundacion Euroarabe, Première Édition du « Dialogue 5+5 de la société civile » à Agadir, Agadir 26 Decembre 2019, <https://www.fundea.org/es/node/2403> (last accessed on 3 January 2022); *Telegramme, Video, Migrations : Une première Édition réussie du « Dialogue 5+5 del la société*

aimed to discuss how civil society can play a role in accompanying national migration policies in the region.<sup>83</sup>

Another actor who engaged with the GCM in its daily work is the ‘Collectif des Communautés Subsahariennes au Maroc’ (CCSM). The CCSM is of the opinion that even if the association prefers to refer to the legally binding ICRMW, it sometimes makes use of the GCM in its advocacy work, in particular Objectives 4, 15 and 17.<sup>84</sup> In 2021, during the above-mentioned CCSM conference,<sup>85</sup> the ‘Organisation démocratique du Travail des travailleurs immigrés au Maroc’ welcomed the GCM but stressed that the vulnerable situation of migrants remained unchanged.<sup>86</sup> According to ‘Association des voix des femmes migrantes’ it is difficult to admit that Morocco is respecting Objective 17 of the GCM, which encourages Member States to eliminate all forms of discrimination, because migrant women are still suffering from discrimination.<sup>87</sup>

More generally speaking, a number of civil society organisations refer to the GCM in their reports, but only in passing and not as a reference framework. For example, ‘Association Marocaine d’Etudes et de recherche sur les Migrations’ (AMERM) referred to the GCM twice in its report about statelessness. The report maintains that because Morocco endorsed the GCM, it has to fulfil its commitment by adopting new migration legislation and ratifying statelessness conventions.<sup>88</sup> Similarly, ‘Organisation Marocaine des Droits Humains’ refers only in passing to the GCM in its 2019 report on the human rights situation in Morocco.<sup>89</sup> Apart from these exceptions, the large majority of advocacy actors do not generally refer to the GCM.<sup>90</sup>

civile » à Agadir, 30 Novembre 2019, <https://telegramme.info/video-migrations-une-premiere-edition-reussie-du-dialogue-55-de-la-societe-civile-a-agadir-46618.html> (last accessed on 3 January 2022).

83 Telegramme, note 82.

84 Interview with the CCSM’s coordinator.

85 CCSM 2021, note 72.

86 Conference report, note 73, pp. 4–5.

87 Ibid., pp. 5–6.

88 AMERM, La prévention de l’apatridie chez les migrants et leurs enfants en Afrique du Nord: le rôle des pays d’accueil et des pays d’origine dans l’enregistrement des naissances et la délivrance des documents d’identité: Le cas de l’Égypte et du Maroc, Rabat 2019, p. 20 and 90, [http://citizenshiprightsafica.org/wp-content/uploads/2019/12/AMERM\\_Rapport-Apatridie-Migrants-fin\\_2019.pdf](http://citizenshiprightsafica.org/wp-content/uploads/2019/12/AMERM_Rapport-Apatridie-Migrants-fin_2019.pdf) (last accessed on 14 March 2021).

89 OMDH, Rapport annuel sur la situation des Droits Humains au Maroc 2019, Rabat 2020, p. 163, [https://www.fes-maroc.org/fileadmin/user\\_upload/publications/Rapport\\_OMDH\\_VERSION-FRANC\\_AIS\\_avec\\_cov.pdf](https://www.fes-maroc.org/fileadmin/user_upload/publications/Rapport_OMDH_VERSION-FRANC_AIS_avec_cov.pdf) (last accessed on 14 March 2021).

90 I surveyed the following reports: Economia, HEM Research Center, Les déterminants socioculturels d’accès à la santé des personnes migrantes au Maroc, Rabat 2021, <http://economia.ma/fr/Travaux-de-recherche/etude-les-d%C3%A9terminants-socioculturels-d-%E2%80%99acc%C3%A8s-%C3%A0-la-sant%C3%A9-%C3%A9tude-des-personnes> (last accessed on 14 March 2021); Association Marocaine des Droits Humains (AMDH), Rapport Migration et Asile à Nador: de graves violations au services des politiques migratoires Européennes, Nador 2019; Organisation démocratique des

‘Caritas Morocco’ does not adhere to the PNPM’s position and considers the GCM ‘useless’; for this reason it does not refer to it in its daily work regarding access to services.<sup>91</sup> Further, ‘Association Meilleur Avenir pour Nos Enfants’ explained that it adheres to the PNPM’s position, but that it does not refer to the Compact in its daily work.<sup>92</sup> Similarly, ‘Association Maroc Solidarité Médico-sociale’ supports the PNPM position but does not refer to the Compact: ‘it is not a law’.<sup>93</sup> However, ‘Association Lumière sur l’Emigration au Maroc’ regrets that civil society does not play a role in monitoring the implementation of the GCM and calls upon civil society to make use of the GCM as an advocacy framework, because Morocco has a moral obligation to implement it.<sup>94</sup>

Finally, ‘Association Interculturelle Kirikou’ regrets that after the adoption of the GCM, civil society has not been involved in the post-Compact debate in contrast to its active participation during the drafting process. Collaborations which were forged during the drafting process have not been solidified towards collaboration in the implementation phase. In its view, civil society should have introduced its own mechanism to follow-up the discussions during the GCM’s adoption and negotiation process.<sup>95</sup>

While some civil society actors refer to the GCM and its Objectives in their reports, they generally take a hesitant stance on using the GCM for advocacy purposes. The underlying scepticism about the GCM’s potential to improve migration policies translates more or less directly into the practice of civil society actors.

Travailleurs Immigrés au Maroc, Durcissement des Conditions de Renouvellement des Titres de séjour des Personnes Migrantes au Maroc, Rabat 2020; ASCOMS, Les Personnes Migrantes en situation régulière risquent de basculer dans l’irrégularité, Rabat 2020, <https://www.facebook.com/Plateforme-Ascoms-152957588907804/photos/pcb.629609484575943/629609391242619/>;

Association Beni-Znassen pour le développement, la culture et la solidarité-Oujda (ABCDS) et autres Association des Sénégalaïs du Maroc Oriental (ASMO), Association Sakia-al-Hamra pour la Migration et le Développement-Laayoune (ASHMD), Organisation Démocratique des Travailleurs immigrés au Maroc (Odt-I), Conseil des Migrants Subsahariens au Maroc (CMSM), Association Rencontre Méditerranéen pour l’immigration et le développement (ARMD)), Covid19 et situation des migrants et réfugiés au Maroc, Oujda 2020 ; Association Thissaghanasse pour la Culture et le Développement (ASTICUDE), Communiqué / Appel, Nador 2020 ; GADEM, Covid-19: le gouvernement marocain en action mais quelles mesures pour les personnes étrangères au Maroc?, Rabat 2020, <https://www.gadem-asso.org/covid-19-le-gouvernement-marocain-en-action-mais-quelles-mesures-pour-les-personnes-etrangeres-au-maroc/> (last accessed on 14 March 2021); GADEM, Pour un moratoire sur l’application des dispositions de la loi n° 02-03 relatives au séjour des étranger-e-s au Maroc pour raison humanitaire durant toute la période de l’état d’urgence sanitaire!, Rabat 2020, <https://www.gadem-asso.org/pour-un-moratoire-sur-lapplication-des-dispositions-de-la-loi-n-02-03-relatives-au-sejour-des-etranger-e-s-au-maroc-pour-raison-humanitaire-durant-toute-la-période-de-létat-d/> (last accessed on 14 March 2021).

91 Email correspondence with the director of ‘Caritas Rabat’.

92 Interview with two staff members of ‘AMANE’.

93 Email correspondence with the president of ‘MS’.

94 Conference report, note 73, pp. 6–8.

95 Interview with the president of this association.

## D. Test case: implementation of Objective 15 in Morocco

While the previous sections have addressed the broad perceptions and attitudes towards the GCM by the government and civil society actors, it is not yet clear how these general attitudes actually play out in the context of concrete policy issues. To shed more light on the details and dynamics of the implementation of the GCM regarding concrete policy issues, this section presents the responses of the government and civil society actors to Objective 15 GCM. I first outline the normative framework included in Objective 15 (I.). I then present the government's view on the basis of the pre-review, implementation plan and the voluntary review (II.). Finally, I report the perspectives from civil society (III.).

### I. Implementation indicators under Objective 15

Under Objective 15, states 'commit to ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services'. This Objective explicitly mentions access to education and health care but does not exclude other services. The explicit reference to education and health care shows that states take these two basic services seriously, which may stimulate the effective implementation of Objective 15.<sup>96</sup> To ensure access to these services, Objective 15 basically advises states to ensure access through four dimensions: entitlement under law, practical access, viable access, monitoring of access. In this latter context, states are encouraged to establish or instruct an existing human rights institution to monitor access to services.<sup>97</sup>

With regard to *Entitlement under law*, Objective 15 encourages states to 'enact laws and take measures' to eliminate all forms of discrimination 'irrespective of cases where differential provision of services based on migration status might apply'.<sup>98</sup> The first step towards this Objective is to review existing national legislation relating to access to health care and education, in order to identify situations where distinctions made on other (not allowed) basis are disguised as distinctions based on (allowed) migration status.<sup>99</sup>

Concerning *practical access*, Objective 15 encourages states to incorporate the health needs of migrants to national health care policies and reduce communication barriers,

96 *Bethany Hastie*, GCM Commentary: Objective 15: Provide access to basic services for migrants, RLI GCM blog series, 15 October 2018 <https://rli.blogs.sas.ac.uk/2018/10/15/gcm-commentary-objective-15-provide-access-to-basic-services-for-migrants/> (last accessed on 4 January 2022).

97 GCM, Objective 15, point (d). On this see *Hastie*, Commentary on the Implementation of Objective 15: Access to Basic Services, RLI GCM blog series, 21 January 2021, <https://rli.blogs.sas.ac.uk/2021/01/21/commentary-on-the-implementation-of-objective-15-access-to-basic-services/> (last accessed on 4 January 2022).

98 GCM, Objective 15, point (a).

99 *Hastie*, GCM Indicators: Objective 15: Provide access to basic services for migrants, RLI GCM blog series, 17 March 2019, <https://rli.blogs.sas.ac.uk/2019/03/17/gcm-indicators-objective-15-provide-access-to-basic-services-for-migrants/> (last accessed on 4 January 2022).

for example by offering culturally-sensitive training to health care providers.<sup>100</sup> It also encourages states to provide an inclusive education for migrant children of similar quality to non-migrant children as well as language training.<sup>101</sup> Furthermore, Objective 15 calls upon states to establish safe and easily accessible service points and communicate relevant information on basic services.<sup>102</sup>

As to *viable access*, Objective 15 encourages Member states to ensure safety and security for migrants, in particular for those in an irregular situation. It encourages states to ‘ensure that cooperation between service providers and immigration authorities does not exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services or unlawfully infringing upon the human rights to privacy, liberty and security of person at places of basic service delivery.’<sup>103</sup> Unlike an earlier version of the GCM, this Objective does not explicitly encourage states to include a ‘firewall’ which prohibits the exchange of information between immigration authorities and the service providers.

Finally, regarding *monitoring* of access to services, Objective 15 encourages states to establish or mandate national independent institutions, such as human rights bodies, to monitor ‘complaints about situations in which migrants’ access to basic services is systematically denied or hindered, facilitate access to redress, and work towards a change in practice.’<sup>104</sup> A crucial step towards implementing Objective 15 would be to mandate existing independent human rights institutions to monitor access to health care and education.

## *II. The government’s view on the implementation of Objective 15*

As mentioned above, while the government’s pre-review addresses Objective 15, the voluntary review does not. This sub-section is therefore based on the pre-review report. As to *entitlement under law*, the government states that access to education and health ‘is provided to migrants, asylum seekers and refugees, irrespective of their administrative situation, on equal footing with Moroccan citizens’.<sup>105</sup> This access is regulated in policy guidelines named circulars issued by ministries and other government institutions. As such, they are not legal acts or administrative decisions, that is, they have in principle no legal nature, because they do not affect the legal system.<sup>106</sup> As for education, the pre-review refers to a 2013 Circular which grants migrant children access to education.<sup>107</sup> Children unable to

100 GCM, Objective 15, point (e).

101 GCM, Objective 15, point (f).

102 GCM, Objective 15, point (c).

103 GCM, Objective 15, point (b).

104 GCM, Objective 15, point (d).

105 Delegate Ministry 2018, note 23, p. 52.

106 In Moroccan administrative law, there are various opinions about the legal nature of circulars, see: <https://ifada.ma/articles-selectionnes/globale-8110.html> (last accessed on 4 January 2022).

107 Delegate Ministry 2018, note 23, p. 52. See also the Ombudsperson’s report in which reference is made to circulars: Médiateur pour la Démocratie et les Droits de L’Homme, La situation

attend regular schooling are offered non-formal education and vocational training.<sup>108</sup> With regard to health care, it is indicated that the Rules of Hospital Procedures were amended in 2011 to state that ‘non-Moroccan patients, diseased or wounded, are admitted in hospitals, irrespective of their administrative situation under the same conditions as Moroccan patients’.<sup>109</sup> Various circulars are referenced, according to which migrants have access to primary health care centres and to emergency care in hospitals, irrespective of their migration status.<sup>110</sup> The existence of these pre-Compact policy guidelines, and the fact that the pre-review does not mention any planned legislative or policy amendment to further implement Objective 15, suggest that access to basic services was already incorporated into national policy before the adoption of the GCM. In this regard, the government explained that Morocco has already introduced the necessary laws and policy guidelines ensuring access to basic services, so there is no need to introduce a specific policy or amendment to existing legislation.<sup>111</sup>

With regard to *practical access*, most of the actions<sup>112</sup> proposed in the draft national implementation plan included in the pre-review<sup>113</sup> are related to this goal. As to health care, the government proposed to operationalize the national Plan on Health and Migration, improve the health system’s capacity and to include migration issues in the programme of the National School of Public Health. With regard to access to education, the plan proposes to integrate migration issues in training offered to education (administrative) personnel; to offer remedial classes in schools; and to carry out research regarding migrants’ educational needs to evaluate current policies. These measures can be seen as a positive response to Objective 15.

Regarding *viable access*, it is notable that the government’s pre-review is silent.

Finally, the government is silent regarding the establishment or instruction of national independent human rights institutions to monitor complaints when access to basic services is denied. In an interview a staff member of the Delegate Ministry explained that no independent institution has been formally directed to monitor access to basic services.<sup>114</sup> This information was confirmed by a field member of the National Human Rights Council.<sup>115</sup>

des droits et libertés au Maroc pour l’année 2019, Rabat 2020, p. 122. The French executive summary is available at: <https://mediateurddh.org.ma/storage/app/media/Manchoratona/resume-executif.pdf> (last accessed on 14 March 2021).

108 Delegate Ministry 2018, note 23, p. 53.

109 Ibid., pp. 53–54.

110 Ibid., p. 53. See also Ombudsperson 2019, note 107, pp. 123–124.

111 Interview with a staff member of the Delegate Ministry in charge of Moroccans Living Abroad and Migration Affairs.

112 Delegate Ministry 2018, note 23, pp. 54–55.

113 Ibid., p. 8 and 12.

114 Interview with Delegate Ministry, note 111.

115 Interview with a staff member of the CNDH. It should, however, be mentioned that the CNDH co-organized a ‘Regional Consultation of African National Human Rights Institutions on the

This is not consistent with Objective 15, which explicitly requires the involvement of independent institutions in the monitoring process.

To sum up, Morocco has already put in place a number of concrete entitlements to basic services, in particular in the context of education and health care. However, the government has so far failed to identify and address specific discriminatory practices and did not provide for independent monitoring.

### *III. Views from civil society on the implementation of Objective 15*

As mentioned above, civil society's references to the GCM, and thus also to Objective 15, are limited. The PNPM 2019 report forms an exception, but it only includes the text of Objective 15 in the introductory chapter and the report does not contain an exhaustive assessment based on that Objective. This does not however mean that civil society has not been monitoring migrants' access to services.

In contrast to the positive picture communicated by the government, civil society<sup>116</sup> and the Ombudsperson<sup>117</sup> reported that national law ensures access to education and health care (i.e. entitlement under law), but practical and viable access are not yet available.

As for education, it has been reported that schools still refuse to register migrant children unable to provide a birth certificate.<sup>118</sup> There have also been reports of some hospitals refusing to issue birth reports when migrant parents cannot pay the hospital fees, as a result of which irregular migrants cannot register their children in the civil register and therefore cannot obtain a birth certificate.<sup>119</sup> This practice is inconsistent with Objective 15. Since this documentation is not generally required for enrolment in primary schools, this practice is moreover at odds with the principle of non-discrimination because it indirectly discriminates against irregular migrants.<sup>120</sup>

With regard to health care, it is reported that hospital access is frequently denied when migrants seeking medical assistance are unable to provide identity documents.<sup>121</sup> Additionally, access to local health care centres is often denied when irregular migrants are

Regional Review of the GCM', Rabat 26 August 2021, [https://migrationnetwork.un.org/sites/default/files/docs/2\\_-\\_regional\\_consultation\\_of\\_african\\_national\\_human\\_rights\\_institutions\\_.pdf](https://migrationnetwork.un.org/sites/default/files/docs/2_-_regional_consultation_of_african_national_human_rights_institutions_.pdf), [https://migrationnetwork.un.org/sites/default/files/docs/side\\_event\\_-\\_regional\\_consultation\\_of\\_african\\_national\\_human\\_rights\\_institutions\\_.pdf](https://migrationnetwork.un.org/sites/default/files/docs/side_event_-_regional_consultation_of_african_national_human_rights_institutions_.pdf).

116 Economia 2021, note 90; PNPM 2019, note 75.

117 Ombudsperson 2020, note 107.

118 Ibid., p. 124. National courts have ruled in 2019 that this violates national and international law (Tribunal Administratif de Rabat, 12 Février 2019, Jugement n° 542; Tribunal Administratif de Rabat, 12 Février, Jugement n° 543).

119 Ombudsperson 2020, note 107, p. 124.

120 Compare *Hastie* 2019, note 99.

121 Economia 2021, note 90, p. 50.

unable to provide documents proving their address or residence.<sup>122</sup> This is inconsistent with Objective 15 encouraging states to limit the collection of information related to migration status in order to stimulate viable access. Also, civil society actors reported that migration status has a direct impact on access to health care because irregular migrants fear arrest by immigration authorities.<sup>123</sup> Irregular migrants settling in the Northern region of the country, close to the Spanish-Moroccan border, are particularly reluctant to approach health centres because police are regularly present in areas where providers are located, seeking to arrest and deport them to the Southern region of the country.<sup>124</sup> In this context, civil society actors have reported that health care services regularly share information with immigration authorities, who then proceed to arrest the migrants involved.<sup>125</sup> Even if this practice of information sharing is not prohibited by Objective 15, as it does not explicitly include ‘firewalls’, civil society recently recommended to introduce ‘firewalls’ and to make rules regarding access to services accessible for the staff of service providers in order to effectively realize the explicit goal of Objective 15 to reduce the vulnerability of irregular migrants.<sup>126</sup>

Overall, civil society actors have not engaged substantively with Objective 15 of the GCM in their advocacy practice. However, the Objective has been mentioned at least by some organizations in their general claims to improve migrants’ access to basic services. Unlike the final version of the GCM, civil society actors, however insisted on the need to establish ‘firewalls’ that would effectively insure safe access to basic services and prevent migrants from being expelled once they demand basic needs.

## **E. The GCM’s impact in Morocco: preserving the status quo with the help of the GCM**

The core interest of this paper is to analyse in how far government and civil society practices support the GCM’s potential as a soft law instrument to effectively impact the

122 Ibid., p. 50.

123 Ibid., p. 35.

124 Plateforme des Associations et Communautés Subsahariennes au Maroc (ASCOMS), webinaire «Deuxième Phase du Projet de Sensibilisation et de Plaidoyer pour l’Accès des Personnes Migrantes, Demandeurs d’Asile et Réfugiées aux Services Sociaux de Base (Santé, Éducation et Justice) Tanger-Nador-Oujda» réalisé par la Plateforme ASCOMS, Rabat 2020, <https://it-it.facebook.com/EuroMedDroitsTunisie/videos/300250181093042/> (last accessed on 14 March 2021). For more information about the situation in the Northern region of the country, see: GADEM, Coûts et blessures Rapport sur les opérations des forces de l’ordre menées dans le nord du Maroc entre juillet et septembre 2018 – Éléments factuels et analyse, Rabat 2018, <https://loujna-tounkara.nke.org/maroc-gadem-couts-et-blessures/> (last accessed on 4 January 2022).

125 Statement of a staff member of association ‘Lumière sur l’Emigration au Maroc’ (ALECMA), during the winter school organized by ‘Clinique Juridique Hijra’, Rabat 2021 (see note 80, above).

126 Clinique Juridique Hijra 2021, note 126.

Moroccan migration order. The preceding sections has demonstrated that the Moroccan government, on the one hand, actively engages with the Compact and relies on it to legitimise its migration policies, while the majority of civil society, on the other hand, seems not to find the GCM very promising and is rather reluctant to invoke it. In the following, I analyse in how far these opposing practices by the government (I.) and civil society actors (II.) affect the impact of the GCM in Moroccan migration policy.

### *I. Government's practices: legitimizing the status quo by referring to the GCM*

At the outset, it merits noting that the government actively engaged in the negotiation process of the GCM. It expressed its firm support before and after the adoption of the GCM and explicitly acknowledges the GCM's expectation of compliance. This is articulated in various official statements. This is certainly a good starting point for the GCM to have an impact, especially if we recall that Morocco does not pay any attention to the legally non-binding character of the GCM, unlike many other Member States.

Additionally, the government was actively involved in the GCM's review mechanism. First, the government elaborated the preliminary review including a draft national implementation plan. Second, Morocco joined the UNMN's 'Champion Countries Initiative' and participated actively in its meetings. Third, the government engaged with the regional review both in the Arab and African region. It submitted a voluntary review report, participated in the first regional review in the Arab region and hosted the African review. Therefore, Morocco met the GCM's call to engage with its review mechanism. At the outset, these are good conditions for the GCM to have an impact on Moroccan migration policy.

It also appears that the fact that Morocco is a country of emigration, transit and destination increases the GCM's impact. States' priorities in terms of implementing the GCM depend on national interests and whether they are receiving or sending countries.<sup>127</sup> As mentioned above, Morocco takes into consideration its triple position when stating that 'as a country of origin, transit, and destination', Morocco 'believes that the GCM sets out a common understanding of migration, shared responsibilities and a common goal of raising together, in a win-win spirit, the challenges of migration and exploiting its opportunities'.<sup>128</sup> This is visible in Morocco's priorities in terms of GCM's implementation.<sup>129</sup> As a country of origin, Morocco addresses the GCM's aspects relevant for its citizens aboard (e.g. creation of an informative website; promote 'living together' and 'success stories'). As a transit country, it pays attention to cross-border movements (border management; human trafficking; smuggling; return). As a country of destination, it deals with the issue of integration (access to the labour market; 'living together' and 'success stories') and

127 Gottardo/Rego, note 12, p. 12.

128 Ambassador August 2020, note 29, p. 2.

129 Ibid., pp. 1–2.

migration legislation (need to introduce immigration and asylum law). Since the GCM covers the triple interests of Morocco, it can be seen as a useful framework for it. This bears the potential to increase the GCM's impact.

Furthermore, the government is relying on the GCM to legitimize its policy. The voluntary review report dresses Morocco up as a champion in implementing the GCM. However, this claim is not substantiated. The voluntary review fails to separately address each Objective; it does not include a national implementation plan; and it is conducted without a clear contribution by civil society actors. This may also explain why the voluntary review exclusively presents a positive picture. Such a practice does not strengthen the GCM's review mechanism. The above-presented test case regarding Objective 15 shows that national policy regarding access to services is not yet fully in line with the GCM, especially with regard to monitoring and practical and viable access to basic services. It thus appears that the willingness to implement the GCM plays out more in rhetoric and less in practice. It also seems that the government uses the review mechanism as a tool to reinforce its reputation as a reliable migration partner. Now that the government relies on the GCM to legitimise its policy, this is certainly a good condition for the GCM to have an impact, as non-compliance would come with even higher reputational costs.

A final factor that potentially increases the GCM's impact is Moroccan's claim to be the leader in African migration affairs. By actively participating in the establishment of the African Migration Observatory (AMO) and by hosting this agency, Morocco positively responded to the first GCM's Objective (data collection). Since the aim of the AMO is to guide African states in implementing the GCM and bearing in mind that its Statute explicitly refers to the GCM, this practice increases the potential of the GCM's impact not only in Morocco but also in Africa more generally. With the creation of the AMO, Morocco and other African states have taken a concrete step towards implementing the GCM. The fact that Morocco is now hosting this agency increases its leadership and reputation in Africa. Moroccan non-compliance with the GCM will certainly damage this claimed position. Thus, it follows that the gain or loss of reputation is heavily involved in the context of Morocco, with a government that dresses itself up as a spearhead of the GCM. This shows that if the review practice is also used for 'naming and shaming', this could have influence on the engagement of Morocco. This increases the potential to progressively influence national policies in the sense that it guides states to effectively implement the GCM.

## *II. Civil society's practices: unable and unwilling to impact the implementation of the GCM*

To begin with, the majority of civil society considers the GCM's content very problematic and even if a small number of NGOs is positive about (parts of) it, not all of them invoke the GCM in their daily work. The main reason given for this reluctant stance is the GCM's non-binding character. Although some civil society actors (recently) engaged

with the GCM, their engagement is limited to only few references. The test case regarding Objective 15 shows that NGOs monitoring access to services do not rely on this Objective, except the PNPM and the *Clinique Juridique Hijra* which superficially refer to it in their reports. At the time of writing, no NGO published an independent review (thematic) report on the implementation of the GCM. This practice does not effectively support the GCM's impact. However, the recent references to the GCM, and the fact that some organizations are encouraging others to make use of the GCM, can be seen as bearing the potential to reinforce the role of civil society in the implementation of the GCM. This could subsequently lead to increasing the GCM's potential to impact national policy.

It is further worth noting that there has been no clearly defined national procedure for civil society to contribute in the review process in contrast to the pre-Compact stage. Civil society organised the “5 + 5 Civil Society Dialogue” meeting in 2019, but it is unclear how this contributed to the national review process. This practice is not consistent with the GCM's ‘whole-of-society’ approach calling for an active involvement of civil society also at the implementation stage. The current practice, therefore, rather decreases the potential of civil society to influence the GCM's impact.

With regard to the critical perspectives from civil society, two major critical arguments can be identified: that the GCM exclusively serves the interests of the global North and that it marginalises the ICRMW.

As to the first point, it is argued that the GCM lacks legitimacy because it exclusively supports policies regarding irregular migration in immigration states in the global North. In this context, civil society refers to the GCM's Objectives related to irregular migration: border control, migrant detention, forced return, readmission, and data collection. Looking at voluntary reports submitted by immigration countries in the North suggests that the GCM is indeed exclusively used to combat irregular migration. For example, the Dutch voluntary review shows that the government makes use of the GCM as a diplomatic instrument that basically serves to combat irregular migration. It emphasises that the GCM is not binding, except for countries in the South when the issue concerns forced return and readmission of irregular migrants.<sup>130</sup> This confirms the sceptical voices of the majority of Moroccan civil society. However, the approach focusing on combatting irregular migration is not exclusive to immigration countries in the global North. Morocco, for example, also pays considerable attention to the fight against human trafficking, smuggling, border control, and return policies. The test case regarding Objective 15 shows that irregular migrants do not

130 Arbaoui, Het Marrakesh Compact in Nederland: niet bindend, wel een diplomatiek instrument, Verblifblog, 1 September 2021, <https://verblifblog.nl/het-marrakesh-compact-in-nederland-niet-bindend-wel-een-diplomatiek-instrument/> (last accessed on 4 January 2022). The Dutch report is available here: [https://migrationnetwork.un.org/sites/default/files/docs/the\\_netherlands.pdf](https://migrationnetwork.un.org/sites/default/files/docs/the_netherlands.pdf) (last accessed on 4 January 2022).

always have practical and viable access to basic services. This Moroccan policy can be seen as a measure to combat irregular migration in a South-South context.<sup>131</sup>

The second critical point advanced by the majority of civil society is connected to the North/South discussion. The usefulness of the GCM is questioned because the Migrant Workers Convention, not yet adopted by the global North, already exists.<sup>132</sup> From the global South perspective, this convention is important because it was initiated by the Global South and it provides more protection, for example with regard to migrant detention.<sup>133</sup> It is further argued that the GCM marginalises the ICRMW since the GCM refers to it only in a footnote. The claim here is that this reinforces the ongoing ‘organized silence’ on the legally binding ICRMW.<sup>134</sup> This convention would thus be overshadowed by the soft GCM due to the considerable public attention it gained and states would be able to use the GCM to escape and side-line that convention.<sup>135</sup> While these concerns are plausible, the fact that Morocco is party to the ICRMW bears the potential to increase the GCM’s impact. Since the GCM also rests on the ICRMW, this latter can be used when interpreting the GCM. Similarly, when holding the state accountable for failing to comply with the ICRMW, reference can be made to its relevance as mentioned in the GCM. This mutual relation can be reinforced if the government’s mechanism in charge of the GCM strongly collaborates with the government’s department in charge of the ICRMW reporting mechanism. Both can have complementary roles and avoid the risk of work duplication.<sup>136</sup>

The impact of civil society actors on the implementation of the GCM in Morocco is hampered by the sceptical view of most non-governmental organization regarding the impact of the GCM. As a consequence, there are hardly any documents that provide a detailed road-map for a human rights-oriented implementation of the GCM in Moroccan migration policy. Combined with the lack of formal involvement in the national review process, civil society actors are so far unable (and perhaps also unwilling) to fully exploit the political potential of the GCM.

131 Compare the two conflicting positions of India: immigration is negatively approached, while emigration is positively presented to defend the rights of Indian citizens abroad. See *Binod Khadria et al.*, The UN GCM: Its Impact on Asia, *International Migration* 57 (2019), pp. 290 and 292.

132 Compare *Mariette Grange/Isabella Majcher*, 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 (2020), p. 293. Cf *Alan Desmond*, The continuing relevance of the UN ICRMW, in *Alan Desmond* (ed.), *Shining New Light on the UN Migrant Workers Convention*, Pretoria: Pretoria 2017, p. 3.

133 *Grange/Majcher*, note 132.

134 *Ibid.*

135 *Ibid.*

136 *Ibid.*

## F. Outlook: political spaces to unleash the GCM's potential in the future

Morocco uses the GCM to legitimize its existing migration policy, while this policy is not necessarily in accordance with the GCM. Civil society is critical of GCM as such, and their criticism is also supported by the text of GCM and e.g. the Dutch voluntary review report, but perhaps, civil society actors underestimate the possibility holding Morocco accountable for its own claim of being a world champion in implementing GCM via naming and shaming.

Looking at the future, it seems that Morocco's engagement with the GCM might increase during upcoming UNMN's meetings as well as during the International Migration Review Forum taking place in 2022. This will probably also increase the GCM's impact on Morocco's migration policy provided that (a) the government creates channels for civil society to share field information and provide recommendations and/or (b) civil society sets up an independent review process to ensure input on how to achieve the GCM's Objectives.<sup>137</sup> The reports presented above regarding shortcomings in access to services could be re-framed in a way that shows the extent to which the situation is in compliance with Objective 15.

Finally, the work of the African Migration Observatory hosted by Morocco could potentially have a catalytic effect for the engagement of Morocco and Africa. It offers the Moroccan government the chance to bring African states together on the GCM in order to work jointly on GCM's implementation. And, if Morocco indeed becomes a 'champion' and succeeds to show possible advantages of implementing the GCM, this could in turn have an influence on the GCM's impact in the Arab and African region.

137 Compare existing civil society initiatives, such as developments of Handbooks on how to use the GCM by civil society, for example Korea, see *Khadria et al.*, note 131. See also the webinar organized by the university of London on 'Using the UN Global Compact for Safe, Orderly and Regular Migration as an Interpretative Tool for legal practitioners' in the UK, Queen Mary, University of London, February 12, 2021, <https://cosmopolismigration.com/2021/02/12/webinar-using-the-un-global-compact-for-safe-orderly-and-regular-migration-as-an-interpretative-tool-for-legal-practitioners/> (last accessed on 4 January 2022).