

Civil Society Days 2016, 8-9 December, Dhaka, Bangladesh

ACTION PAPER FOR WORKING SESSIONS 4.1¹:

Doing Global Governance Better

4.1: Multilateral cooperation and governance of migration and development: institutions and legal frameworks

1. Introduction

The GFMD Civil Society Days convening in Bangladesh come at a moment of increased attention by governments to migration governance, and a moment of extreme danger and risk for millions of people on the move around the world. The negotiations launched to develop a Global Compact for safe orderly and regular migration² demonstrate the elevated world attention to migration governance, as does the International Labour Organization (ILO) decision to devote the International Labor Conference 2017 General Discussion to migration governance and the Global Compact.

The International Organization for Migration (IOM) has become a related organization of the United Nations (UN), with uncertain implications for the roles of other UN agencies with migration mandates, in general and in relation to facilitating the Global Compact negotiations. At the same time, a rising tide of xenophobia has brought overtly anti-immigrant leaders into office in some countries, and they are on the threshold of power in others.

These challenging and often contradictory streams require civil society to act with a renewed sense of urgency and with agility. Three years into the 5-year timeframe for civil society's 8-point plan, civil society must gauge progress on existing goals, while also updating and adapting its priorities to changing the governance landscape and broader context. Among the specific areas of focus for the 2016 GFMD are lowering the costs of migration for migrants and addressing the needs of migrants in crisis.

The GFMD civil society concept paper states that *“all debates and recommendations of the civil society programme will continue to integrate and promote a human rights and human-development perspective.”* From such a perspective, improving migration governance or “doing governance better” must mean **protecting migrants better, giving women, men and children more mobility options, better options, and safer options.**

With respect to fully incorporating a **gender perspective** in the governance of migration, there is much to be done. Thus far, attention has focused too narrowly on women's vulnerabilities. While all women—and all people—must be able to travel and live in safety, the New York Declaration, for example, focuses too narrowly on women as victims, on their vulnerabilities when travelling

¹ This Action Paper has been prepared as input for the 2016 GFMD Civil Society Days by Global Coalition on Migration (GCM)

² See the New York Declaration for Refugees and Migrants: http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1

irregularly. Civil society should promote a broader approach, one that starts not with migration, but with progress toward equality, as expressed in **Goal 5** of the 2030 Agenda, to “achieve gender equality and empower all women and girls.”

Progress on Goal 5 in states of origin and destination would go far toward reducing women’s vulnerabilities in migration. The closer women and girls come to enjoying equal rights and opportunities— to education and training, to credit, to property, to inheritance, to mobility, to health services— the better their opportunities for decent work and the less likely they are to find themselves in a situation in which they are compelled to migrate— especially under circumstances that leave them particularly vulnerable to abuse and exploitation, whether sexual or gender-based violence or workplace exploitation.

Destination states must address the particular needs of migrant women, who almost always face discrimination on the basis of their gender and migration status (and even more so if they are irregular), and who are more likely than men to work in sectors not covered by labour protection.

Migration—and therefore migration governance-- affects millions of **children** who migrate alone or with family members, and it also affects children whose family members migrate without them, as well as those at risk of separation from parents subject to detention and/or deportation due to irregular status. Both regular and irregular migration cause children to be separated from migrating family members. Multiple regions have experienced increases in numbers of unaccompanied and separated child migrants, and the protection of their rights continues to be a governance challenge. Despite authoritative guidance from the Committee on the Rights of the Child (CRC) on detention never being in the best interests of the child, much weaker language ended up in the New York Declaration.

This working session is aimed at linking global governance institutions and legal frameworks to the regional issues and contexts at which most civil society organizations operate. Among the specific areas of focus for 2016 GFMD government roundtables, and references for this session, are lowering the costs of migration for migrants and addressing the needs of migrants in crisis, and so civil society inputs into those discussions will be an important outcome of this session. But recognizing that critical issues vary across regions, we invite participants to participate in regionally-organized discussion tables to identify the one or two most critical migration issues in their region in need of improvements in governance. Specifically, the sessions will aim to:

1. assess current priority issues, by region, for improving migration governance, whether those issues are reflected in the 5-year 8-point plan or have emerged more recently;
2. identify the level(s) at which governance needs to be improved, with special attention to
 - a. possible intersections with global governance and negotiation of the Global Compact; and
 - b. whether improvements are needed in law or in implementation (in policy and practice) of existing laws (and if there are international standards needing to be transposed into national law);
3. develop civil society recommendations (and, where possible, benchmarks) for actions that civil society and/or States, individually or collectively, can take to address these pressing issues and challenges.

2. Inclusive development in the UN 2030 Agenda and the New York Declaration for Refugees and Migrants

Since the 2013 High Level Dialogue on Migration and Development, States’ responses to emerging as well as ongoing migration challenges have frequently fallen short of protecting migrants’ rights and

well-being, and even their lives. The September 19 Summit aimed to respond to this situation. Via a negotiated Global Compact for Safe, Regular and Orderly Migration, the [New York Declaration for Refugees and Migrants](#) attempts to map a path to more effective and coherent multilateral governance of migration, in keeping with States' 2015 commitment in the **2030 Agenda** to "leave no one behind" and to "cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons" (Para. 29).

In the New York Declaration, States "reaffirm and will fully protect the human rights of all refugees and migrants, regardless of status; all are rights holders. [States'] response will demonstrate full respect for international law and international human rights law and, where applicable, international refugee law and international humanitarian law." But they do not say *how* they will do so.

Civil society has an important role to play in ensuring that this commitment can be effectively implemented. And as we discuss below, the use of firewalls between immigration enforcement on the one hand, and access to justice and to basic services on the other, is a critical mechanism to protect the rights of all migrants.

Similarly, while the New York Declaration makes reference to addressing the drivers of migration (and not only the drivers of forced migration), civil society has a role in ensuring that this commitment is fleshed out, and that the broad aim of **SDG 10**, to reduce inequality within and between states, is what informs negotiations and not simply **Target 10.7**, to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies." **10.6**, for example, aims to "ensure enhanced representation and voice "for developing countries in decision-making in global international economic and financial institutions in order to deliver more effective, credible, accountable and legitimate institutions."

Along the same lines, the [Addis Ababa Action Agenda](#) aims to support national development efforts, committing to pursue policy coherence and an enabling environment for sustainable development at all levels and by all actors, and to reinvigorating the global partnership for sustainable development" (**Para. 9**).

3. Existing recommendations from civil society

In 2013, global civil society adopted a 5-year, 8-point Action Plan as its agenda for change and collaboration on migration and development. Among other action point, action point 7 called for "**Redefinition of the interaction of international mechanisms of migrants' rights protection** [...] to more coherently align protection activity of agencies including ILO, IOM, UNHCR, OHCHR and UNODC"

Follow through from this Action Point, and a recommendation made in the 2015 GFMD Civil Society Days calling "**to ensure civil society's rightful place in governance of migration at local, regional and global levels**", this September more than 100 organization signed a civil society statement that called upon governments [to Act Now](#) and follow through on their commitments in the UN New York Declaration for Refugees and Migrants. Among 7 action calls, this call was included: "Commit to the development of a Global Compact for Safe, Orderly and Regular Migration, grounded in international human rights law and labour standards, in order to **strengthen rights-based global governance of migration**. States should fund and establish a **consultative mechanism with civil society organizations**, including migrants and refugees, directly involved in the process from now until the Compact is achieved."

Other concerted civil society recommendations that look at specific elements of migration governance are:

1. **End detention of migrants** (children, pregnant women and families most urgently) for purposes of assessing migration status and implementing alternatives to detention, and recognize that international standards state clearly that **detention is never in the best interest of the child**;
2. **Ensure firewalls** between immigration enforcement authorities on the one hand, and other government agencies and services on the other, **enabling all migrants' access to social services and to the criminal justice system** to report crimes against them, without fear of being detained or deported;
3. **Respect the rights of all migrants, regardless of status**, at work and outside of work; provide access to healthcare, including reproductive health services for women; to accommodation, and to education for children;
4. **Improve transparency, accountability, and adequate standards** in labor agreements, preferably by involving the ILO and social dialogue partners;
5. **Reform temporary and circular migration programs** to enable workers to fully exercise their rights, including the right to organize and collectively bargain, to use visa portability to change employers and to access justice for protection from retaliation

4. Initiatives and actions taken in the past years by civil society to advance multilateral cooperation and governance of migration and development

Over the past several years, a number of promising initiatives and actions have been undertaken by civil society. A few are presented here. During the sessions, others will be added to this list:

- Civil society organizations, with the support of many states, sought inclusion in the New York Declaration of a commitment to end child detention, and recognition that detention was never in the best interests of the child. The campaign to end child detention continues, with increasing pressure placed on states that refuse to commit to ending the practice.
- In the EU, the Victims of Crime Directive (2012/29/EU) grants equal rights and protection to all victims of crime, regardless of their residence status, and is therefore a crucial framework to support undocumented victims in obtaining protection, access to services and justice. PICUM developed a campaign and tools to assist civil society organizations and local authorities to ensure that the EU Directive was transposed into national law in member states and that local authorities were aware of and trained in the proper use of its provisions.
- Civil society organizations, particularly in Asia, have been instrumental in working with ILO, IOM and governments on labour recruitment reform. The ILO has just issued its Fair Recruitment Guidelines, and these can provide an important resource for civil society and especially migrant organizations to make migrants aware of, as well as to bring to relevant government agencies in both origin and destination countries.

5. Guiding questions for discussion during the Session

1) *Recommendations for changes in policies and practices*

What needs to be changed to improve rights-based governance that leads to respect for migrants' rights, access to justice, safety, and ability to lead decent lives? Are improvements needed in law or in implementation (in policy and practice) of existing laws?

And, if appropriate, what benchmarks would be effective to measure progress that these changes are implemented?

2) *Actors for success*

In your region, who are the key actors, and what are the current priority issues for improving migration governance? (*These can be action areas reflected in the 5-year 8-point plan or issues that have emerged more recently*).

3) *Actions and strategies*

What actions should civil society take to push for the recommendations made? Where and how—what processes, what levels-- can civil society organizations intervene most effectively to improve respect for migrants' rights, access to justice, safety, and ability to lead decent lives?

4) *The Global Compact for safe, orderly and regular migration*

How could a Global Compact on Migration help to “do the global governance of migration better”; what are essential elements to address in this Global Compact?