European Regional Civil Society Consultation on the Global Compact for Safe, Orderly and Regular Migration
2 – 3 October, 2017

SUMMARY REPORT OF THE MEETING

The European regional civil society consultation on the Global Compact for safe, orderly and regular migration (GCM) was organized by the Migration and Development Civil Society (MADE) Coordinating Office of the International Catholic Migration Commission (ICMC), and PICUM – Platform for International Cooperation on Undocumented Migrants, with support from the International Organization for Migration and Open Society Foundations.

It brought together civil society actors based in geographical Europe including European Union member states, wider Europe and countries within the scope of the Eastern Partnership Agreement. 72 participants – representing 24 countries - took part in the Consultation, of whom 29 are migrants, refugees or members of the diaspora.

The summary report outlines the redlines and baselines identified by the participants during each of the seven working sessions.

1. EU External Migration Policy

This discussion focused on the external policies of the European Union that relate directly (and indirectly) to migration. Acknowledging that migration does not occur in a silo, participants expressed disapproval of the EU narrative on “investment to reduce migration”, pointing to the interconnectivity between (European) policies on development, trade, investment, security and foreign relations and drivers of migration. There was consensus that policies should not aim to stop migration but must respect the rights of people while promoting economic development. As to concrete mechanisms, participants agreed that respect for human rights should be ensured in business and investment, meaning that instruments such as the EU External Investment Plan should ensure that actors who violate human rights - be they states or private sector corporations - do not receive access to EU funding or support through other means.

The participants also discussed European border management as an issue of concern. They agreed that states must base their border management on human rights and human security, meaning the security of people, with a focus on vulnerable people; not the security of government institutions. A number of participants mentioned that as civil society they witness many human rights violations happening along borders, including abuse of migrants and funding of militias. One question raised in this context was
what concrete safeguards the EU is putting in place to ensure that its border management support also increases human rights protection. Cooperation and political dialogue with third states on these issues must bring with it the responsibility to monitor human rights at borders and in relevant security/detention facilities.

Participants felt that UN agencies and NGOs should be able to access and monitor processing centres and border areas, and that it was important that accountability mechanisms be put in place as part of support for border management in third countries. Participants emphasized that borders must be managed in such a way so as to ensure that the right to leave an unsafe country is respected and people are able to flee from danger i.e. that the concept of safe countries is not abused.

2. Detention

This discussion centred on the practice of detaining migrants in countries in the European region, exploring alternatives to detention, with particular attention to the issue of children in detention as well as conditions in detention centres.

Regarding detention of children, participants agreed that this must end in all its forms in every country, and should never be seen as a protective measure or as in the best interests of the child. As alternatives, states should invest into non-custodial community-based care arrangements such as child homes, foster care, guardianship, etc., to be established in close cooperation with child rights organizations. Participants emphasized that families should never be separated for immigration purposes, and that alternatives to detention for families that are appropriate for their needs should be developed.

In general, it was felt that decisions to detain should always include a comprehensive individual assessment and screening of proportionality and vulnerabilities, while every detention decision should be subject to periodical judicial review, including individualized assessment. Participants agreed that every person subjected to detention decision-making must receive quality legal assistance, including interpretation.

There was consensus on the need for governments to commit to reducing the use of detention as a migration management tool and to setting up and implementing, in close cooperation with civil society organizations and other specialists, a range of community based alternatives to detention which follow the case management model.

Given the prominence of detention as a practice in Europe (as the European Union encourages Member States to use more detention and longer in order to increase return¹) and its profoundly negative impact on migrants as well as host communities, participants emphasised the importance of this issue not being neglected or subsumed by other topics such as ‘return’.

Participants recognised with alarm that return is shaping almost all aspects of Europe’s migration policy, with detention seen as a tool to effect returns, as well as being used as a deterrent and as a political tool in response to pressure “to be seen to be doing something about migration”. However, participants

agreed that these ‘objectives’ can be achieved more effectively by other means rather than detention. They saw the need to developing these arguments further, with alternatives to detention being a useful tool in many ways to do this.

Participants also agreed that there is a need to develop a full civil society strategy that considers, for example:

- messaging that acknowledges the fact that governments are not monolithic (for example, the cost argument that detention is expensive might not work with politicians but might work with some civil servants);
- how to build a cross-cutting advocacy action that can be conducted at the national level in different countries (for example, parliamentary questions can be asked in each country to establish costs);
- how to bring in other allies in pushing our priority concerns regarding detention forward, including in the GCM process where there is a concern that detention may be buried under other issues;
- how to build on the momentum gained by the ending detention of children movement (including on alternatives) by developing a similar argument for other populations.

3. Access to rights and services regardless of status

The emphasis in this discussion was placed on how to ensure access of migrants, regardless of their status, to rights and services, including through mechanisms such as firewalls and with the importance of states’ commitments at the heart of realizing this access.

There was a strong consensus among participants that comprehensive firewalls should be put in place between immigration enforcement and public services/the justice system, both in countries of destination and transit. They agreed that access to any service should have no negative effect on status, stay or the service providers, and that separation between immigration authorities and other law enforcement authorities and public services should be a clear right.

Rights pertaining to health, education, housing, labour, justice and legal services guaranteed under international law should be clearly enshrined in national law. Examples were given of broad healthcare entitlements and coverage for migrants, regardless of status, in some Southern European countries, where austerity measures have had little impact on health service provision.

Participants called on states to commit to effective access to services and accept the positive obligation and accountability for equitable uptake and outcomes based on people’s needs. States should enable higher levels of access to pre-, tertiary and adult education and to generate better general working conditions with equal access to complaints mechanisms. This can be achieved in following ways:

- Positive obligation by state and political disclosure to inform all migrants and service providers
- Individual documentation or local identification cards, including for undocumented, includes information on rights to access services
- Temporary humanitarian protection leading to regularization
- Anonymous multilingual hotlines and social media for information, complaints, online services
- Facilitation of formal qualification recognition of immigrants’ skills as service-providers, increased representation of immigrants among all social partners/service-providers and targeted role in design and delivery of service as intercultural mediators
Good practices referred to specifically were labour inspectors and effective labour complaints mechanisms in Belgium, access to justice for undocumented workers and legal representation by unions in Ireland and the Dutch “Safe In – Safe Out” model enabling undocumented migrants to safely report crimes to the police.

Throughout the discussion, participants referred to benchmark documentation, such as the ECRI (European Commission against Racism and Intolerance from the Council of Europe) General Policy Recommendation no. 16 on safeguarding irregularly present migrants from discrimination adopted on 16 March 2016 and the FRA (European Union Agency for Fundamental Rights) Report on Fundamental rights of migrants in an irregular situation in the European Union and FRA’s guidelines on the firewall, elaborated together with Member States.

4. Transnational and sustainable development
The contribution of diaspora should be recognized and partnerships should be created at each level (local, national, regional) in countries of origin and in host countries. Diaspora members should receive support in visa issues and issues related to double nationality (mobility passport). There are valuable initiatives that exist at national and regional level which could be scaled up or used as inspiration in other settings, such as the Swiss Platform on Migration and Development (national) and Africa-Europe Diaspora Platform (ADEPT – cross-regional). Participants recommend governments to facilitate these platforms as key stakeholders in migration policy development. Diaspora should be represented in Parliament at the national and international levels, and should be included in decision-making (such as is the case in Mali).

It is important to establish partnership with families, communities and local institutes. Diasporas should generally be more connected, fostering networks and the sharing of information and good practices. There is need for financial education on how to invest money/ send remittances in a more efficient and secure way. (See Mexican ‘Tres por Uno’ Programme, UNDP’s Transfer of Knowledge through Expatriate Nationals – TOKTEN)

5. Pathways to regular movement and status
This session centred on the reality of inexistent as well as restricted regular pathways for human mobility for the purposes of labour, protection, family unity, and education.

The participants felt that European states should ensure access (to Europe) through transparent and accessible labour migration schemes, at all skills levels and across sectors of the economy governed by ILO standards on an equal basis with nationals. This goes hand in hand with the necessity for wider ratification of ILO standards by European governments, including putting in place effective controls of implementation. In this context, the Swedish labour migration model was cited as a good practice, with the exception that it should be broadened and not tied to only one employer. The labour exchange between Ukraine and Poland after the European Union approved visa-free travel was cited as a positive example as well, as was the Portuguese regularization model.

Linking to the discussion on insufficient regular pathways for newcomers, participants call upon European states to open accessible pathways out of irregularity, non-conditioned by employment, for those people who already find themselves in the situation of irregularity. Practices cited as championing were France’s regularization of unaccompanied children and Belgium’s regularization of medical cases.
In connection to the above, the participants pointed out the need for UN member states to broaden or put in place possibilities for **humanitarian visas** and ensure the possibility for migrants to exercise the right of family reunification without limitation through quota, nature of residence status, income level or administrative obstacles. France was cited as a good practice.

6. **Fighting xenophobia and discrimination**

Recording a worrying rise in xenophobic and discriminatory attitudes, inflammatory rhetoric, ‘fake news’ in certain media outlets across Europe and the institutionalization of xenophobia and discrimination through the rise of right-wing political parties/governments [Austria (ÖVP+FPÖ), Czech Republic, Front National in France, AfD in Germany, Hungary, Poland], participants felt the urgency to address these issues.

Generally, states must do more to identify vulnerable groups. They must be able to prosecute hate crimes and hate speech, as well as assist victims of discrimination. Specifically, participants are in agreement that states must establish and finance an independent equality body responsible for fighting against discrimination, engaging in discrimination testing, assisting in individual victims of discrimination, and conducting surveys with migrants on their experiences of discrimination as well as on their levels of reporting discrimination (and their reasons for not reporting).

The [EU-MIDIS II of the European Union Agency for Fundamental Rights (FRA)](https://fra.europa.eu/en) was cited as a strong example of the importance of directly surveying migrants about their individual experiences of discrimination. The survey indicates that in many cases, discrimination goes unreported because migrants believe that no action will be taken.

States should establish mechanisms (in particular, discrimination testing) to identify institutional forms of discrimination, and ensure that the results of discrimination testing can be used in court. Discrimination testing is likewise crucial for identifying institutional/systemic discrimination, e.g. property owners and employers restricting access to employment and housing through racist/xenophobic/discriminatory practices.

Information disseminated by governments about migration – as well as media – deeply shapes public opinion about migration. The participants accentuated the states’ responsibility for fostering positive public opinion about migration/diversity and helping individuals and communities – including civil servants – to develop intercultural skills. Migration and refugees have been a huge fake news target in Central Europe and Germany, for example.

In this context, it is crucial for states to devote attention to introducing measures to combat hate speech online, and to the establishment of digital literacy initiatives that help youth recognize fake news, a practice that has been initiated by certain European countries (however, this digital literacy practice is just starting in certain European countries and has not been established as a good practice yet).

States must invest in community-based integration to ensure that migrants and non-migrants are regularly interacting together on an equal footing in the same schools, companies, organizations and communities. This involves promoting intercultural education in schools, so that all children can have the opportunity to learn (about) the local languages and cultures represented within their student populations. Here language training can be combined with vocational training, a positive measure
existing in certain European countries. It is furthermore crucial that states invest in the recognition of skills and qualifications of migrants and establish measures that ensure equal representation of minorities in different spheres, including in leadership roles.

Certain actors (including governmental actors) talk about discrimination and xenophobia rather than Islamophobia and racism. By doing so, they are denying these social realities – women being attacked for being veiled, decreased employment chances for individuals with Muslim-sounding names – and evading their responsibility to address these issues. As a consequence, new terrorism laws, particularly in Europe, have targeted (and essentially criminalized) certain populations.

7. **Return and reintegration**

As a topic that is rapidly gaining importance and priority amongst European governments, it was crucial to address return and reintegration in this consultation. The three key “non-negotiables” identified by the participants revolved around 1) expansion of the non-refoulement principle to all migrants, 2) post return/reintegration monitoring and 3) securing/guaranteeing essential conditions in countries of return.

Governments should preserve existing standards (as acknowledged for instance by Fundamental Rights Agency, including the right to be informed and the right to be heard) and honour the principle of non-refoulement as non-negotiable and extend its applicability to migrants. This implies access to borders/protection and encompasses no push-backs, no pull-backs, no instrumentalisation of safe third country concepts, no deals with countries like Libya or agreements such as the ‘EU-Turkey Deal’.

Voluntary return should, at all times, be prioritized over forced return. Governments should ensure that returns are sustainable (rights-based and ensure the well-being of both the migrant and the recipient society). Each person subject to return should receive due process before the return decision, including procedural safeguards (right to information, right to return). Governments should put in place mechanisms to monitor return and reintegration, looking at impacts on the receiving society, migrant, family, community. Monitoring and reintegration processes should be rights-based and transparent, and involve CSOs and local authorities.

It should be the aim of states to ensure essential conditions in countries where migrants are returned to. Countries of origin have the responsibility to monitor and provide services. There should be a framework for countries of destination and tailor-made solutions for returnees are needed. Portability of rights must be granted also in cases of forced return. Local civil societies should be empowered to hold their countries accountable.

The participants highlighted that there are alternatives to return that could be even more sustainable. Return should not be used as a bargaining chip; there is the need to look at a wider array of tools and disconnect conditionality from development funds. The Global Compact should not be a compact on return!

Several countries were referred to as champions in this realm. In Mali, for instance, an informed and sensitized civil society critically discusses migration governance applied by the EU to third countries. Unsuccessful asylum seekers in Sweden may apply to work in Sweden through the labor migration policy. In Ghana counselling is offered to returnees and their families to facilitate social reintegration. Countries that prepare for return should apply the case management approach, as is being done in the UK.
Other priorities brought forward were to:

- involve diaspora to create incentives in countries of return for returnees
- put in place protection against expulsion for severely ill migrants
- focus on the mental health aspects of torture and expulsion
- develop a multi-stakeholder process to establish basic principles of return beyond the GCM.