

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

ACTION PAPER FOR WORKING SESSIONS 2.1 and 2.2¹:

Doing Protection of Migrants on the Move

2.1: Protecting Migrants in all crises, in transit and at borders

2.2: Development Solutions for forced displacement, including by conflict, disaster, and climate change

1. Introduction

The world is witnessing the largest number of persons on the move since the Second World War. More than 65 million persons are displaced from their homes, with as many as 21 million of them refugees. Women and children make up over half of those persons on the move. This situation is made worse by the absence of shared responsibility at the global level, where a small number of developing countries are hosting the largest number of refugees and asylum-seekers.

Persons displaced from their homes, including refugees, asylum seekers, and other migrants, are increasingly being intercepted by force in transit countries, criminalized, arrested, and placed in detention on the basis of their irregular migration status, and forcibly returned to their home countries, often without proper access to asylum systems; individualized screening to ensure the protection of those in particularly vulnerable situations or to prevent *refoulement*; and legal support and other fundamental due process protections.

These enforcement tactics are often justified on the basis of false, misguided, or even blatantly xenophobic anti-immigrant narratives. They are implicitly and explicitly supported by countries of destination through direct funding, cooperation agreements, and “capacity building” efforts which have the intended effect of externalizing the borders of wealthier countries such that countries less well-resourced or equipped to provide proper reception and protection to displaced persons are disproportionately bearing this responsibility.

The result of such policies is devastating to the health, well-being, and human rights of people on the move, who regularly experience violence from organized crime, corrupt authorities and others of ill-will. Women and children can suffer physical and sexual abuse. Migrants often are subject to human traffickers and unscrupulous smugglers, who use them for profit.

Long-term solutions to forced migration should include sustainable economic development, an adherence to principles in the Nansen Initiative to protect migrants from climate change and natural disasters, and efforts at conflict resolution and safe and voluntary repatriation practices.

¹ This Action Paper has been prepared as input for the 2016 GFMD Civil Society Days by The Scalabrini International Migration Network and Amnesty International

The goal of these sessions is to discuss current protection gaps regarding the movement of persons in times of crises, in transit and at borders, to identify possible solutions, and to promote a rights-based and solutions-focused approach to forced migration both within the GFMD and during the future deliberations on the Global Compact for Safe, Orderly, and Regular Migration.

Relevant international protection instruments, both binding and non-binding, applicable to the discussions are: the 1951 UN Convention on Refugees and its 1967 Protocols, the UN Convention on the Rights of the Child, the Covenants and Declarations contained within the International Bill of Human Rights, the Sustainable Development Goals (SDG), the Convention on the Rights of the Child, and the New York Declaration on Large Movements of Refugees and Migrants and its annexes.

2. Protection of Migrants on the Move in the UN 2030 Agenda and the “New York Declaration for Refugees and Migrants”

Some relevant references in the UN 2030 Agenda related to the protection of migrants in all crises, in transit and at borders (for session 2.1):

- **Target 10.7:** “Facilitate **orderly, safe, regular, and responsible migration** and the mobility of people, including through the implementation of planned and well-managed migration policies.”
- **Target 8.0:** to promote “**sustained, inclusive and sustainable economic growth**, full and productive employment, and decent work for all.”
- **Target 8.7:** “Take immediate and effective measures to eradicate **forced labor, end modern slavery and human trafficking** and secure the prohibition and elimination of the worst forms of **child labour**, including recruitment and the use of child soldiers, and by 2025 end child labor in all its forms.”
- **Target 16.2:** reinforces an end to the abuse, trafficking, and exploitation of **children**: “By 2030 end the abuse, exploitation, trafficking and all forms of violence against and torture of children.”
- **Target 16.3:** ensures **equal justice** for all: “By 2030 promote the rule of law at the national and international level and ensure equal justice for all.”

Some relevant references in the UN 2030 Agenda related to development solutions for forced migration, including by conflict, disaster and climate change (for session 2.2)

- **Target 1.4:** To ensure that all **women and children** have access to economic support: “By 2030, ensure that all women and children, in particular the poor and vulnerable, have equal rights to economic resources as well as access to basic services, ownership, and control over land and other forms of property, inheritance, natural resources, and appropriate new technology and resources.”
- **Target 1.5:** To reduce the **exposure of the poor to climate change**: “By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure to climate-related extreme events and other economic, social, and environmental shocks and disasters”

Furthermore almost the entire UN 2030 Agenda in itself is relevant in relation to creating development and sustainable solutions at home, that prevent people from being forced to leave whether is eradicating poverty (goal 1), healthy lives (goal 3) quality education for all (goal 4), or promoting peaceful and inclusive societies (goal 16), and many more goals.

The “New York Declaration for Refugees and Migrants” that was unanimously adopted by 193 UN Member States during the UN High Level Summit of 19 September 2016 includes numerous commitments for migrants on the move, in both the Political Declaration and its Annex II. This includes, but is not limited to, the following:

- **par 41:** “We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times. We will cooperate closely to facilitate and ensure safe, orderly and regular migration, including return and readmission, taking into account national legislation.”
- **par. 42:** “We commit to safeguarding the rights of, protecting the interests of and assisting our migrant communities abroad, including through consular protection, assistance and cooperation, in accordance with relevant international law.”
- **par 50:** “We will assist, impartially and on the basis of needs, migrants in countries that are experiencing conflicts or natural disasters, working, as applicable, in coordination with the relevant national authorities. While recognizing that not all States are participating in them, we note in this regard the Migrants in Countries in Crisis initiative and the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change resulting from the Nansen Initiative.”
- **par 51:** “We take note of the work done by the Global Migration Group to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations.”
- **par 52:** “We will consider developing non-binding guiding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable situations, especially unaccompanied and separated children who do not qualify for international protection as refugees and who may need assistance.”

Annex II, includes, as elements to be included in the Global Compact for safe, orderly and regular migration, the following:

- **par 2.5:** “We will 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. We underline the need to ensure respect for the dignity of migrants and the protection of their rights under applicable international law, including the principle of non-discrimination under international law.”
- **par 2.6:** “We emphasize the multidimensional character of international migration, the importance of international, regional and bilateral cooperation and dialogue in this regard, and the need to protect the human rights of all migrants, regardless of status, particularly at a time when migration flows have increased.”
- **par 2.7:** “We note that international economic imbalances, poverty and environmental degradation, combined with the absence of peace and security and lack of respect for human rights, are all factors affecting international migration.”

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. A few action points are in particular relevant to address the situation of migrants in transit and in crisis:

- **Point 3** of the Plan calls for: “Reliable, multi-actor mechanisms to address the assistance and protection needs of migrants stranded in distress, beginning with those trapped in situations of war, conflict or disaster (natural or man-made) but with the same logic and urgency with respect to migrant victims of violence or trauma in transit. This should include specific attention to egregious gaps in protection and assistance for migrant women who are raped, and the thousands of children that are unaccompanied and abused along the major migration corridors in every region of the world. Benchmarks could include further work and multi-stakeholder capacity building on frameworks developed by agencies with such responsibilities including the International Organization for Migration (IOM), the United Nations High

Commissioner for Refugees (UNHCR) and the United Nations Office on Drugs and Crime (UNODC), and the consolidation of relevant principles and practices under existing refugee, humanitarian and human rights laws.”

- **Point 4** makes a specific call to the protection of migrant women against violence.
- The Plan also addresses issues of **inclusive development** in several of its points, specifically in **Points 1 and 2**

Civil Society at the GFMD 2015 also put forward a number of recommendations and benchmarks on the issues to be addressed in this session². Specifically:

- **On transit and crisis:** To ensure needs-first, human-rights-based and human-development driven protection and solutions for migrants in crisis and transit situations.
- **On forced migration:** To ensure human-development-driven, short-term responses and long-term solutions for forced migrants.
- A few specific ideas that were put forward under these recommendations include:
 - update current mandates and strengthen or build further binding frameworks to cover the wider reality and needs of forced migrants and the countries in which they find refuge, and migrants in all crisis and transit situations. For example by broadening the scope of the Migrants In Countries in Crisis initiative that is underway and welcome, and the 1951 UN Convention relating to the Status of Refugees, possibly with a related protocol, with consideration of those aspects of the OAU Convention (1969) and Cartagena Declaration (1984) that are directly relevant.
 - challenge “temporariness” by offering long-term, sustainable solutions to those experiencing forced migration; recognizing and investing in their human development and potential, including through access to labour market, education for children, local integration, resettlement, family reunification and pathways to permanent residence and citizenship.
 - not criminalize organizations helping migrants, e.g. through search and rescue operations, medical support, shelter, legal advice and other services.

4. Initiatives and actions taken the past years to advance the protection of migrants on the move, displaced and in transit

Over the past several years, a number of initiatives have been undertaken by governments, and multi-stakeholder partnerships. Only a few are presented here. During the sessions others will be added to this list:

- Completion of the **Nansen Initiative**³, that led to the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change which provides guidelines for the treatment of persons displaced by natural disasters and climate change. the Nansen Initiative evolved into the Platform on Disaster Displacement.
- Completion of the Migrants in Countries in Crisis Initiative, which provides guidelines for foreign-born workers, migrants and other non-citizens fleeing conflict and disasters in a host country. Six regional civil society consultations were held before and fed directly into the government-led regional MICIC consultations;
- Agreement on the **New York Declaration for Refugees and Migrants**, which initiates a process to conclude a Global Compact for Safe, Orderly, and Regular Migration by 2018, and includes the commitment to consider developing non-binding guiding principles and voluntary guidelines on the treatment of migrants in vulnerable situations.

² For a full overview of the [2015 GFMD CSD recommendations](#) relevant for this session on page 6 and 7.

- Ongoing efforts with **city and local governments** to integrate immigrants and refugees in destination countries, including within the Annual Global Mayoral Forum

Here are a few examples of current policy practices and tools currently underway. During the sessions others will be added to this list:

- The **Mexican government**, together with the governments of **the Northern Triangle of Central America** (Honduras, El Salvador, Guatemala) is beginning to implement a **transnational justice** mechanism that will allow migrants and their relatives to access justice wherever they are (even when returned to their home countries) to seek redress when they are victims of human rights violations. This mechanism could deter further human rights violations and promote victims' right to access justice and the right to truth.
- The use of asylum standards, as reflected in the Cartagena Declaration, that grants protection based on the threat of generalized violence and violence from non-state actors. The principles of the Cartagena Declaration have been incorporated into national laws around the Latin American region, including Mexico.
- The guidelines of the Global Migration Group regarding migrants in vulnerable situations currently being developed, and **OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders**
- The promotion of **livelihoods for youth**, including the provision of skills training and microfinance.
- The deployment of **protection tools beyond borders to protect populations in transit**, such as in-country processing, regional resettlement, capacity-building in transit countries for adjudication of asylum claims, and the use of alternatives to detention.

Most of these policies are still under initial implementation phase and it is important for Civil Society to monitor and promote their effective implementation.

5. Suggestions for recommendations for the 2016 GFMD CSD 2016

The Working Sessions will deepen existing goals, benchmarks and actions such as the ones described above. It is suggested to begin with working out the following four areas:

- Guarantee the inclusion of a rights-based approach in the design of migration policies at the local/national/regional level;
- Strengthen existing government-civil society partnerships to ensure effective monitoring of transit-migrant routes in different migration corridors;
- Create new engagement mechanisms to facilitate diaspora's development-related investment in their communities of origin; and
- Develop a framework for responsibility-sharing among nations during crises, based on capacity.

6. Action steps beyond the GFMD

The working sessions will define key actions for civil society and governments at global and regional levels. Recommended actions to be worked out during the sessions include:

For Civil Society:

- Engage fully in the development of the Global Compact for Safe, Regular and Orderly Migration;
- Work with national governments to increase partnerships in the service and care of migrants;

- Assist governments with integration efforts into local society, including combatting xenophobia.

For governments:

- Refrain from using deterrence policies and externalization of borders to stem large movements of refugees and migrants;
- Enhance protection mechanisms to ensure that due process rights are protected in large movements;
- Work with civil society to enhance the rule of law and protections.

7. Guiding questions for discussion during the Session

Guiding questions for 2.1: Protecting migrants in all crises, in transit and at borders

1) Recommendations for changes in policies and practices

What protection gaps, in policy and in practice exist with regards to protecting migrants in crises, in transit and at borders, and what changes are need? How do we define responsibility-sharing in the context of these forced movements?

2) Strategies, practices, partnerships and tools

What strategies have been effective to better protect migrants in transit and at borders, and what tools exist that can be used?

3) Actions and strategies

Given the lack of positive changes in how nations make and implement migration policy, and the potential for more draconian changes, what type of advocacy should be carried out by civil society to promote meaningful change at local, national and regional level?

4) Actors for success

What partners in civil society and in governments should migration advocates work with, and since migration crosses international boundaries, what role should transit countries and play in the protection of people on the move?

5) The Global Compact for safe, orderly and regular migration

How can the Global Compact for Safe, Regular and Orderly Migration help to better protect migrants in transit and crises situations and at borders and what other global/regional governance mechanisms need to be improved?

Guiding questions for 2.2.: Development solutions for forced displacement, including by conflict, disaster, and climate change

1) Recommendations for changes in policies and practices

What are the long-term solutions to forced migration, including forced migration induced by conflict, disaster and climate change? What short-term measures should be taken?

2) Strategies, practices, partnerships and tools

What tools can be used to achieve the long and short-term solutions identified? What kind of “good practices” can we identify?

3) Actors and actions for success

What partners in civil society and in governments should migration advocates work with to implement development solutions for forced migrants? What actions need to be taken?

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

How can the Global Compact for Safe, Regular and Orderly Migration address development issues and prevent forced migration and what other global/regional governance mechanisms need to be improved?