



Civil Society Days – 2017, Berlin 29th of June, 1st of July

Bridging Document - Women in Migration

Version for input in the 2017 GFMD Civil Society Days

Background:

This paper looks at different points of the [5-year Action Plan for Collaboration](#) from a women migrant rights perspective. The aim is to examine the specificities affecting women migrants in the context of migration and inform more coherent approaches from a women rights standpoint. It has been prepared by Carolina Gottardo from the [Women in Migration Network \(WIMN\)](#) to provide input for the Civil Society Days (CSDs) of the Global Forum on Migration and Development (Berlin, 29th of June, and 1st of July 2017), and looks specifically at the dimensions of women in migration into the development and implementation of the Global Compact on Migration.

A. Introduction

There is *always* a gender dimension in migration. The framing of Women in Migration goes beyond “migrant women” to explore the realities of *all* women affected by migration in countries of origin, transit, destination and return.

While national laws and international treaties have specific legal frameworks and categories for people on the move for diverse reasons, women’s realities do not easily fit into these structures. People on the move are categorized as “internally displaced persons,” internal economic migrants, international migrants, refugees, or asylum-seekers. However, there are multiple and complex reasons for women’s migration, common realities across these categories, mixed status within families, and changing status for individuals. Regardless of the category, states have the obligation to fulfill human rights and treaty obligations. It is false to suggest that some migrants are deserving of rights while others should be denied rights and turned away. International human rights law affirms the rights of all migrants regardless of status.

Overall, the Global Compact Should:

- Address the multiple and complex reasons for women’s migration; uphold the human rights of all women in migration in countries of origin, transit, destination and return; and fulfill human rights and treaty obligations regardless of the specific category of women in migration.
- Ensure there is policy coherence in the development and implementation of the parallel Global Compact on Refugees.
- As stated in UN Women’s [Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration](#) (the UN Women’s Recommendations): “Ratify international conventions (and withdraw all reservations)

that promote and protect the rights of women at all stages of migration and incorporate their provisions into national law.”¹

B. Women’s migration and women’s agency

Women in migration are not “vulnerable” in need of “rescue”; they are advocates for their rights and agents of change. Current immigration policies *create* the contexts of exclusion, inequality and rights violations, which put women at risk and in a situation of vulnerability. States should focus policy on protecting rights, rather than “protecting” women, which limits autonomy and enjoyment of women’s rights.

The Global Compact should:

- “Develop gender-responsive, human rights-based migration policy without delay, which recognizes the agency of women in migration, promotes their empowerment and leadership and moves away from addressing migrant women primarily through a lens of victimhood.”²
- Guarantee autonomous and independent status for migrant women, including autonomous movement and life choices independent of men.
- Guarantee women access to individual documentation, issued in their own names. Ensure that women can pass on their nationality to their children.³

C. Intersectionality and multiple oppressions

Women in migration often experience multiple forms of discrimination. The concept of “intersectionality” is that women experience multiple identities at the same time, and multiple oppressions. All of these identities need to be addressed in an integrated way in policy, not as separate categories. Migrant women can be located in multiple and diverse identities and experiences. Gender is not binary. There must be an inclusive understanding of “women and girls” which includes lesbian, trans-sexual, bi and intersex women and girls.

Racial discrimination and Xenophobia

The poisonous rhetoric on migration and asylum with States, media and other actors often demonizes migrants and asylum seekers and promotes a narrative that favours welcoming some “deserving refugees” while criminalizing, jailing and deporting “undeserving” migrants and asylum seekers, or creating divisions between “good migrants” and “bad migrants”. This dichotomy is too often driven by economic demand, race and country of origin and affects women in migration.

Explicit reference to racism should not be omitted in discussions of xenophobia. Concerted policy changes at the national level are required to safeguard the economic and social human rights of both citizens and migrants.

The Global Compact should:

- Include an intersectional analysis of exclusion and ‘othering’ from gender and race perspectives in the context of sustainable development and human rights.
- Prioritize ending all forms of discrimination against women, regardless of legal status or factors including race, ethnicity, nationality, age, religion, sexual orientation, gender identity, disability, health and pregnancy status, or occupation.

¹ UN Women: <http://www.unwomen.org/en/digital-library/publications/2017/3/addressing-womens-rights-in-global-compact-for-migration>

² UN Women: recommendations for addressing the human rights of women in the Compact for safe, orderly and regular migration, Outcome of expert meeting, Recommendation 1.3, November 2016

³ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families Art 29

- Challenge the racial and ethnic dimensions of migration welcome and exclusion and treatment of migrants in destination countries.
- “Pursue...a policy of eliminating racial discrimination, taking effective measures to condemn all acts, manifestations and expressions of racism, racial discrimination, xenophobia and related intolerance against women in migration”⁴

D. Push factors for migration

The majority of women migrate as workers or with their families, driven by economic necessity. The failure of states to fulfil economic, social and political human rights play a key role in pushing women to migrate. Thus, discussion of migration and the Sustainable Development Goals (SDGs) cannot be limited to those points that explicitly mention migrants. Fulfillment of *all* of the SDGs is necessary to create an environment where women can choose to migrate or remain at home. The growing power of corporations to displace people and undermine livelihoods, while demanding cheap labor elsewhere, is a central factor in driving migration, including irregular migration.

Women migrant workers’ role in development cannot be instrumentalized as “agents of development,” but must be seen in the complex nexus of their choices, their lack of choices, their family relationships and their ability to claim rights, including economic and social human rights.

In addition, women, including Lesbian and Transgender women, experience gender-based violence, state violence, organized crime, institutional discrimination, conflict and persecution and the exclusion of certain social groups that are not recognized as refugees or subjects of international protection. Many are forced to flee, yet thrust into irregular status in destination countries because of current categories.

The Global Compact should:

- Promote rights-based development that promotes women’s human rights, women’s role in decision-making, women’s bodily integrity, decent work, social protection and sustainable environmental practices.
- Promote the fulfillment of the SDGs and reduce the constraints that force people to migrate, encouraging efforts to correct structural conditions of unemployment; gender inequalities; racial, ethnic and other oppressions; austerity cuts; toxic pollution or land grabbing in countries of origin.

E. Criminalization of Migration, Regularization and Firewalls

Too many governments are responding to arrivals of migrants, asylum seekers and refugees with punitive policies of securitization, deterrence and the criminalization of migration. States have a prerogative to control their borders. However, the principles of security and national sovereignty cannot go against fundamental human rights, gender equality and women’s human rights. Undocumented migration is not a crime.

Migrant women face multiple barriers to migration through regular channels, such as gendered bans on migration, violence and abuse, discriminatory regulations for residence when depending on a spouse and more limited access to travel documents. When they resort to irregular migration they face greater abuses in transit and destination.

⁴ UN Women: recommendations for addressing the human rights of women in the Compact for safe, orderly and regular migration, Outcome of expert meeting, Recommendation 1.2, November 2016

Migration policy must create pathways to regularization as a right for all migrants, not the exception.

The Global Compact should:

- Encourage programmes to regularize the status of migrants or lead to permanent residence, with specific measures to address migrant women and girls with irregular migration status.
- Ensure that independent residency status for women is secured, in particular to allow for the regularized and legal stay of women who experience or are at risk of gender-based and other forms of violence....)⁵
- Shift from an emphasis on temporary and circular migration to promoting and allowing access to permanent residence and pathways to citizenship. Create safe and legal migration routes including family reunification initiatives.
- Establish firewalls between public services, justice and migration enforcement⁶
- Legislate access to justice, education and health for all women, independent their nationality or migration status. This must include safe reporting without jeopardy of information being shared with immigration control.

F. Borders and Detention

No international border can be a zone of exception when it comes to human rights protections. Migrants cross borders seeking a safer and more secure future, yet migrants and asylum seekers are seeing their rights violated at borders.

Women in transit may be at particular risk at international borders where special attention is required. Migrants of different genders experience migration and borders differently with a higher rate of mortality at the borders for women and gender non-conforming people than for men.

Saving lives must be paramount, whether in moments of crisis or ongoing irregular migration flows made necessary due to the lack of regular channels. States must ensure migrants safety and address their needs. Further, states must not externalize borders by funding migration control, detention facilities and militarization of other borders to prevent migration, nor offer aid in exchange for enhanced migration crackdowns and border control in neighboring and/or developing countries.

The Global Compact should:

- “Provide access to justice and due process for women at all stages of migration”⁷
- Embrace and implement the OHCHR Principles and Guidelines on the Human Rights of Migrants at International Borders⁸ which reiterate international human rights law.
- Ensure that all border governance measures protect the right of all persons to leave any country and that border management measures do not adversely affect the enjoyment of the human rights and dignity of migrants, refugees and asylum seekers.

⁵ UN Women: recommendations for addressing the human rights of women in the Compact for safe, orderly and regular migration, Outcome of expert meeting, Recommendation 2.5, November 2016

⁶ Firewalls have a strong legal basis, being recommended by international human rights treaty bodies such as the CESR, CMW, ILO and OHCHR.

⁷ UN Women: recommendations for addressing the human rights of women in the Compact for safe, orderly and regular migration, Outcome of expert meeting, Recommendation 4.5, November 2016.

⁸ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP.1, 23 July 2014

- Establish a presumption against immigration detention in law and commit to end all forms of immigration detention, upholding international human rights law and its procedural safeguards in all cases.

G. Trafficking in persons and smuggling of migrants

States often co-opt the concept of trafficking in persons as justification for anti-migration initiatives, including the imposition of restrictions on women’s migration. This harms migrant rights, expands criminalization and detention, and undermines work to end trafficking in persons. Misusing the issue, including by conflating trafficking with smuggling of migrants, undermines the ability to effectively address trafficking in persons.

Policies implemented in the name of combatting trafficking in persons are also being used to target migrant workers through raids on places of work (usually with migrants in irregular status getting detained and deported). As a result trafficked persons are often returned alongside migrants as states avoid their human rights obligations.

More regular channels of migration would diminish the need for smugglers. Current policy plays for the “push and pull factors of migration” without providing for regular migration. Criminalization of smuggling does not deter the migrant; it merely makes the journey more costly and dangerous. Migration management models that restrict regular migration channels and increased border security create opportunities for smuggling. Criminalization drives smuggling further underground increasing the power of smugglers, and the dangers for migrant women – including the risk of trafficking, violence and sexual abuse.

The Global Compact should:

- Adhere to definitions of trafficking in persons and call on states to fulfill their obligations under the Trafficking in Persons Protocol without discrimination and in line with the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*;⁹
- Ensure the human rights of trafficked persons are at the centre of all efforts to prevent and combat trafficking and to protect and provide redress to victims
- Ensure that anti-trafficking measures do not adversely affect the human rights and dignity of those who have been trafficked, and of migrants, refugees and asylum-seekers
- Be clear about the differences between trafficking and the smuggling of migrants and refrain from using concerns about *either* to justify more intense border security, enforcement and criminalization, which further penalizes migrants. Anti-trafficking policies should not be anti-migration.
- Ensure that migrants who have used the services of smugglers are not criminalized and that measures undertaken to address the smuggling of migrants do not adversely affect the human rights of migrants, including the right to seek asylum.

H. Labour migration

Every person has the human right to work, regardless of immigration status. Many states do not recognize this obligation when it comes to migrants.

Women’s labour migration is disproportionately precarious, in informal, unregulated sectors that put women outside the protection of labour law, with low wages, lack of opportunities for skills development and the risk of exploitation. Despite bringing a range of skills, migrant

⁹ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1, 20 May 2002

women are often confined mainly to service sector occupations in less regulated sectors such as cleaning, catering, hospitality, domestic and social care.

Both regular and irregular migration channels, can increase the risk of violence against migrant women workers. Women migrant workers in temporary visa programs, where their visas are tied to their employers or those undocumented may be unable to report abuse as they fear retaliation, blacklisting, deportation or loss of a job after paying exorbitant recruitment fees.

The Global Compact must not be used to strengthen migration management approaches that put profits over rights. The Compact must emphasize core labour and human rights standards throughout. It cannot be used to support the continuation or expansion of temporary work programs, or facilitate the further entrenchment of labour migration through exploitative recruitment practices

Temporary or circular migrants are being used to create precariousness in formerly stable, permanent jobs for nationals in destination countries, undermining conditions for all workers. Migrant women workers should not be seen as a source of income to their countries of origin through remittances, nor as a source of cheap labour in destination countries. Migrant women workers make significant contributions to development beyond remittances. This includes women's leadership, agency, knowledge and social contributions in countries of origin and destination.

The Global Compact Should:

- Emphasize core labour and human rights standards throughout. The Compact must not be used to strengthen migration management approaches that put profits over rights
- Ensure labour migration programmes guarantee full labour rights protections for all workers without discrimination
- Include workers' voice in Compact negotiations
- Abolish discrimination or job segregation by gender
- Challenge temporary or circular migration programs, which have significant costs to workers' rights. Instead, expand channels for regular migration.
- Recognize the role of the ILO and its members in reframing the debate around migration and development, affirming worker rights and protections for migrant workers

I. The process and implementation of the Global Compact on Migration

A new focus by the global community on migration governance and the urgency of global cooperation is welcome. While there is an opportunity for the new Compact to improve on current flawed migration processes and policies, there is also a deep concern that the Compact, may instead undermine states' existing obligations to respect, protect and fulfil the human rights of all migrants.

There is a strong push to legitimize securitization and militarization of borders and other deterrence measures as well as regressive practices such as detention and deportation. Furthermore, the Compact may not be a binding instrument and thus will not achieve the needed goals for coordinated governance within a human rights framework.

The Global Compact Process Should:

- Guarantee meaningful participation of civil society, particularly migrant-led groups and migrant women organizations, with self-organized civil society engagement in national, regional and thematic meetings and through all stages of the process.

- Establish permanent multi-stakeholder fora in new global migration governance mechanisms with civil society, migrant and migrant women’s organizations, ensuring that women in migration are recognized and engaged in the policy spaces that impact their lives as well as follow-up implementation, monitoring and accountability processes
- Ensure that there is a women’s rights-focused speaker on every panel and as part of the summary process for each consultation and that a Women’s Rapporteur (as modeled in GFMD Civil Society Days), who provides a specific focus on women in migration at every stage of the process, is adopted in all global compact preparatory and implementation meetings.
- Facilitate increased and dedicated funding to migrant-led and migrant women organisations from all regions and their full (and non-tokenistic) participation in the process