

**Working Sessions theme 3:
Operationalizing the Protection of Migrants and their Families
Background note and guiding questions**

GFMD Civil Society 2012 focus on operational mechanisms and benchmarks

The GFMD Civil Society programme 2012 focuses on “**Operationalizing Protection and Human Development in International Migration**”. This theme reflects civil society’s priority for this year’s GFMD to focus on operationalizing recommendations with concrete implementable mechanisms and - where feasible - benchmarks against which success can be measured in the next years - a kind of “Migration & Development Goals”. Therefore each of the working sessions will be geared towards putting forward:

- **mechanisms or tools**, including examples of “good” practices, existing partnerships and success stories,
- as well as a proposal for **the next 3-5 steps to take** by relevant actors, in particular governments, civil society actors and the private sector.
- Where feasible each focus theme will also formulate **some benchmarks** against which success can be measured in the next years – a kind of “*Migration & Development Goals*”, which emphasize aspirations and allow for better impact evaluation and monitoring.

The programme for the Civil Society Days 2012 will be structured around Working Sessions along three themes: “Labour”, “Development” and “Protection”. This note provides some background to the third theme “Protection”, in particular on what has previously been concluded in the GFMD and a set of guiding questions to the working sessions during Civil Society 2012.

Theme 3: Operationalizing the Protection of Migrants and their Families

From the very beginning of the GFMD civil society has advocated for the protection and promotion of the human rights of all migrants as central to human dignity and human development. The protection of human rights is an imperative in itself; it is further clear that without adequate protection, large numbers of migrants are prone to harassment, discrimination, exclusion, violence and exploitation, severely constraining them from improving their own human development, that of their families, communities, countries of origin, transit and destination.

The theme of migrant protection has been gaining momentum within both the government and civil society components of the GFMD as well as outside the GFMD, with growing emphasis in forums and processes linked to the IOM, UNHCR and UNODC as well as the ILO, OHCHR and mechanisms of the Human Rights Council¹. Particular attention is being given to responding to migrants trapped in dire humanitarian situations arising in crisis and in transit, with an eye to further discussion and action on

¹ The acronyms in order stand for: the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC), the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO) and the Office of the High Commissioner for Human Rights (OHCHR).

the issue at the second High Level Dialogue on International Migration and Development at the UN General Assembly in late 2013.

In the GFMD, the protection of migrants has also increasingly been included in government programme. This year the States are devoting two roundtables to this topic: (1) a roundtable looking at migrant protection as integral to migration management and (2) a roundtable specifically dedicated to the protection of migrant domestic workers, which may confirm civil society's observation of last year that the wide ratification of the ILO Domestic Workers Convention is within direct reach.

Connecting to and building upon this momentum, this civil society thematic "Protection" track proposes to explore benchmarks and mechanisms to address the needs and protect the rights of migrants in vulnerable situations irrespective of status, in particular migrant domestic workers and migrants trapped in dire humanitarian situations. Civil society's two Working Sessions under this theme at the GFMD 2012 are:

- 3.A - Protecting Vulnerable Migrant Workers
- 3.B - Protecting Migrants in Dire Humanitarian Situations

One of the three joint civil-society-government dialogues in this year's GFMD Common Space will also focus on "*Common ground and partnerships to protect migrants in distress*".

Working Session 3.A: Protecting Vulnerable Migrant Workers

Despite the increased international attention over the years, including within the GFMD, too many migrant workers, and their families and children, still find themselves in dangerous, demeaning and deplorable working and living conditions. In particular migrant workers in irregular status, migrant domestic workers, and workers in low-paid jobs and/or tied to specific employers are categorically vulnerable to abuse and are often left without access to remedies. Regular and widely documented abuses include arbitrary and unlawful arrest and detention in poor conditions, non-payment of wages, confiscation of identity papers, sexual, physical and psychological abuses,

This working session aims to devise operational mechanisms and strategies to put an end to these abuses, picking up from the work done by civil society in all previous GFMD's (see below) and on the ground throughout the year, daily, in directly assisting migrants in need of protection. Operational mechanisms and strategies to be discussed might include: campaigns for the ratification and implementation of the ILO Domestic Workers Convention, for the recognition of domestic work as work and to end the "kafala" and similar sponsorship systems; the right to unionize and collective bargaining; educating the local population on abuses; action to provide legal assistance to victims of abuse; regularization; establishing national hotlines and contact points for human right abuses of migrant workers - all gender sensitive and irrespective of the status of the worker.

Convergence of recommendations by Civil Society in GFMDs of 2007 – 2011 on protecting vulnerable migrant workers

Throughout all GFMD Civil Society Days, participants have always put up front that protection and observance of migrants' human and labour rights is indispensable to human development. In particular the protection of vulnerable groups such as migrant workers in irregular status, children and women, and specifically migrant domestic workers, has been at the core of civil society recommendations. There has been overwhelming convergence on at least the following four recommendations.

GFMD Civil Society,

1. Continues to strongly urge governments to **ratify, implement and enforce conventions** providing for equal treatment and the protection of migrants, first and foremost the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the other core human rights conventions; and key ILO conventions, chiefly Conventions 97, 143 and the Domestic Workers Convention (189); and strongly encourages civil society to continue their **ongoing advocacy** on the ratification and enforcement of the conventions and to collect, share and showcase successful relevant advocacy campaigns.
2. Calls for the **observance of all workers' human rights and labour rights** regardless of the workers' migration status, including non-discrimination (*i.e., the same treatment, working conditions, and wages as comparable native workers*), freedom of association and access to social security benefits, health care, education, and legal remedies, including sanctions and prosecution of those violating the rights of migrant workers.
3. Urges governments to provide for **regular and safe migration channels**, including regularization mechanisms, for migrant workers, including migrant domestic workers, and to end the "kafala" and similar sponsorship systems; and to **stop the criminalization of migrants with irregular status**, making them further prone to discrimination, exploitation and dehumanization and to pursue alternatives to detention while never placing in detention pregnant or lactating women, children, survivors of torture, abuse and trauma, elderly, disabled or persons with serious health conditions, or other vulnerable groups.
4. Calls on governments to ensure that **migrant children** are treated as minors and are able to enjoy the full range of rights, irrespective to their migratory status; to reaffirm and reinforce family rights, in particular the right to **family unity** and reunification; and to acknowledge that the different needs and experiences of women and men while migrating and thus to adopt elaborate **gender-sensitive** protection and migration policies.

If 2012 delegates agree to pick up these recommendations from prior GFMD civil society meetings as a starting point – the working session should aim to take these recommendations to the next level, add elements not previously discussed and formulate some benchmarks to measure progress in the next years.

Links with government recommendations - GFMD 2007 - 2011

Protection of migrant workers has over the years gradually become more prominent on the government agenda, and indeed the respect of the human rights of migrants, regardless of immigration status, has often been included in government recommendations. However, whereas the recommendations that came out of the GFMD 2007 specifically called for an "*end to the current stalemate on ratification of the Migrant workers Convention*", as well as "*respecting and implementing relevant international instruments (UN and ILO)*", other recommendations are rather tend to be more unspecific on the type of prevention and protection mechanisms and interventions needed at international and national level to ensure that the rights of migrants are protected. Rather, government recommendations have tended to focus more specifically on fighting xenophobia and racism, and are usually quite strong on adopting gender-sensitive approach. To illustrate one recommendation from last year's government GFMD meeting regarding the rights of migrants in the context of irregular migration:

- "In addressing the challenge of irregular migration, states need to remember that migrants are human beings with human rights who should be treated with dignity and respect throughout the migration cycle, regardless of their migration status. In this regard, governments of destination countries should put into place schemes to avoid xenophobia and group enmity towards migrants [...]" (GFMD 2011, RT II)

Guiding questions for Working Session 3.A on *Protecting Vulnerable Migrant Workers*

- (1) **Which abuses** need to be addressed most urgently and **what are the changes most urgently needed** to improve the protection of vulnerable migrant workers, in particular (i) migrant workers in irregular status, (ii) migrant domestic workers, and (iii) workers in low-paid jobs and/or tied to specific employers?
 - a. In terms of legal frameworks, laws and national policies? (*e.g. ending the “kafala” and similar sponsorship systems, ratifying the ILO Domestic Workers Convention, integrating domestic work into “normal” labour law*)
 - b. to change the mind-set and behaviour of employers, local populations, or others?
 - c. to provide immediate legal, social and medical assistance to migrants in need of protection? (*e.g. establishing national hotlines and contact points for human right abuses of migrant worker*)
 - d. with respect to (collective) organizing and empowering migrants?

- (2) **Who** can make these changes happen to put an end to these abuses and **how**? What replicable **good-practices, mechanisms or tools** exist that we can use, and what are the **next steps to take and by whom**?
 - a. What steps are being taken or need to be taken to ensure ratification and implementation of the Domestic Workers Convention? E.g. is the “*Checklist to Protect and Support Domestic Workers*”, developed by UNWOMEN for GFMD a useful tool?
 - b. What tools are there for other vulnerable groups, in particular irregular migrant workers, that should be developed or promoted?

- (3) Can we formulate and/or endorse up to three **benchmarks to measure** real progress towards achieving these changes? And **who can track** the progress in achieving these benchmarks?

- (4) Which **one priority issue and benchmark** should be taken up by governments in the **UN High Level Dialogue** on International Migration and Development in 2013?

Working Session 3.B: Protecting Migrants in Dire Humanitarian Situations

The protection of migrants caught up in dire humanitarian situations and distress, whether en route or during stay in host countries, is relatively new to the GFMD agenda. Civil society raised the urgency of responding to migrant victims of violence and trauma in transit as one of its five priority recommendations at the GFMD in 2010. With similar circumstances of distress and urgency, the world is increasingly confronted with situations where migrants are trapped in countries affected by larger humanitarian crisis due to armed conflict, civil unrest or natural disasters. Assistance and protection for migrants finding themselves in dire humanitarian and life-threatening situations is often not available or insufficient, for reasons such as a lack of capacity or mandate on the part of governments and international organizations, questions of state sovereignty and responsibility, and lack of access, including for NGOs, to affected crisis areas and migrants.

Sir Peter Sutherland, the UN Secretary General's Special Representative for Migration, and other stakeholders are suggesting to feature this theme, often referred to as "stranded migrants", prominently in the agenda of the UN High Level Dialogue in 2013, to increase awareness about migrants stranded in distress arising in crisis or transit situations and to identify challenges and ways to address their needs based on existing international law and accepted principles and practices.

This working session aims to devise operational mechanisms and strategies to be able to better respond and protect these migrants. These could include: the establishment of safe houses (*e.g. for victims of trafficking and crime in transit*), effective access to basic health care and other humanitarian needs, protection and funding for NGOs to operate in dire humanitarian situations, combatting crimes such as abduction, organ smuggling or human trafficking, shared programming for evacuation (*e.g. for migrant workers trapped in humanitarian crisis situations*), cooperation in achieving durable solutions (*e.g. through relocation/resettlement, return or integration*).

Convergence of recommendations by Civil Society in GFMDs of 2007 – 2011 on protecting migrants in dire humanitarian situations

Protecting "stranded" migrants in the range of dire humanitarian situations has not been in the centre of GFMD discussions, neither in the Civil Society Programme, nor in the government programme; indeed it is the first time that both the civil society programme and the Common Space will take up this broad question. Nevertheless civil society has previously made strong recommendations on protecting migrants specifically in *transit* directly relevant to the Working Session theme, including the following.

If 2012 delegates agree to pick up this recommendation from prior GFMD civil society meetings as a starting point – the working session should aim to take these recommendations to the next level, add elements not previously discussed and formulate some benchmarks to measure progress in the next years.

Urges states and international agencies to join us in urgently putting in place consistent responses of assistance and **protection to victims in transit, in particular women and children**. Improved mechanisms are needed to ensure that migrants are **rescued at sea** when such rescue is needed, and differentiated upon arrival for the specific protection to which they are entitled under international, regional and national law. UNHCR's 10 Point Plan of Action for Refugee Protection and Mixed Migration is a useful framework in this direction.

Links with government recommendations - GFMD 2007 - 2011

Although previous government GFMD programmes did not specifically look at migrants stranded in humanitarian situations, recommendations have sporadically touched upon protection obligations and needs, such as with respect to migrants in transit. In general these recommendations included a strong focus on irregular migration and addressed the mixed character of irregular movements and the protection needs of people therein:

- In addressing the challenge of irregular migration, states need to remember that migrants are human beings with human rights who should be treated with dignity and respect throughout the migration cycle, regardless of their migration status [...]. The mixed character of many irregular movements should also be acknowledged, which may include persons in need of international protection.” (GFMD 2011, RT II)

Guiding questions for Working Session 3.B on Protecting Migrants in Dire Humanitarian Situations

- (1) **Which** situations give rise to particular dire humanitarian situations, distress and threats to the life and dignity of migrants both in humanitarian crisis and in transit? **What are the changes most urgently needed** to improve the protection of migrants trapped in these situations? E.g. with regards to:
 - a. migrant workers trapped in situations of conflict or other humanitarian crisis
 - b. migrants in distress in transit, e.g. migrant victims of violence or trauma in or after sea or desert crossings, or being held for organ smuggling or human trafficking purposes
 - c. children in any of these situations.
- (2) **Who** can make these changes happen and **how**? What replicable **good-practices, mechanisms or tools** exist that we can use, and what are the **next steps to take and by whom**?
 - a. E.g. how can the protection of migrants be integrated into humanitarian responses, who should be primarily be responsible to protect migrants in crisis situations and what is the role of other actors (e.g. government, international organizations (which ones), employers, recruitment agencies, civil society, etc.)?
 - b. What tools are there and is there a need for any additional guidelines or a framework to protect migrants in humanitarian crisis situation, and for whom?
- (3) What indicators and benchmarks already exist, and can we formulate and/or endorse up to three **benchmarks to measure** real progress towards achieving these changes? And **who can track** the progress in achieving these benchmarks?
- (4) Which **one priority issue and benchmark** should be taken up by governments in the **UN High Level Dialogue** on International Migration and Development in 2013?

[A few suggested existing tools and guidelines](#)

for Working Session 3.A on Protecting Vulnerable Migrant Workers

- EC-UN Joint Migration and Development Initiative (JMDI), **Migration for Development: A Bottom-up Approach**, (2011) chapter 5: *Migrants Rights* - www.migration4development.org
- GFMD, “**Checklist to Protect and Support Domestic Workers**” (2012)
<http://www.gfmd.org/en/docs/mauritius-2012>
- International Detention Coalition (IDC), **Handbook for Preventing Unnecessary Immigration Detention** (2011) - http://massivefishball.com/IDC_Handbook.pdf
- PICUM, **Ten Ways to Protect Undocumented Migrant Workers** (2005)
<http://picum.org/picum.org/uploads/publication/Ten%20Ways%20to%20Protect%20Undocumented%20Migrant%20Workers%20EN.pdf>
- UNICEF, Victor Abramovich, Pablo Ceriani Cernadas, Alejandro Morlachetti, **The Rights of Children and Women in the Context of Migration** - Conceptual Basis and Principles for Effective Policies with a Human Rights and Gender Based Approach (2011)
<http://ebookbrowse.com/the-rights-of-children-youth-and-women-in-the-context-of-migration-final-pdf-d135058247>

for Working Session 3.B on Protecting Migrants in Dire Humanitarian Situations

- Child Protection Working Group, **Minimum Standards for Child Protection in Humanitarian Action** (2012) - <http://cpwg.net/wp-content/uploads/2012/10/Minimum-standards-for-child-protection-in-humanitarian-action.pdf>
- ICMC, **MAYDAY! Strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe** (2011)
<http://www.icmc.net/pubs/mayday-strengthening-responses-assistance-and-protection-boat-people-and-other-migrants-arrivin>
- IFRC, **World disasters report 2012, Forced Migration and Displacement** (2012)
<http://www.ifrc.org/PageFiles/99703/1216800-WDR%202012-EN-LR.pdf>
- UNCHR, **Refugee Protection and Mixed Migration – A 10-point Plan of Action** (2007)
<http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf>
- UNODC, **International Framework For Action - To Implement The Smuggling Of Migrants Protocol** (2011) - http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Framework_for_Action_Smuggling_of_Migrants.pdf