

GFMD Theme 4: Addressing Gaps in Migrant Protection

**Summary of Priorities for Action + Possible Gaps
among four Regional Meetings, May – July 2020**

co-organized by the GFMD Chair with the African Union (two, in English and French respectively), the RCM-Puebla Process, and the Bali Process

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Introduction

Between May and July of this year, four groups altogether totaling 216 representatives of 60 States, 30 civil society organizations, 15 businesses, 12 Mayors and associations of cities, and 41 observer organizations participated in four separate two-hour on-line breakout sessions in the regions identified above on the Global Forum theme *Addressing Gaps in Migrant Protection*. The theme has 3 focus areas:

1. Protection of migrants in **transit**
2. Protection of migrants in **admission, and policies of inclusion**, including access to social services and justice, and portability of benefits, and
3. Protection of migrants in **labour agreements, and in the informal economy**

The theme and the meetings were introduced with a number of papers and presentations, including a brief conceptual starter paper, available on the GFMD website <http://www.gfmd.org/docs/uae-2020>.

Part I immediately below is a summary not of the entirety of those four regional discussions, but of key emphases and priorities that participants identified for action, with particular emphasis on threads and streams of convergence, shared interest, common ground and partnership regarding this theme.

Part II then suggests a few issues further that may not have received the attention that these or other regions, or cross-regional actors may also believe are necessary to consider under this theme.

Together, these may provide a basis for the States-led drafting between September and December of a background paper for use at the Roundtable on this theme at the GFMD Summit in January 2021.

I. Key emphases and Priorities for action: Why, who and what?

A. WHY? This year is not like the others.

One striking image for migrants and COVID, which participants in these sessions repeated again and again: the suddenness of people thrown out of jobs, homes and countries, often “into the streets”.

And the need, in an emergency, to respond with a sense of emergency.

Participants emphasized that:

- “COVID time” is actually *two* fully global crises, and in some places, quite possibly a third. That is: first the pandemic, then immediately the global economic crisis that exploded from measures to combat the pandemic. Now a third type of crisis is emerging in places: social and political crises, some arising from pre-existing instabilities, but all with at least some basis in yawning inequalities and gaps exacerbated by surging COVID-related unemployment, hunger and discrimination.

- COVID adds urgency—which includes not only grave concern but also new energy and interest among actors who have not traditionally partnered before, especially across business, civil society and local authorities.

While participants noted a range of particular effects on international migrants and their families, they were also clear that the crises are also a calamity for people, countries and economies everywhere, including internal migrants.

And clear that **the whole world is looking for solutions**. Participants across the four GFMD constituent groups strongly insisted that migrants were *part* of the solutions, in particular to the health and economic crises. As further described here however, there was wide convergence among participants that the degree to which migrants are part of the solutions depends on the degree to which they are included in sound systems of migration and protection.

Participants were clear that COVID-19 phenomena are profoundly relevant to the GFMD, and vice-versa. In this direction, participants pointed directly to the GFMD for action that will simultaneously address gaps in migrant protection *and* work to restore public health, jobs, communities and economies. In short, seeing migrants and refugees as precisely part of *solutions*.

To do that, participants welcomed the insistence of this year’s GFMD on the imperative—and possibilities—to expand partnerships, during in “COVID-time”, to recover from it.

Partnership assumes convergence, and several participants pointed to recent multilateral frameworks as powerful evidence of widespread convergence, in particular the 2030 Agenda for Sustainable Development (2015), the New York Declaration on Migrants and Refugees (2016), and the two Global Compacts, on Refugees and for Safe, Orderly and Regular Migration (both in 2018).

All of these frameworks were States-led, States-negotiated, but not States-only. Indeed, civil society, business and, over the years, an increasing number of mayors and local authorities all contributed to those processes and results, as did leading international organizations like IOM, UNHCR and ILO,¹ joined by other UN, international and regional bodies².

And all were adopted by either universal or near-universal approval of UN Member States.

Across the four regional GFMD meetings, participants talked as much about WHO should be partners as they did about WHAT partners should do to address gaps in migrant protection.

B. WHO should be partners? It was striking that every time participants provided examples of their positive experience with partnerships, they emphasized that good partnerships require the “right” or “key” partners. Success at this requires not only reasonable convergence—but also capacity. *And the central purpose of partnership and partners is always to bring and boost needed capacity.* For example:

- Participants across all four GFMD groups, including States, pointed consistently to **the Mayors and local offices as key partners at the front-line**. “These are the very guys”, one participant said, “that you need on board in partnerships that aim to protect migrants”. He continued: “the first people we meet are usually the local authorities. They are the ones in touch with the people when they are suffering, they are the ones who can provide an immediate answer, and we can work with them.”
- Several participants working in or with city authorities called for **decentralizing to the cities some of the “competence and means” of the national government regarding migrants and refugees**. Decentralizing will empower the cities to step up as partners *with* the national

¹ IOM = the International Organization for Migration; UNHCR = the United Nations High Commissioner for Refugees; ILO = the International Labour Organization.

² Other international bodies actively involved have included OHCHR (the Office of the High Commissioner for Human Rights); UNODC (the UN Office on Drugs and Crime); UNICEF (the United Nations International Children’s Fund), the World Bank, and OECD (the Organisation for Economic Co-operation and Development).

government, doing more effectively many things that only the cities can do anyway simply because they are physically closest to the people. This includes immediate welcome and protection of new arrivals, and support for local housing, urgent medical care, education and employment. One participant said bluntly: “integration is local”.

For example, in Senegal, Dakar has commissioned a Technical Counsellor (*Conseillère technique du Maire de Dakar*) to work on the protection of children.

- **Participants across all four GFMD groups, including from civil society, pointed to the importance of business actors as partners.** In Morocco, for example, a recent agreement between the Ministry of Immigration, la Confédération Générale des Entreprises (CGEM) and UNHCR aims to facilitate integration of refugees, including better employment opportunities.
- **The people affected are always essential partners,** and should always be included in discussion and decision-making on policies and programmes that affect them.

Several participants emphasized that inclusion must be a habit, not occasional, and that *inclusive dialogue* is an underestimated form of partnership. This is not just to be democratic or nice: it is also to be effective. For example, in the border regions of Cameroon, Gabon and Equatorial Guinea, when civil society groups created a platform for local administrations and other authorities—including border police—to meet and exchange with migrants altogether at the table, and “there were no reprisals, no more attacks.”

- **But inclusion does not always mean “everyone at the table”.** Participants explored the expressions “whole of government” and “whole of society.” In the real world, is “whole of government” or “everyone at the table” sometimes too vague and utopic, or slow?

Several participants responded that it was “important to include the different sectors”, *but* within them, partners “ready to move” are the key to partnerships achieving their objectives.

C. WHAT should partners do? Participants seemed clearly encouraged by one another, *and by their shared interest across the different GFMD constituent groups*, especially on **these 12 priorities for protection**:

1. Respond urgently to urgent COVID-related problems of migrants and refugees; among others:

- **Provide access to COVID testing and treatment.** One participant reported for example, that in the UAE, everyone is to have equal access to testing and treatment regardless of nationality or migration status, including free treatment for all who require it.
- **Connect to shelter and other solutions migrants and refugees who are on the streets** because of lost work or evictions. For example, applying lessons learned in its recent experience of large numbers of migrants transiting in late 2018-early 2019, Mexico City was able to strengthen or extend many existing programmes and services to allow access to migrants. As one city representative put it, “We don’t want special programmes unless necessary”, *but* “if we don’t *strengthen* protection and access to social programmes, we have already seen that they will be forced to live on the streets.”

In Uruguay, “Montevideo has a fund,”, one participant reported, “so that migrants are not thrown out of where they live, whether rented or shared housing.”

- **Assist stranded migrants.** One participant described migrants camping outside their embassies waiting for help to get home, even as winter arrives.

Another participant described thousands of migrants deported southward by the United States and Mexico, some exposed to COVID risk in crowded detention or other facilities along the way. “We try to monitor but lack of access to information is very worrying,” and need UN partnership in this.

A representative of one State described thousands of workers trapped without resources in countries not their own when the ships they worked on were locked down by COVID restrictions. Because their own countries were unprepared or unable to help much, many were “on the streets for months.” The participant urged establishing a *mechanism* to assist those nationals and migrants in such circumstances.

- **Speed-up and simplify regularization of residence and employment eligibility, including documents.** As representatives of the cities and other participants described, the COVID emergency has made it painfully clear how important it is to streamline, even relax rules and procedures that are just too heavy and slow—e.g., 6 months or more—for migrants and refugees to access essential healthcare, work and housing even in ordinary times. Because that is good for no one.

2. “Learn the COVID lessons” that have value for recovery and long-term solutions. In particular:

- **Ensure that health services are open to all, without discrimination.** COVID has reminded the world that no one is protected unless everyone is protected. As one of the States put it: public health in such a context is the very essence of a shared interest, “even in a selfish way”.

But because this can be complicated, States need to partner with other actors to ensure that migrants and refugees have genuine access to health care, regardless of their immigration status and without fear of being punished or deported for it. Participants mentioned several States going in this direction recently, including Spain and the UAE.

- **Recognize regularization of residence and employment as a fair, wise and practical measure** for migrants and refugees in irregular or undocumented status who perform essential services, including workers in health care in hospitals, group or home settings; farm work, meatpacking, food stores and public transportation, whether the workers are permanent or seasonal, or based on land or sea. Australia, Bahrain, Canada, Italy, New Zealand and Spain among others were commended for recent measures in this direction.
- **Turn to building a culture that regularizes migration and employment and economies.** Not just for the COVID crisis, but also to emerge sooner and stronger from the related global economic crisis.

3. Update migration policies by putting regularity structurally at the center. Participants observed that the lack of reality- and opportunity- based migration policies exacerbates vulnerability and protection problems for migrants and refugees *and* blocks economic and human development. Many noted that the lack of regular pathways increases irregular migration, even driving migrants and refugees to seek and consent to its worst forms (like human trafficking) and most dangerous routes.

Putting regularity at the center calls for policies that:

- **Adopt predictable, flexible, transparent and rights-sensitive labour migration policies** that work both for protection *and* for development. Business participants were further emphatic that such policies are essential to strong labour markets, to innovation, businesses and economies—both filling *and* creating jobs.

This issue achieved the greatest convergence by far among participants across all four regional meetings and all four GFMD groups. Moreover, representatives of all four GFMD groups expressed willingness to partner together in this direction.³

- **Regularize the good recruitment processes and finally terminate the bad ones.** Participants across the GFMD groups consistently described the reality of many current recruitment practices, for lower skilled migrants in particular, as a mess of abuse that is gross, conspicuous,

³ Addressing this gap in protection also relates to the separate GFMD 2020 themes 1: the Governance of Labour Migration, and 5: Discussing Approaches to Prevent Irregular Migration.

in clear violation of international standards—and avoidable. Several participants described situations of outrageous debt bondage, forced labour, and gender-based violence.

Several participants said that existing arrangements, including most **bilateral labour agreements**, were broadly failing in these regards. It is time to insist on protection in formal and enforceable **intergovernmental agreements**, with strong sanctions available *and imposed* on abusers whoever they are.

Participants expressed appreciation of two forms of partnership working to fix recruitment: (a) the work of **ILO on fair recruitment standards, and IOM on a code of conduct**; and (b) **public agencies** that directly regulate recruitment actors or dynamics, like Morocco is promoting, including in partnership with Spain, with contracts that respect rights on duration of work, salary and social benefits consistent with the Global Compact for Migration.

As one business participant put it, “We need to be a better regulator of the recruitment industry, particularly those actors responsible for sending people overseas. They need to be registered, they need to be subject to legal authority to make sure that they’re doing things correctly.”

- **Invest significantly more on skills recognition, matching, mobility and development—and in related partnerships**—in order to fully harness the potential of migrants and refugees for their own development and the development of their communities and countries.⁴ In Sri Lanka, for example, employers have supported the government in establishing a skills database aimed for launch in July, including a “skills passport” based on certification and recognition of prior learning. One business participant pointed to the two-way benefit of refugees with talent and skills needing work and employers needing them for that work.
- **Ensure social protection floors for migrant workers, and genuine access to public services**, including healthcare, education, crisis relief programmes and justice without discrimination or recrimination, for migrants and their family members. These would be an important part of the incentives to move from informal to formal employment.
- **Guarantee portability of rights and earned benefits, including to reclaim wages for work performed, and pensions.** Representatives from States and civil society described a dynamic new multi-stakeholder partnership on Transitional Justice, created to help migrant workers everywhere recover wages for work they did in another country during COVID-time but were not paid for.

4. Improve protection of domestic workers, women, children and others, including LGBT people, who have specific—and well-documented—vulnerabilities in contexts of migration. They and other people should always be included directly and meaningfully in development of the policies that affect them. In the IGAD region in East Africa for example, National Coordination Mechanisms bring together State and non-state actors, including migrant associations, to discuss all issues related to migration, an approach that the African Union is now replicating in other AU Member States.

5. Fight human trafficking with a *balance* of enforcement, against traffickers, and protection and assistance, for the women, men and children that the traffickers exploit. For example, one State representative observed that COVID-time has revealed the importance of new or expanded partnerships to improve anti-trafficking cooperation across borders, from more effective communication among law enforcement officers to development of digital systems. Participants commended the Memorandum of Understanding between Indonesia and the UAE on trafficking.

6. Strengthen inter-governmental agreements at all levels.

⁴ Addressing this gap also relates also to the separate GFMD theme 2: Skilling Migrants for Employment.

- **bilateral labour agreements** must step up their insistence on basic worker rights and protection at international standards for all migrant workers, at all skills levels, including for workers commonly excluded on farms and in seasonal and domestic work.
- **existing mobility agreements** throughout Africa need to be implemented and/or duplicated, within regions (like ECOWAS in West Africa) and continentally, including wider ratification and domestication of the Africa *Protocol on Free Movement of Persons*.
- wider ratification and implementation is also due for relevant **international conventions and standards**, including ILO Convention 189 on domestic workers.

7. Recognize vulnerabilities as more relevant than categories. A number of participants across the States, civil society, business and city participants suggested that to be effective, protection and other policies and programmes should be framed around the real-world *similarity* in vulnerability and opportunity among migrants and refugees on the ground, rather than their categorical dissimilarity. Participants were also clear that all people on the move have rights, including to basic protection, with refugees having additional—and essential—rights to specific protection under the Refugee Convention.

8. Address root causes that are widely known to force people to migrate because they cannot stay or take care of their families in their own countries. This has been a starting point for GFMD discussions of protection from the very beginning of the Forum in 2006. It means exploring—much more energetically—what the GFMD has to offer in focus *and partnerships* on concrete *alternatives* to forced migration.

9. Significantly increase investment in better data for protection and systems of communication, to understand the true presence, need and contributions of migrants and refugees, and share information with them. City leaders in particular pointed to the lack of data about the number and needs of newly arriving migrants and refugees, even internal migrants from rural areas or in conflict. This impedes the cities and other local actors, including civil society and business organizations, from responding to those migrants and refugees with essential services, from health care and education to employment opportunities and justice.

10. Incentivize transitions from the informal to formal employment and economies, or else it will not happen. A menu of incentives should be developed, including access to capital, worker visas and benefits matching.

11. Recall, restore and resource the essential contribution of multilateral action. For many of these or other actions to succeed, “multi-stakeholder” is not enough; action must also be multi-*lateral*, including within:

- action-oriented regional and global groups and processes, as already described above
- targeted, practical frameworks. States, business and other participants emphasized the GFMD-inspired MICIC (mentioned above), ILO’s General Principles and Operational Guidelines for Fair Recruitment, the 2030 Agenda for Sustainable Development and the Global Compact for Migration.

These frameworks directly address gaps in protection of migrants of all kinds, with *menus of solutions* in real-world contexts of human and economic development. Indeed, protection of migrants is also protection of development, in countries from, through and to which people move.

12. Finally, recognize that these solutions may be “the missing link” to improve public narratives on migrants, refugees and migration. Several participants see the COVID crisis opening peoples’ eyes in many countries to the essential role and contributions migrants provide there every day: a moment for a possible *paradigm shift* in public perception and narratives. It was suggested that all of these actions here concretely help to change public perceptions and narratives on migrants —especially things like greater pathways and regularization that reduce irregular migration and status, and

recognition of migrants and refugees not only as essential workers but as creators themselves of enormous numbers of jobs and businesses. Participants expressed appreciation for the new GFMD Working Group on Narratives, led by Canada and the Mayors Mechanism.

II. Further gaps to address in protection of migrants

Even with the extensive list above, several other issues may also be considered under this theme in the background paper, Roundtable, and partnerships, including gaps, partnerships and solutions relating to:

- consistent needs-first assistance and protection for the full mix of migrants and refugees vulnerable in transit and upon arrival (i.e., **mixed migration**), including:
 - victims of violence and trauma in contexts of migration—not only refugees and migrants but also those helping and defending them
 - those returning to countries or origin involuntarily
- rights- and reality- based pathways for regular migration in contexts of **family reunification**, which has rarely been the subject of focus in GFMD processes, despite how paramount “family” is to decisions regarding migration and re-migration, employment and remittances, self-protection and human development.
- **migrants displaced by climate change and environmental disaster and degradation**, including data collection and evidence-based discussion and policy-making