

Global Compact for Safe, Orderly and Regular Migration

Sixth Thematic Consultation: Irregular migration and regular pathways, including decent work, labor mobility, recognition of skills and qualifications and other relevant measures

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Thematic Expert Report

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Introduction

This brief report on the Sixth Thematic Consultation on the Global Compact for Migration is divided in two sections.

The first one includes some general remarks on the topics including in the Agenda of this meeting, as well as on some issues highlighted by many speakers –governmental delegations, UN agencies, civil society representatives- throughout the two-day Consultation.

The second one includes a synthesis of the 3 roundtables: irregular migration; decent work and labor mobility; recognition of skills and qualifications. In particular, the main points of convergence of each roundtable as well as other topics underlined by the delegations will be highlighted.

I. General remarks: towards a comprehensive and rights-based migration policy as an indispensable prerequisite for ensuring safe, order and regular migration

The process towards the Global Compact, its outcomes and the following phase after 2018 implies an historic opportunity for identifying global solutions on human mobility – articulated with local and regional ones-, including short, medium and long term responses.

Therefore, it is essential, on the one hand, political will and decision to that end. On the other hand, a comprehensive response –in every sense- that ensure a rights-based

approach –in regards to the principles and, more importantly, from the operational perspective -as a mean and an end-.

A human rights perspective is critical for achieving the goals enshrined in the New York Declaration, as well as in other declarations and agreements signed by UN States Parties, including the Declaration on the Right to Human Development which asserts that human development is the effective realization of all human rights (UN General Assembly Resolution 41/128, December 4th 1986).

As to the Sixth Thematic Consultation, a first aspect that is worth highlighting is the fact that the discussion on *irregular migration* has been included along with the topics on decent work and labor migration. It is more likely, unfortunately, that irregular migration is included in debates on security, organized crime and related issues, in spite of the number of factors that evidence that such phenomenon is intrinsically linked with root causes of migration, including those connected to work and economic issues in countries of destination.

Consequently, it is important to underline the relevance of addressing those themes together in order to seek common solutions. This connection highlights that when it comes to address the situation of people in irregular migration status, it is critical that topics as work, labor migration, families, labor informality, social protection, among many other social policy issues are duly included. Another corollary is that migration policies should be understood –throughout public policies- as a social, comprehensive policy, rather than focusing mainly in policies linked to security matters. This latter approach is as narrow as inefficient, and negatively impact basic human rights of migrants. Likewise, it affects social integration in host countries, and obstructs tackling the root causes of migration in a proper manner.

II. Topics and Convergences in the discussion of the Sixth Thematic Consultation

II.1. Convergences in the 3 Sessions

Throughout the three sessions of the Sixth Thematic Consultation of the Global Compact for Migration, a number of themes were highlighted in several occasions by different stakeholders. Among those topics, the following could be underlined:

- It has been evidenced once more –as well as in numerous multilateral precedents during the last decade- the relevance for addressing migration through a comprehensive manner. This holistic approach should include, among others, important issues that were highlighted in this Consultation, such as:
 - Comprehensive migration policies, namely, a deep and coherent articulation with public policies on labor, health, education, social security,

- childhood, gender, prevention of social exclusion and exploitation, access to justice and many others;
- Inter-institutional articulation among every key governmental body in the designing, implementation and evaluation of such comprehensive migration policy;
 - Coordination between migration policies at local, national, bilateral, regional and global level, including the above-mentioned comprehensive and inter-institutional approach at all levels;
 - Participation of all key stakeholders, including UN agencies and civil society organizations, in the elaboration, implementation and monitoring of these policies;
 - Collecting qualitative and quantitative data, including building rights-based indicators as a baseline for those policies;
 - A rights-based and inter-sectorial approach in migration and related policies -labor, health, etc.- which fully ensure the principle of no discrimination, including in regards to gender, age, ethnic origin, disability, among others.
 - A gender approach is essential for all migration policies and practices in countries of origin, transit, destination and return;
 - The rights of children in the context of migration are critical for ensuring a long term approach, promoting fully and peaceful integration in receiving countries, addressing properly the root causes of migration and achieving the Sustainable Development Goals.
- States are sovereign for implementing their migration policies, although they have to do it –as in regards to any other public policy- respecting their duties in the field of Human Rights, Humanitarian, Refugee and Labor Law.
 - It was repeatedly highlighted the relevance of ratifying and/or implementing the ILO Conventions to all migrant workers, regardless their migration status:
 - These remarks not only refer to specific Conventions (N° 97 and 143) and those closely related (e.g., N° 189) but also to all fundamental ILO Conventions.
 - Several States and other stakeholders have underlined the importance of ratifying the UN Convention for the Protection of the Rights of All Migrant Workers and Member of their Families (CMW). On this issue, it is important to add few personal reflections based on the CMW experience within constructive dialogues with State Parties:
 - The challenges unanimously by all UN State Parties in 18th December 1990 not only remain valid but have become more acute;

- Most of the themes mentioned during the 2-day discussion are directly or indirectly included in the CMW provisions, which evidences the value of this tool;
- CMW includes a chapter on international cooperation for the “promotion of sound, equitable, humane and lawful conditions in connection with international migration”, namely, one of the key goals of the Global Compact for Safe, Orderly and Regular Migration;
- CMW ratification would represent an elemental gesture that not only would evidence the political will within the Global Compact, but would establish a minimum and common floor as a starting point for the development of necessary actions.

II.2. Convergences and themes of each Session

II.2.1. Session on Irregular Migration

This section includes convergent and other topics addressed in the first roundtable, including some personal remarks.

- A first and critical convergence was on the need and relevance of creating more regular channels for migration
 - More channels for regular migration should specifically include migrants for low skilled jobs;
- There are multiple root causes of migration, including irregular, which complement each other. It is critical to address root causes of migration, including irregular migration:
 - It is important to underline that illicit smuggling of migrants is a consequence of the lack of regular channels for migration and other structural factors;
 - The Global Compact is a unique opportunity for the elaboration of a Plan of Action directed to address such causes in both short and long term;
 - This task is intrinsically related with the commitments under the 2030 Agenda on SDGs.
- The root causes of irregular migration exist in countries of origin and in the pull factors in destination, as informal economy, which not only promotes irregular channels but contributes to perpetuate irregularity;
 - Therefore, responses mainly focused in punishing irregular migration –that is, return or expulsion- cannot be effective while structural factors (push-pull) remain;
 - A comprehensive, realistic and rights-based approach would evidence that, rather than returning workers in an irregular situation, it would be appropriate to formalize some areas of the economy and labor market;

- Demographic trends and needs in origin and destination countries also contribute to those human mobility;
- Another convergent point was on the need to effectively ensure the protection of all migrant workers from exploitation and abuses in transit and destination countries, including trafficking in persons:
 - To that end it is critical the promotion and protection of their human rights –social, labor and union rights, etc.- irrespectively of their migration status;
 - Labor inspection policies should be strengthen in order to prevent exploitation and promote formal employment;
 - Firewalls should be implemented between social policies, including labor, and those related to immigration enforcement;
 - Initiatives against informal employment and labor exploitation could be effectively complemented with those aimed at creating permanent channels for regularizing migration status;
- States should improve and expand the policies and initiatives directed to the protection of migrants in transit and migration routes:
 - Pre-departure information policies should be deepened in countries of origin, including information on their rights.
- Irregular migration challenges should be addressed through a co-responsibility approach:
 - Co-responsibility should include addressing root causes of irregular migration –with comprehensive short and long term policies- and the appropriate protection in transit and destination countries, ensuring a rights-based approach.
- Irregular migration should not be criminalized, namely, cannot be considered a crime.

Other issues highlighted in several opportunities during the first roundtable, by State delegations and other stakeholders, were the following:

- Economic factor are one of the main causes of migration, including irregular migration, which complement and aggravate with other social and humanitarian factors, including armed conflicts, among others.
 - All the root causes could be related to the lack of effective realization and respect of basic human rights.
- Creating regular channels for migration should an integral analysis of the economy and labor market in destination. However, it should not lead to forgetting the critical task in regards to creating decent work in countries in origin;
- Bilateral and multilateral agreements on regular migration, including temporal labor migration, should ensure equal protection of rights;
 - These agreements should fully ensure a gender approach, including by eradicating any restriction based on gender;
- It is important to develop mechanisms that facilitate the circulation of migrants, including migrant workers:

- Previous lessons learned in the European Union, MERCOSUR, ECOWAS and others, should be taken into account.
- Hay que tener en consideración el impacto que ciertos mecanismos podrían tener en la existencia o aumento de la migración irregular, como es la exigencia de visados en países de origen;
- It was highlighted the relevance of creating mechanisms directed to facilitate people to move for irregular to regular migration status:
 - Extraordinary and temporary regularization programs are positives, although permanent avenues are specially relevant for reducing irregularity;
 - Regularization is described as a positive measures and evidenced as good practices due to several grounds;
 - Positive outcomes of regularization are social and labor inclusion, increasing of decent and formal employment, preventing labor exploitation and trafficking, improving crime persecution, including gender violence, etc.
 - Regularization could be based in existing labor relations, family ties, length of stay, humanitarian ground, and many other grounds.
- On an opposite note, it was alerted on moving from regular to irregular status – *irregularization*:-
 - In several countries irregularity occurs after a regular entry to the territory due to different reasons –e.g., losing a job-;
 - Policies should be developed in order to prevent those circumstances as well as to facilitate to returning to a regular status.

As a final remark on this session it is important to highlight the important contribution that migrants in irregular status make in a daily basis in countries of destination, in spite of the fact that such status limits their capabilities for improving their living conditions and contributions to receiving societies. It has been widely evidences their contribution in the field of labor, taxation, production of wellness and goods –as well as their exchange and distribution-, etc., etc. In an opposite direction of false representations and myths on irregular migration, receiving countries largely benefit from their work, which could be strengthened trough the creation of regularization channels and regular avenues for migration. These policies could also improve social and peaceful cohesion in multicultural societies.

II.2.2. Session on Decent Work and Labor Mobility

Some of the convergences in this session were the following:

- National, bilateral and multilateral initiatives for promoting decent work for migrants should be expanded and strengthened;

- It should be highlighted publicly and in different formats the important contributions made by migrant workers in countries of origin and destination;
- Migrant workers should be at the center of the consensus to achieved within the Global Compact as well as in the initiatives to be developed after 2018;
- It is critical to improve the measures directed to effectively protecting the rights of all migrant workers, including their protection from labor exploitation:
 - Equal treatment and labor conditions between nationals and migrants should be ensured, regardless migration status;
 - Policies aimed at regulating migrant workers Recruitment Agencies should be strengthened, including:
 - Bilateral cooperation agreements, as well as joint follow-up mechanisms on their implementation;
 - Eradicating recruitment fees for workers –in line with standards promoted by ILO, UN Women, UN CMW Committee, etc.-;
 - Civil society organizations, including trade unions, should be able to participate in the designing, implementation and evaluation of those regulations.
 - Access to justice by migrant workers, regardless their migration status, is critical. Policies and practices for ensuring this right should be encouraged;
 - Labor inspection policies should be strengthened, ensuring a firewall from immigration enforcement;
 - Legal and practical tools should be developed for promoting and fulfilling union rights to all migrant workers, irrespectively of their migration status;
 - Protecting labor rights should be complemented with policies and practices directed to ensuring migrants' access to other human rights, such as health, education and social security, regardless their migration status;
 - Migration policies should recognize –by law and in practice- that migrants could change their job, namely, preventing dependence from a single employer;
 - Training and information policies and programs should be strengthened, in particular on pre-departure and post-arrival orientation;
- More and better data on labor market in destination countries should be gathered, including on the labor needs in each area:
 - Nevertheless, that need should not obstruct a realistic approach to migration, including irregular migration, and its actual insertion in informal economy. It is important to take into account the convergence points at the session on irregular migration.
- It is highly important to acknowledge, including in policies and practices, the key role of private sector, trade unions and other civil society organizations –including migrants and institutions that promote their rights-, and specialized international agencies:

- Initiatives promoting and ensuring open, participatory and genuine social dialogue should be created and/or strengthened, at local, national, bilateral, regional and global level.
- A gender approach to labor migration and decent work is critical, including the duty to ensure gender equity in a holistic manner throughout all the migration process, its policies and practices, including:
 - Migration, labor and related legislation;
 - Access to rights;
 - Access to justice, including firewalls;
 - Access to regularization channels;
 - More disaggregated qualitative information;
 - Bilateral and regional agreements;
 - Addressing root causes of migration;
 - Analysis of labor market and its harmonization with human rights principles;
 - Inter-institutional cooperation;
 - Comprehensive migration and labor policies
- International cooperation for promoting migrants' decent work is paramount:
 - Bilateral joint policies should be promoted, rather than unilateral policies, which take into account realities and needs of each country/region, and not only interests and policies of one side;
 - Bilateral agreements, including those on temporal and circular labor, could be an important tool, although it is essential that labor and family rights, among others, are respected;
 - Regional processes are also critical tools, which –similarly- should ensure a rights-based approach, social participation as well as other already-mentioned conditions.
- It was highlighted the need for taking into consideration the complex political, social and communicational scenario in the field of migration in several countries and regions, in particular the growing xenophobia. A number of policies and initiatives should be developed and implemented on this issue as a critical step for succeeding in other labor and social policies.
- Family unit, as a corollary of the acknowledge of family as a central component of societies, should be facilitated and protected within migration and labor policies;
- Anti-discrimination policies at work –as in regards to other rights- should be strengthened and effectively implemented.

Finally, it is important to note what some speakers highlighted as to the fact that the protection of the rights of all migrant workers and their families should also be understood as a mean to strengthen the rights of all the workers and families of receiving societies.

II.2.3. Session on Recognition of Skills and Qualifications

Among the main points of convergence in this session, it could be highlighted the following:

- It is important to promote initiatives that facilitate that equal training and skills should imply equal opportunities and treatment;
- Recognition of skills is critical for promoting labor and social integration;
- These initiatives contribute to articulation and coherence between migration and labor policies;
- Respecting labor and union rights with no discrimination is reciprocally complemented with recognition of skills and qualifications;
 - International labor and human rights norms and standards should be fully respected;
 - Access to education in equal conditions, regardless of migration status, is a key step for acquisition and recognition of labor skills;
 - Gender approach is indispensable in every initiative aimed at recognizing migrants' labor skills and qualifications;
- In case of migrants in irregular situation, recognition of skills and qualification can become a channel for access to formal employment and to a residence permit;
 - This is linked with the above-mentioned in regards to the relevance of firewalls as well as the importance of regularization measures within the harmonization of migration and labor policies;
- There are a number of good initiatives in the field of migrants' skills recognition, at national, bilateral and regional level, which should:
 - be shared and strengthened;
 - ensure the effective fulfilment of rights;
 - take into account realities and needs of labor market as wells as of migration dynamics in each country/region, both regular and irregular;
- It was highlighted that in numerous countries migrants are disproportionately represented in certain areas of the labor market:
 - Among several causes, this situation is linked to the lack of recognition of skills and qualifications, to different forms of discrimination, as well as to the absence of regular channels for migration and/or access to a residence permit by those working and living in irregular status;
- Initiatives on skills recognition should take into account issues as brain drain and/or infra-valorization;
- The role of private sector for creating jobs and recognizing skills was underlined, as well as for identifying needs that could promote access to decent work;
- Likewise, the central role of trade unions was highlighted;

- Participation of trade unions, private sector, employers, ILO and other international agencies, as well as civil society organizations, should be facilitated within every initiative on these matters;
- It was also highlighted the important role that could and should be done by employment public services;
- Addressing root causes of migration should be linked with returning and reintegration policies which ensure access to decent work related to skills and qualifications recognized;
- Developing indicators for measuring the impact of these initiatives is important;
- It was suggested the idea of a “skills passport” that would allow migrants to simply demonstrate his/her qualifications.