

Towards Global Compacts on Refugees and on Migration

Lessons learnt from the externalization of migration and asylum policies implemented by the European Union

CONCORD Policy brief

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Introduction

One year after the adoption of the 2030 Agenda, in September 2016, the UN General Assembly hosted a high-level plenary meeting to address large movements of migrants and refugees. This was the first time a high-level UN meeting was devoted entirely to international migration, a step largely resulting from the political crisis caused by the increased numbers of migrants and refugees across the globe – including those arriving in Europe in 2015 and 2016. The New York Declaration for Refugees and Migrants resulting from the 2016 meeting called for the negotiation of a [Global Compact for Safe, Orderly and Regular Migration](#) (GCM), as well as the elaboration of a separate [Global Compact on Refugees](#) (GCR, based upon the agreed elements of the Comprehensive refugee response framework), both to be adopted in 2018.

Both Global Compacts are originated from UN Member States' perspective that a shared comprehensive approach and increased international cooperation is needed to respond to the increasing movement of migrants and refugees. They are supposed to provide an opportunity for states to turn this vision into action, through cooperation between states and with other stakeholders. The Global Compacts are expected to build upon international human rights law, labour conventions and protocols, international humanitarian and refugee law, and the UN 2030 Sustainable Development Goals (SDGs), in particular the agreed target to facilitate orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies.

The processes to develop the Global Compacts started in 2017 with a consultation phase¹; a stocktaking event was held in Puerto Vallarta (Mexico) in December 2017, and the Zero drafts of the [GCR](#) and [GCM](#) were published on 31 January and 5 February 2018, respectively (a GCM “zero draft plus” was later published on March 5th, 2018). Intergovernmental negotiations and consultations on both Global Compacts shall be held from February to July 2018. The

¹ During the consultation phase, civil society proposed “Ten acts for the Global Compacts”. Available at: <http://www.madenetwork.org/ten-acts>

GCR will be then presented by UNHCR in the High Commissioner's Annual Report to the General Assembly in September 2018, while the GCM will be formally adopted in a dedicated intergovernmental conference to be held in December 2018 in Morocco.

With this policy brief **Concord aims to draw lessons for the future Global Compacts from the externalization of migration and asylum policies implemented by the European Union (EU)** in the past decade, which were brought under a single framework with the adoption of the Agenda on Migration in 2015 and of the New Partnership Framework and Migration Compacts in 2016.²

The externalization of migration policies implemented by the EU: lessons learnt for the Global Compacts

A broad set of EU and Member States (MS) policies and practices today are in fact characterized by extremely limited regular routes to Europe for migrants and asylum seekers, while the tools of migration control are increasingly being outsourced to third countries. Barriers against irregular migration are in this way moved to areas outside the EU in order to create a “buffer zone” and to deter migration towards Europe. In parallel, the currently negotiated reform of the Common European Asylum System (CEAS) risks to introduce restrictions to the right to asylum in Europe, among other things by failing to admit asylum requests if the individual comes from loosely defined “safe third countries” or from “countries of first asylum”.

This whole externalization approach impacts negatively on the effectiveness of European development activities as, in relations with third countries, conditions on migration control and/or on readmission agreements are increasingly attached to development funds; Official Development Assistance (ODA) is in some cases deviated from stated development objectives such as poverty eradication and reduction of inequality, and from countries most in need; in other cases, it is used on the flawed assumption that more development will reduce migration³. This results in little local ownership of development projects, delegitimization of local authorities in face of their communities, increased instability coupled with growing militarization, and shrinking civil society spaces.⁴

² This brief does not attempt, therefore, to propose a full analysis of the GCM and GCR drafts on all their aspects, but only on those which can be related to the externalization of migration and asylum policies.

³ Evidence clearly points to the contrary. See: Centre for Global Development, “Deterring Emigration with Foreign Aid: An Overview of Evidence from Low-Income Countries”, CGD Policy Paper 119, February 2018, available at: <https://www.cgdev.org/publication/can-development-assistance-deter-emigration>

⁴ Clingendael Institute, “Turning the tide. The politics of irregular migration in the Sahel and Libya”, CRU report, February 2017, available at: <https://www.clingendael.org/publication/roadmap-sustainable-migration-management-agadez>

The externalization approach also impacts negatively on international protection guarantees for asylum seekers and, more broadly, on the protection of migrants' rights, who are now taking more dangerous routes at the risk of their health or even their lives, and increasingly recur to underground, human smuggling and trafficking practices.

Concord documented elements of the impact in partner countries of EU external migration policies, in recent reports on the EU Trust Fund for Africa⁵ and on securitization of aid⁶. We ground the contents of the present policy brief on that evidence, raising concerns that elements of the EU externalization experience may be brought into the GCR discussions and GCM negotiations, as emerging from initial EU positions.⁷

We approach the analysis of the two zero drafts through a single mixed migratory lens, which reflects the reality of movements of people towards Europe. While we acknowledge that the negotiations of the GCM and of the GCR are separate processes, our observations descend from an analysis of externalization processes which connects migrants and asylum seekers. Therefore, our inputs are presented under common headlines, while specifics for each of the two compacts/processes are articulated, as necessary.

This approach intends to highlight the need to ensure that complementarity between the two Compacts is envisaged in the negotiations, as well as in the monitoring and implementation mechanisms which will follow the adoption of the two drafts.

Concord's inputs to the GCM and the GCR drafts

Suggested approach to negotiations

We believe that the “zero draft plus” of the GCM is a welcome starting point in its vision and guiding principles, as well as in its identified objectives, being based on a positive narrative about migration and being located in the SDGs framework; space for further improvement is indicated below.

The GCR is also welcome in its objectives. However, the “zero draft” contains important areas for crucial improvement which are specifically highlighted below, and which – we hope – will evolve towards a substantially different balance, more aimed at protecting human rights.

⁵ Concord, “Partnership or conditionality? Monitoring the Migration Compacts and EU Trust Fund for Africa”, available at:

https://concordeurope.org/wpcontent/uploads/2018/01/CONCORD_EUTrustFundReport_2018_online.pdf?c676e3&c676e3

⁶ Concord, “Security aid: fostering development or serving European donors' national interest?”, available at: <https://concordeurope.org/2018/02/15/security-aid-aidwatch-paper/>

⁷ EU input to the UN Secretary-General's report on the Global Compact for Safe, Orderly and Regular Migration. Available at: https://refugeesmigrants.un.org/sites/default/files/stocktaking_eu.pdf

Need for clear outcomes, particularly on regular pathways

The absence of clear outcomes and targets for the changes proposed for the lives of refugees and other migrants and their host communities - particularly in relation to the need to open regular and safe pathways - leave limited space to drive action and keep governments and other actors accountable. While the GCM makes an effort to identify actionable commitments, the GCR draft only offers a menu of suggested ways to move towards a comprehensive response for refugees, but does not show a clear direction on roles and responsibilities. The risk is that both Global Compacts, instead of global deals, become a shopping list of suggestions from where governments and other relevant actors can pick and choose what they can and want to do.

- Ongoing negotiations and consultations should therefore be used by Delegations to push for the strengthening of the concluding sections dedicated to follow up, review and implementation of the Global Compacts, by indicating the need to adopt metrics and a concrete mechanism to track commitments - particularly in relation with the need to open regular pathways for both refugees and other migrants - and to invest seriously in monitoring and evaluation. As both drafts make welcome linkages with the UN Sustainable Development Goals (SDGs), further definition of these commitments and indicators could also offer a way to hold parties accountable for results.
- A reference to the need for a binding agreement to be developed in the future shall also be introduced, in order to leave the door open to making progress when the political climate will allow.

The ambiguous intersection between development assistance and the response to refugees and other migrants' movements

Both GCM and GCR drafts call for a stronger link between the refugee and migrant responses and the use of development assistance. This needs to be nuanced, as the connection “more development – less migrants” is far from being linear: research has shown that the development/migration nexus is complex, and the opposite often occurs, particularly if the benefits of economic development are unequally shared⁸.

- Development assistance to refugees, migrants and host communities should be decoupled from migration control aims, and be additional to traditional development assistance: there should in fact be no diversion of development funds towards migration control aims, and ODA should not be instrumentalised to respond to security or border

⁸ Hein de Haas, “Migration Transitions: A Theoretical and Empirical Inquiry into the Developmental Drivers of International Migration” (working paper, University of Oxford, International Migration Institute, Oxford, May 2010), www.imi.ox.ac.uk/publications/wp-24-10.

control interests of destination countries, or as a bargaining chip in negotiations over restrictive migration policies or readmission agreements in origin or transit countries.

- In addition, there should not be competition for resources between refugees or migrants and other non-displaced impoverished populations outside migratory routes; and between poor countries with and without migration flows.

Concord in fact documented a trend for European development funds to be directed towards mixed migration flows routes in Africa⁹, in some cases with limited analysis of other needs in the same countries outside those routes, and sometimes for migration control aims.

Overall, both GCR and GCM drafts lack a perspective on the financing mechanisms to be put in place for their implementation, with the risk that resources are simply moved from development/other sectors, while the needed dedicated funding is not put in place.

- ODA should therefore not be inflated with the recording of refugee reception costs in host countries, where specific and complimentary financing instruments should be dedicated to the protection of migrants and refugees.¹⁰

On the other hand, the GCM draft indicates the need for private and foreign direct investments for job creation. We believe that developing countries need to enjoy the regulatory space to make the best out of these investments, ensuring they deliver decent jobs for their people and contribute to diversification of their economy.

- The GCM draft should replace an unnuanced and unsubstantiated support to foreign direct investments, capturing instead the need to review international trade rules and investors protection mechanisms in order not to restrict the ability of governments to establish entry and operational requirements on foreign direct investments¹¹, and to protect and support particular sectors of their economy.¹² In addition, since only responsible

⁹ Concord Europe and CINI, "Partnership or conditionality? Monitoring the Migration Compacts and EU Trust Fund for Africa", available at: <https://concordeurope.org/2018/01/24/monitoring-eu-trust-fund-africa-publication/>

¹⁰ See the chapter 3.3 of Concord Europe AidWatch 2017 in: https://concordeurope.org/wp-content/uploads/2017/10/CONCORD_AidWatch_Report_2017_web.pdf; and also "Slight increase of global aid explained by rise of in-donor refugees' costs": <https://concordeurope.org/2017/04/11/reaction-aid-statistics-2016-oecd/>

¹¹ For example, knowledge transfer programmes for the benefit of local firms' development, training to facilitate entry of local people in higher-skilled jobs, local contents rules, etc

¹² Concord Europe, "A 10 point roadmap for Europe on the role of private actors in development". Available at: <https://concordeurope.org/wp-content/uploads/2017/10/Private-sector-2017-online-final.pdf?1fdb40&1fdb40>. ActionAid, "An alternative FDI framework for more and better jobs in developing countries, Dec. 2017". Available at: https://www.actionaid.org.uk/sites/default/files/publications/an_alternative_fdi_framework.pdf

investments can contribute to the sustainable development, both home and host countries of investors should establish binding investor obligations with respect to human rights, labour and the environment, in line with international standards and guidelines.

The externalisation of the governance of migration and asylum

In the frame of an increasing externalization of the governance of migration and asylum, the Mediterranean, and Europe itself, remain the stage for push-backs of individuals moving within mixed migratory flows.

- Both the GCM and GCR should introduce a clear provision condemning violations of the non-refoulement principle, which put at risk the protection of persons moving in the context of mixed migratory flows.

In the same externalization perspective, the CEAS reform proposal envisages that a country can be identified as “safe third country” for an asylum-seeker also in absence of ratification and application in practice of the Refugee Convention, without geographical limitation.

At the same time, some European MS – such as France and Denmark¹³ - are making proposals to process and/or are already processing asylum requests in transit countries instead than in their national systems.

- The GCR should condemn any remote, extraterritorial or other systems of processing asylum requests that outsources, filter or deter access to protection, or operate in absence of a mandatory and actionable commitment to resettle those who are successfully processed externally¹⁴. ODA should never be used to support such arrangements. The GCR should promote the idea of shared but differentiated responsibilities for an equal distribution of commitments, and should discourage states from creating loosely defined “safe country” lists.

In a similar perspective, the GCM draft carries a focus on mitigating initial movement from countries of origin, with lesser emphasis on creating greater opportunities in host countries.

- the GCM draft should reaffirm the right to leave a country, including one’s own, as enshrined in the Universal Declaration of Human Rights, and call for universal ratification

¹³ See the bill proposed in Denmark. Daily Sabah, “Denmark’s largest party proposes to restrict ‘non-Western’ asylum seekers”, February 5th, 2018, available at: <https://www.dailysabah.com/europe/2018/02/05/denmarks-largest-party-proposes-to-restrict-non-western-asylum-seekers>. The French Government already examines asylum requests in Niger since a few months. See: The New York Times, “At French Outpost in African Migrant Hub, Asylum for a Select Few”, February 25th, 2018, available at: <https://www.ilpost.it/2018/02/26/francia-rifugiati-niger/>

¹⁴ See Recommendation 6 of the Africa Civil Society Organizations Regional Consultation on the Global Compact on Safe, Orderly and Regular Migration Bamako, 28-29 August 2017

of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as well as of the ILO Domestic Workers Convention.

Individual registration and biometrization of refugees and other migrants

The OHCHR affirms that “the collection of data at borders (particularly biometric data) [should be] proportionate to a legitimate aim, obtained lawfully, accurate and up-to-date, stored for a limited time and disposed of safely and securely. Personal data should be anonymised when stored for statistical purposes”.¹⁵

- The GCR and GCM should recognize that - in absence of comprehensive and mandatory safeguards - the use and transfer of these data across different agencies and countries increases the risk of it being used controversially in areas of migration tracking and surveillance. The need for additional provisions for such safeguards should be affirmed, and the use of ODA to support biometrisation of controls at borders or in reception centres should be avoided.

In the context of the proposed reform of the CEAS, sharing of biometric data taken in transit countries loosely defined as “safe” with EU Member States, in fact, risks to become instrumental to bypassing the right to an individual examination of the asylum claim in Europe, and to potentially transfer the individual to the “safe third country” of transit.

Training of third countries’ authorities responsible for border control

GCM commits to “technical cooperation agreements that enable States to request and offer assets, equipment and other technical assistance to strengthen border management, particularly in the area of search and rescue, and other emergency situations”.

Concord illustrated cases in which EU offers technical assistance and equipment to authorities responsible for border control in countries such as Libya, having a track record of serious and systematic human rights violations against refugees and other migrants at sea, terrestrial borders and in detention centres.¹⁶ In Libya, in addition, the Coast Guard do not have a solid chain of command and cannot offer guarantees about the use of the equipment they are provided with.

- The GCM should therefore affirm that cooperation with third countries’ authorities responsible for border control should never take place in the absence of guarantees that

¹⁵ OHCHR, “Recommended principles and guidelines on human rights at international borders”, 2014. Available at: http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf

¹⁶ Concord Europe and CINI, “Partnership or conditionality? Monitoring the Migration Compacts and EU Trust Fund for Africa”, available at: <https://concordeurope.org/2018/01/24/monitoring-eu-trust-fund-africa-publication/>

it would strengthen human rights protection and contribute to create a functional asylum system in the country. Development cooperation should never be used by destination countries to outsource to third countries' authorities the interception of refugees and other migrants to prevent them from reaching their soil, thus circumventing their obligations to offer asylum. Any cooperation agreements with third countries' authorities responsible for border control must set up a strong system to monitor the human rights impact of such cooperation, in relation to the use made of the skills and means provided, and an accountability system in cases of breaches of international law and standards.¹⁷

Returns

The proposed reform of the CEAS envisages that a country can be identified as "safe third country" for an asylum-seeker to be returned to, also if the connection with it consists only in having transited through it.

- Both GCM and GCR should state clearly that non-admitted asylum seekers should never be returned to third countries with which they have no connections, including countries where they only transited.

We are in fact concerned that the return of large numbers of non-admitted asylum seekers to transit countries deemed as "safe" would not only violate their rights, but would also have a detrimental effect in terms of local development.

Regularization policies and other alternatives to involuntary return should be given due attention when designing return policies.

Environmental migrants and refugees

The GCM positively includes a recognition that persons displaced in the context of disasters and climate change deserve temporary or permanent forms of protection.

- The GCR should indicate the need to begin to reflect about a new international legal definition of refugees or complimentary categories, considering climate and environmental impacts on human mobility and the spreading of human insecurity in impoverished countries.

Migrants voices

Migrants' own voices are largely absent from the GCM draft.

¹⁷ Amnesty International, "Italy: Refugees and migrants in the central Mediterranean, cutting the lifelines", 2017. Available at: <https://www.amnesty.nl/actueel/italy-refugees-and-migrants-in-the-central-mediterranean-cutting-the-lifelines>.

- The GCM should commit to providing a platform for migrants' voices, if the process intends to be truly people-centred.

Role of the International Organization for Migration

The GCM draft identifies in the International Organization for Migration (IOM) the lead UN agency to be strengthened in view of the full and effective implementation of the Compact.

- We believe that IOM should have an important role in the GCM implementation, but in full coordination with other agencies such as the International Labour Organization and the Office of the United Nations High Commissioner for Human Rights, and in consultation with civil society.

Conclusions

In the ongoing intergovernmental negotiations and consultations for the GCM and the GCR, Concord will remain committed to monitor the two processes and to establish a dialogue with national governments through Concorde National Platforms, on the base of the perspectives provided above.

It is hoped that the final text of the GCM and of the GCR will maintain human rights and the 2030 Agenda squarely at the centre; and that the pivotal importance of creating and enlarging regular pathways for the movements of migrants and refugees will be assigned a key role to ensure that irregular migration is effectively reduced without criminalising migrants. These pathways should be integrated within sustainable and coherent national development plans, and in the framework of an equitable distribution of opportunities and responsibilities agreed at international level¹⁸.

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¹⁸ See Recommendation 3 of the Africa Civil Society Organizations Regional Consultation on the Global Compact on Safe, Orderly and Regular Migration Bamako, 28-29 August 2017

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