



The Global Compact for Safe, Orderly and Regular Migration

1. Introduction

On 5th February 2018 the UN issued the 'Zero Draft of the Global Compact for Safe, Orderly and Regular Migration.' This marks the formal commencement of the intergovernmental negotiations which will be held during six separate rounds.

Estimates suggest that there are 260m people living outside their country of origin in varying vulnerable circumstances. The importance of this Compact is that it is the first global framework to assist such migrants. Unlike refugees, migrants are not covered by international law;¹ yet they constitute 3.4% of the world's population, a figure that has grown by almost 49% since 2000.²

The Compact seeks to ensure that migrants, whether seeking a better life or escaping violence and poverty can do so in a safe, orderly and predictable way.

2. Background

The Compact builds on the New York Declaration of 2016. It recognises that migration is poorly managed worldwide and that there is a need to share the responsibility for managing the phenomenon. In essence the Compact is a non-binding co-operative framework intended to confront some of the critical challenges facing this vulnerable community. It will not make new law but will create provisions that will be consistent with obligations to which states already have acceded under human rights conventions and various international labour standards.³ It comprises 22 objectives and a large number of actionable commitments. It is based on ten principles which include a strong human rights framework, an emphasis on children and the rights of children on the move, especially

unaccompanied minors. There is also a focus on climate migration. It respects national sovereignty but urges international co-operation. It also stresses compliance with Agenda 2030. A series of six thematic consultations and four intergovernmental regional consultations will feed in to the final form of the Compact. The Missions of Mexico and Switzerland are co-facilitators of this process.

Archbishop Bernadito Auza, the Holy See's representative to the UN, called it a "good document for negotiations."⁴ Also commenting on the Zero Draft, Archbishop Ivan Jurkovic described it as "an historic opportunity to find durable solutions that respond to the principles of solidarity and fraternal compassion by offering a more concerted and equitable response."⁵

The UN Secretary General commented on the fundamentally positive orientation of the Draft Compact: "Let me emphasize: migration is a positive global phenomenon. It powers economic growth, reduces inequalities, connects diverse societies and helps us ride the demographic waves of population growth and decline."⁶

3. The Need for the Compact

At the heart of the urgency to put a Global Compact in place is the vulnerability of the migrant population, especially amidst the rise in racism, xenophobia and the scapegoating of migrants across the world:

"In some parts of the world there is an incipient tendency for nations to reach agreements whereby migrants are deported to countries that have little to offer them by way of livelihoods or programs that separate migrants from their families. There are also examples of migrants caught in situations

where they have to give up rights and freedoms in order to find work in other countries. The Global Compact seeks through shared structures of good governance and solidarity to stop such situations from being normalised.”⁷

In response to these concerns the consultations will pay special attention to the human rights of all migrants, including issues of social cohesion and all forms of discrimination. It will address the drivers of migration, such as poverty and the consequences of climate change. It will deal with international co-operation and governance of migration, including border controls and transit issues, and it will look at the contributions of migrants and the diaspora to sustainable development, such as remittances and the portability of earning. The Compact takes cognisance of the scourges of trafficking in persons, people-smuggling and contemporary forms of slavery. It will be cognisant of irregular migration and the need for regular pathways, promoting labour mobility, the recognition of skills, and provisions for decent work. Finally, the Compact stresses the need for family re-unification.

4. Positive Aspects

Many of the Compact’s objectives find an echo in the South African government’s Green Paper on International Migration of 2016. In particular, attention should be drawn to the following objectives that deserve support:

- countering language that could promote racism and xenophobia, and indeed even constitute hate speech
- action against the detention of children and a greater sensitivity to the plight and vulnerability of unaccompanied minors
- the criminalisation of traffickers and people-smugglers
- investigations into the collaboration between smuggling syndicates and law enforcement agencies and officials and those who are complicit in the smuggling and trafficking operations.

With regard to the issue of trafficking and smuggling, we commend Action J in the draft

Compact, which enjoins states to provide national legislation that ensures that non-state entities cannot “confiscate or retain identity documents, travel documents or work documents from migrants.” Clearly, the confiscation or the like of documents renders the migrants powerless in the face of abuse and exploitation, and it is a tactic at the heart of the *modus operandi* of traffickers for continuing the practice of modern slavery. From a human rights point of view it offends the principles of freedom of movement, free association, and the right to just and fair working conditions. Kara Napolitano points out that “violations of human rights are both a cause and a consequence of trafficking in persons, making the promotion and protection of human rights particularly relevant to the fight against it.”⁸

5. Xenophobia

The issue of xenophobia has been of concern to South Africa especially since 2008, when the country witnessed a large outbreak of this pathology. The subsequent flare up, especially again in 2015, in various parts of the country, indicates that there is a xenophobic ‘default position’ just below the surface which is entrenched by the use of certain language in the public domain and by some questionable attitudes that are normalised by leaders. After the 2008 xenophobic attacks a report was released, titled *Towards Tolerance, Law and Dignity: Addressing Violence against Foreign Nationals in South Africa*, and commissioned by the International Organisation for Migration. It found that poor service delivery and an influx of foreigners may have played a contributing role, but blamed township politics for the attacks. It also found that community leadership was potentially lucrative for unemployed people, and that such leaders organised the attacks. Local leadership could be illegitimate, and often violent, when emerging from either a political vacuum or fierce competition, the report said, and such leaders enhanced their authority by reinforcing resentment towards foreigners.⁹

In April 2015, there was an upsurge in xenophobic attacks throughout the country. The attacks started in Durban and spread to Johannesburg. Zulu King Goodwill Zwelithini was accused of fuelling the attacks by saying that foreigners should “go back to their countries.”¹⁰

On 24th February 2017 a large ‘anti-immigration’ march was held in Pretoria which echoed many of

the same xenophobic sentiments. The ongoing manifestations of xenophobia show that it remains a problem, and that it needs to be dealt with partly through the delegitimising of inappropriate language.

In the light of the above, South African must be encouraged to commit itself to “promote an open and fact-based public discourse on migration in partnership with all parts of society, that generates a more realistic and constructive perception of migration.”¹¹

In this regard it is heartening to note the provisions contained in the Prevention and Combating of Hate Crimes and Hate Speech Bill 2016, which has just been approved by Cabinet. As Justice Minister Michael Masutha has commented, “we should all take the opportunity at hand to contribute towards ensuring that once sanctioned into law, the Bill will assist all of us to deal with recurring incidents of racism, xenophobia and related intolerance.”¹²

6. Children

On the issue of migrant children, and the abhorrent practise of detaining children in connection with immigration, it is commendable that the Compact’s Objective 13 and Action G promises to

“uphold the protection and respect for the rights and best interests of the child at all times, regardless of their migration status, by ending the practice of child detention in the context of international migration, and providing alternatives to detention that include access to education and healthcare, and [by allowing] children to remain with their family members or guardians in non-custodial contexts, including community-based arrangements.”¹³

The detention of children for immigration purposes can never be in their best interest. The fact that much of immigration law is not compliant with children’s rights, and that examples of breaches of such rights occur even where child friendly legislation is in place, are reasons for continued vigilance in this area. This is true also with regard to the detention of migrants generally,¹⁴ and many organisations have commendably pushed in their advocacy for the rescinding of the practice of detention altogether.

There is great merit in the argument of the Mixed Migration Platform in their response to the Zero Draft of the Compact:

“Though committing to a human rights-based approach to detention, the Compact leaves room for a broad interpretation of states’ prerogative to detain migrants as a last resort. In line with the Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, the GCM should make a stronger commitment to abolishing mandatory detention of migrants, and to end the use of detention as a border management and deterrence tool against migrants.”¹⁵

Indeed, a large body of research has shown that detention of children and their families is not an effective deterrent to either illegal migration or to people-smuggling. A recent survey showed that 17 European countries detained child migrants and 19 countries detained families with children. Hence the practice is widespread. In recent times, two regional human rights bodies – the Inter-American Court of Human Rights, and the Council of Europe Parliamentary Assembly – have both recommended to member states that they introduce and enforce laws barring detention of children for immigration purposes.¹⁶

South African legislation on this point can be summed up as follows:

- If the illegal foreigner who is detained for purposes of deportation is the primary caregiver of minor children in South Africa, it must be ensured that the family is not separated and that the children are not left behind alone.
- As a general rule, the detention of children is allowed only as a measure of last resort and must be for the shortest possible period.
- If detention of a child cannot be avoided, minimum standards of detention of children must be met.
- Children in detention must not be separated from their parents or caregiver, but must be separated from other adults.
- Children should be accommodated in facilities that are appropriate to their age,

provided that they not be separated from their parent(s).

“Unaccompanied foreign children are deemed to be in need of care and protection and they therefore have the right to access the child protection system under the Children’s Act. Children who appear to have a claim for asylum are additionally protected by the provisions of the Refugees Act and should be assisted to claim asylum. Unaccompanied minors should not be held in immigration detention. A foreign child may not be deported into the unknown, and repatriation is only admissible if this is determined, by a social worker or the Children’s Court, to be in the child’s best interest. Repatriation would therefore involve the intervention of a social worker and the Children’s Court.”¹⁷

7. Other Perspectives

The Holy See’s Mission drew attention to the need for strong political will to prevent the forced displacement of persons and the tragedies which often follow. The Mission also called for a recognition of the spiritual nature of all human beings and their right to religious freedom; and submitted an additional clause that highlights the need for holistic service rather than a mere list of disjointed best practices from which to draw here and there, according to national priorities. That would ensure that “in all cases the human person remains under the protection of the principles of humanity and the dictates of public conscience.”¹⁸ The Mary Robinson Foundation voiced concern that there was insufficient room for the voices of migrant communities to be heard in the follow up mechanisms. This would reduce the strength and importance of migrant voices as important stakeholders in the development of the Compact.¹⁹

The Mixed Migration Platform commented that:

“The emphasis of the Zero Draft is too heavily focussed on mitigating initial movement from country of origin, and too little on creating greater opportunities in host countries with the resources to do so. The ‘root cause’ approach to migration and development carries the implicit categorization of migration as a ‘problem’ to be solved rather than a phenomenon natural to humanity, and therefore risks a continued under-preparedness in host countries. It is worth noting also that recent evidence suggests that economic development in countries of origin often leads to further emigration, not less (at least in the short-medium term). States should ensure that they are improving their capacity to receive migrants and supporting them to reach their human potential, preferably redirecting resources from unproductive securitization and externalization measures.”²⁰

8. Conclusion

As we seek to step up our advocacy and respond to the Zero Draft of the Global Compact for Migration in order to create a more just world for migrants, we are encouraged by the words of Pope Francis, who reminds us that “defending the inalienable rights of refugees, ensuring their fundamental freedoms and respecting their dignity are duties from which no one can be exempted.”²¹

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- ¹ <https://www.devex.com/news/new-un-global-compact-on-migration-moves-ahead-91832>
 - ² <https://www.devex.com/news/new-un-global-compact-on-migration-moves-ahead-91832>
 - ³ <http://gcmigration.org/2017/04/what-is-the-global-compact-on-migration/>
 - ⁴ <https://holyseemission.org/contents/statements/5a79c4da40b6f.php>
 - ⁵ <http://www.vaticannews.va/en/vatican-city/news/2018-02/jurkovi-holy-see-un-geneva-global-compact.html>
 - ⁶ <https://www.un.org/press/en/2018/sgsm18852.doc.htm>
 - ⁷ <http://gcmigration.org/2017/04/what-is-the-global-compact-on-migration/>
 - ⁸ <https://combathumantrafficking.org/2016/12/human-trafficking-human-rights-violation/>
 - ⁹ https://en.wikipedia.org/wiki/Xenophobia_in_South_Africa
 - ¹⁰ https://en.wikipedia.org/wiki/Xenophobia_in_South_Africa
 - ¹¹ https://refugeesmigrants.un.org/sites/default/files/4th_multistakeholder_hearing_preliminary_agenda.pdf
 - ¹² <https://www.iol.co.za/news/politics/sa-a-step-closer-xenophobia-hate-speech-law-2083235>
 - ¹³ https://refugeesmigrants.un.org/sites/default/files/180205_gcm_zero_draft_final.pdf
 - ¹⁴ <http://www.lhr.org.za/news/2008/lhr-launches-report-monitoring-immigration-detention-south-africa>
 - ¹⁵ <https://reliefweb.int/report/world/mmp-note-zero-draft-global-compact-safe-orderly-and-regular-migration>
 - ¹⁶ https://www.unodc.org/documents/congress/workshops/workshop2/Statement_M_LeVoy_.pdf
 - ¹⁷ http://www.probono.org.za/Manuals/Refugee-Manual/2015_Asylum_seeker_guide_Immigration_Detention.pdf
 - ¹⁸ <http://www.vaticannews.va/en/vatican-city/news/2018-02/jurkovi-holy-see-un-geneva-global-compact.html>
 - ¹⁹ <https://www.mrfcj.org/resources/zero-draft-global-compact-for-safe-orderly-and-regular-migration/>
 - ²⁰ <https://reliefweb.int/report/world/mmp-note-zero-draft-global-compact-safe-orderly-and-regular-migration>
 - ²¹ <http://www.vaticannews.va/en/vatican-city/news/2018-02/jurkovi-holy-see-un-geneva-global-compact.html>

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