

The Status of the Global Compacts on Refugees and Migration

A New Commitment to the Well-Being of Refugees and Migrants?

March 2018

Introduction and Summary

Governments around the world have a critical opportunity this year to make systematic improvements to how the world assists and protects refugees and migrants. In September 2016, UN member states adopted the New York Declaration for Refugees and Migrants, in which they committed to improve planning for and response to large movements of refugees and migrants. As part of this process, UN member states are to adopt both a Global Compact on Refugees (GCR) and a Global Compact on Safe, Orderly and Regular Migration (GCM) later this year.

So-called zero drafts of these compacts were released in late January and early February, respectively.¹ In early March, revised versions were released. In the case of the GCR, it was termed “Draft 1.”² In the case of the GCM, the new draft was termed “Zero Draft Plus” as it provides only technical changes to the initial zero draft.³ Both hold important promise, but also come with significant room for improvement. Member states are moving forward with negotiations and consultations to finalize the texts in advance of this year’s UN General Assembly session. They will need to make progress on a range of issues, from gender to governance to the protection of all vulnerable populations on the move, among others.

Background

We live in a world of unprecedented levels of human mobility. Throughout history, individuals have migrated across borders to seek better opportunities for themselves and their families. Extraordinary advances in education, communication and transport have only accelerated those trends. Moreover, the failure to end protracted conflicts and the proliferation of new ones, often accompanied by gross human rights violations, have contributed to the forcible displacement of more than

65 million people. However, conflict and persecution have not been the only drivers. Gang violence, grinding poverty, food insecurity, disasters brought on by natural hazards, and climate change are also causing people to move, often in desperate circumstances. As a result, there are not only more refugees but also more people who may not be recognized as refugees and are nonetheless in extremely vulnerable situations and in need of protection.

The 2016 New York Declaration sought to enhance the response of governments of the world to all of these challenges. As part of the declaration, UN member states agreed they would work to develop and approve two different compacts – one focused on refugees and another focused on migrants. The compacts differ in important ways. Draft 1 of the GCR builds on the existing international regime for refugees but offers guidelines for ensuring more equitable and predictable responses to large refugee crises. The Zero Draft Plus of the GCM articulates a broad normative framework for ensuring safe, orderly, and regular migration.

Draft 1 of the GCR consists of two parts: 1) an operational Comprehensive Refugee Response Framework (CRRF), which had already been adopted as part of the New York Declaration of 2016 and presumably will not change in the months to come; and 2) a Program of Action, which is the part of Draft 1 that is genuinely in draft form. Over the past year, the UN High Commissioner for Refugees (UNHCR) has led a consultative process designed to produce that Program of Action. In contrast, the process for developing the GCM has been led by member states from the outset, with the support of the UN Special Representative for International Migration. As mentioned, the initial drafts were made public in late January and early February; the current versions (Draft 1 in the case of the GCR and Zero Draft Plus in the case of the GCM) were made public during the week of March 5.

Global Compact on Refugees

A Program of Action: The Program of Action in Draft 1 is designed to mobilize a broad array of stakeholders and additional funding to help host countries effectively manage refugee response. These include donor governments, the private sector, development agencies, financial institutions and regional organizations. The Program of Action

encourages broad international support for education, employment, and the rights and well-being of refugees in countries of refuge, including local integration when feasible. It also calls for additional support for the solutions of third country resettlement and “voluntary and sustainable” refugee repatriation.

The draft of the Program of Action is broken down into two main sections. The first section introduces mechanisms to facilitate responsibility sharing between these actors. The second section sets out areas to which donor governments and other stakeholders “will be called on to pledge and contribute” (through the responsibility sharing mechanisms) to achieve a comprehensive response to large refugee situations. This second section outlines those areas and associated requirements, which principally involve host countries, but also implicate countries of origin and countries of resettlement. The areas include: 1) reception and admissions; 2) meeting the needs of refugees and supporting host communities; and 3) long-term solutions. The draft calls for deeper investments in key services like education, health, and livelihoods to be delivered in a way that makes refugees more resilient and benefits host communities. Guidance is also given on gender, new pathways for protection, and increased engagement with refugees themselves, among many other issues.

Core Human Rights Principles: Refugees International had been deeply concerned that the initial Zero Draft was sorely lacking in language that explicitly promoted core human rights principles. The new Draft 1 contains additional language in the text of the document. For example, it notes that “the global compact emanates from fundamental principles of humanity and international solidarity,” and “is grounded in the international refugee protection regime, centered on the cardinal principle of non-refoulement, the 1951 Convention and its

1967 Protocol...complemented by international human rights instruments (such as the Universal Declaration on Human Rights...).” It is critical that such language be retained and even strengthened in subsequent drafts of the GCR in the face of disturbing trends, such as detention and criminalization of asylum seekers.

Non-Refoulement: This principle refers to a state’s responsibility not to forcibly return or expel an asylum-seeker to a place where his or her life or freedom would be at risk. In a welcome improvement from the zero draft, Draft 1 of the GCR now acknowledges the centrality of non-refoulement to the international refugee protection regime. Nonetheless, this cardinal principle is mentioned only once in the 18-page document. RI strongly believes that non-refoulement must be upheld in the GCR, and we would welcome even additional emphasis on this crucial principle in light of recent and disturbing trends as described below.

In particular, we have witnessed in recent years numerous cases in which refugees have been sent home or threatened with return to conditions where they face considerable risks and in circumstances that are less than fully voluntary. This includes cases of Nigerian refugees who were forcibly returned from Cameroon (and vice-versa) and Afghan refugees returned to a country that is now among the most dangerous in the world. In Kenya, Somali refugees are facing pressures for return when their unfettered preferences would be to remain in in Kenya. These realities only underscore the importance of the refugee compact enshrining the right to seek asylum and the principle of non-refoulement.

Gender: Draft 1 acknowledges that women and girls experience particular challenges when forced to seek refuge, and this new draft includes some action items not included in the Zero Draft. But the section does not adequately convey the obstacles and

opportunities to the realization of the rights of women, especially in humanitarian contexts. Solutions identified in the document should be more prescriptive, with expectations for gender-sensitive and gender-responsive humanitarian action. For example, rather than (or in addition to) a recommendation for “contributions to strengthen the security and safety of women and girls, including to prevent and respond to sexual and gender-based violence and sexual exploitation,” the Compact should call for specific and comprehensive GBV prevention and response programs, with markers to measure enforcement. The GCR should acknowledge that gender considerations need be addressed at every point in the displacement cycle – from initial flight, during protracted displacement, and through to durable solutions.⁴

Implementation and Governance: The provisions regarding implementation and governance evolved considerably from the Zero Draft to Draft 1 of the GCR. First, while the concept of responsibility-sharing was contained in the Zero Draft, much of the language about the responsibilities of donor governments was suggestive, making it difficult to hold such governments to account. In contrast, Draft 1 not only contains more prescriptive language about support from donor governments in a broad array of areas (from education and health to jobs and livelihoods, among others), but it also includes more details about the humanitarian and developmental needs in specific areas of concern. There is also more prescriptive language about implementation mechanisms, and the inclusion of an initial Global Refugee Summit in 2019 to be followed by Global Refugee Summits convened every three years beginning in 2021. UNHCR would play a key role in supporting these implementation mechanisms, including through the recording of “concrete pledges and contributions” and progress reports on the global compact to the UN General Assembly. Host countries, donors and other key stakeholders are

expected to participate. However, the composition of key governance mechanisms remains largely undefined. Nor does Draft 1 establish principles or pathways for determining that composition, or roles for key development actors (including the international financial institutions). These concerns should be addressed if the GCR is to meet expectations regarding the integration of development actors into the response to displacement crises and thereby help to close the humanitarian-development gap.

Metrics and Accountability: Draft 1 expands the Zero Draft discussion on data and evidence. It calls for better use of data in mapping the cost and impact on countries hosting large numbers of refugees, and also foresees a more robust use of data to assess gaps in international cooperation and to promote responsibility-sharing. However, greater detail is required on how this can be achieved. Effective use of data to secure broad assessments of both progress and gaps could be a critical tool in promoting accountability, especially if it were used in the context of UNHCR reporting to governments as envisioned in the draft. To be sure, the draft document contains inherent challenges to accountability and enforcement, as it states on page 2 that the compact is dependent on “voluntary but mutually reinforcing and dedicated contributions.” But this is all the more reason to establish data-driven metrics, and a robust monitoring effort – and to call upon states to provide resources to help achieve these objectives.

Refugee Participation: Finally, in several sections, Draft 1 of the GCR affirms that refugees and host communities should be included in decision-making processes about their futures. Refugees are assets in building solutions and should be at the center of decision-making about their own well-being. However, while all stakeholders have long recognized the critical importance of participation of

refugees and local civil society in decisions on humanitarian action, there is a huge gap in this area between rhetoric and reality. For this reason, UNHCR should engage with refugees and civil society in affected countries to ensure that the GCR contains dedicated mechanisms to ensure not only a “seat at the table” in compact discussions, but also involvement in implementation of a GCR that ultimately emerges. This could include, for example, a special refugee and local stakeholder group with clear governance responsibilities in the management of the GCR process after adoption.

Global Compact on Migration

A New Human Rights-Based Normative Framework for Safe, Orderly Migration: The Global Compact on Migration, though non-binding, is indeed a milestone in the history of the global migration dialogue. It is significant in that it explicitly links international human rights instruments to a framework for international migration. Moreover, informed by that normative framework, the Zero Draft Plus of the GCM states that member states will work on and/or take specific actions on issues like labor rights, temporary protection, international recruitment, access to counsel, access to social services, xenophobia, recognition of skill and professional qualifications, and remittances. Importantly, it takes a people-centered approach, which recognizes that, regardless of legal status, there are people on the move in vulnerable situations whose basic human rights must be upheld.

Positive, Principled Framing: In addition to core international human rights treaties, the preamble grounds the compact in other key international instruments, including those relating to transnational organized crime, trafficking, migrant workers’ rights, sustainable development, climate change, and disaster risk reduction.

Importantly, the GCM Zero Plus draft casts international migration and the role of migrants in positive terms. The document underscores the power of migration to unlock human capital and promote economic development. It reinforces the need to minimize risk and share responsibilities to ensure that migration works for the benefit of all. And it sets out a range of important measures “to condemn and counter expressions, acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against all migrants...” The draft also elaborates ten guiding principles that mandate GCM sensitivity to human rights, due process and the rule of law, gender and the rights and well-being of children, among other issues.

Ambitious, Actionable Objectives and Commitments – and Resulting Challenges: The GCM elaborates 22 objectives to be fulfilled through a series of actionable commitments. The objectives are ambitious in their nature and scope – attempting to address a full range of migration law, policy, and operational challenges and issues. The greatest challenge in the near-term may well be to ensure that states do not back away from the Zero Plus draft’s aspirations. Given the fact that each of the document’s more than 150 actionable commitments will require significant resources and effort to implement, future drafts should include more specific language on how such implementation challenges can be met and how developing and least developed countries can be supported to meet the compact’s numerous commitments.

An important long-term challenge will be to develop an effective governance and institutional framework. The Zero Plus draft commits states to continue the multilateral dialogue at the UN through a “robust follow-up and review mechanism.” However, the proposal for that mechanism does not appear to be up to the task. The draft proposes replacing the UN-sponsored High-Level Dialogue on Migration and

Development with an International Migration Review Forum (IMRF) to meet every four years. In 2026, the IMRF would focus on “which specific measures will further strengthen the global governance of international migration.” Beyond this, the draft does not provide specific details on how implementation will be achieved. At the very least, the compact will need to lay out a process for how and when states will tackle the complex and expensive issues of implementation. In doing so, it will be critical for civil society organizations, academia, and migrants themselves to be given a role in implementing the GCM.

Natural Hazards, Disasters, and Climate Change:

As clearly stated in the first paragraph of the New York Declaration, disasters brought on by natural hazards and the adverse effects of climate change, either alone or in combination with other factors, are drivers of human mobility. Refugees International therefore welcomes the GCM’s recognition of other international instruments and initiatives that address disaster- and climate change-related displacement and migration, including the Paris Accord of the United Nations Framework Convention on Climate Change (UNFCCC), the Sendai Framework for Disaster Risk Reduction (DRR), and the Platform on Disaster Displacement.

In addition, RI supports provisions of the GCM Zero Draft Plus that encourage states to provide temporary or permanent protection to migrants who must leave their countries due to disasters or other climate change-related adverse effects and who do not qualify for protection as refugees. This is especially needed to protect the human rights of vulnerable populations impacted by the slow onset effects of climate change, such as sea level rise and desertification, and who are not effectively protected under international law.

Cross Compact Issues

Internal Displacement: Neither the GCM nor the GCR adequately address internal displacement brought on by humanitarian crises. In committing to address root causes and drivers, both the GCM and the GCR should include a commitment by states, international humanitarian agencies, development actors, the private sector, and others to better protect, assist and seek durable solutions for internally displaced persons (IDPs). The compacts should also require better information and data on IDP populations worldwide.

Protection: As discussed above in Section 3, we are living in a world that has witnessed shrinking protection space for asylum seekers and vulnerable migrants alike, and where the failure to address the challenges presented by large movements of refugees and migrants has led to involuntary returns of those who face serious risks of abuse upon return. Both compacts address these issues but could – and should – strengthen the emphasis on protections from forced return to persecution, torture, and other serious violations of human rights, and explicitly recognize that new forms of protection must be considered sympathetically.

Cross Platform Mechanism: Missing from the latest drafts of the compacts is a cross platform mechanism that can help coordinate implementation, foster common approaches and efficiencies, and de-conflict where necessary between the two documents. We recognize that there may be member state sensitivities surrounding this issue. But such a mechanism would be critical for ensuring that all vulnerable populations on the move and in need of

protection receive the attention they deserve under the responsibilities, objectives, and actions set out in both compacts. It could also foster unity of effort in tackling shared challenges like assisting victims of trafficking and smuggling. In addition, a cross platform mechanism could help build bridges between the relevant multilateral agencies with different mandates, like UNHCR and the International Organization for Migration (IOM), rather than further segregate their respective operations.

Conclusion

The GCR and the GCM offer the prospect of a brighter future for many hundreds of millions of people around the world – refugees and migrants, as well as people from communities through – and to – which refugees and migrants travel. As we have indicated, the current versions of both draft documents have positive elements, but also provisions that should be strengthened considerably in the months to come. Refugees International looks forward to sustaining our engagement in this process.

Endnotes

¹ United Nations, The Global Compact On Refugees Zero Draft, January 31, 2018. <http://www.unhcr.org/Zero-Draft.pdf>. United Nations, Global Compact for Safe, Orderly and Regular Migration, Zero Draft, February 5, 2018.

https://refugeesmigrants.un.org/sites/default/files/180205_gcm_zero_draft_final.pdf

² United Nations, The Global Compact On Refugees, Draft 1, March 9, 2018. <http://www.unhcr.org/Zero-Draft.pdf>

³ United Nations, Global Compact for Safe, Orderly and Regular Migration, Zero Draft Plus, March 5, 2018. http://unipd-centrodirittiumani.it/public/docs/20180503_globalcompactformigrati_on_zerodraftplus.pdf

⁴ For more on the GCR and gender, see joint advocacy letter, “Making the Global Compact on Refugees Work for Women and Girls,” October 10, 2007. <https://www.refugeesinternational.org/advocacy-letters-1/2017/10/10/making-the-global-compact-on-refugees-work-for-all-women-and-girls>