



Committee on Migrant Workers

35th Session: Half-day of general discussion on draft General Comment No. 6

27 September 2022

Building Toward Migration Justice: Using All the Tools in the Toolbox

The Quaker United Nations Office works on the human rights of migrants because of our belief in the inherent dignity of all and our commitment to work for, with and through international law and multilateral processes to ensure the dignity of all members of our human family regardless of the borders we have crossed or why we have crossed them.

It is important for me to start there because whilst we will talk today about processes we work on them for a purpose.

I am pleased to see this discussion today and to have heard from others on how they see this process align with their purposes, especially where those purposes that align with ours on human rights of migrants. Because when it comes to upholding the human rights of migrants regardless of status, we need all the tools in the box. And despite the politicisation of migration at national levels, the use of migration flows for political leverage, and widespread lethal disregard for migrants lives, States have created these tools (the Convention, the Compact, the mandate of the Special Rapporteur) and collectively we can – and must – use them to build towards migration justice.

A few thoughts from me on how more clarity on convergence between the Compact and the Convention could be of benefit to migrants

Progressive interpretation and the development of law and guidance as a relay race

Whilst we are speaking today about convergence, in some ways the divergence of the texts is most interesting, where that divergence presents a progressive interpretation and adds to the protection of the human rights of migrants.

The Global Compact for Migration, for example, is, in my ready, much stronger on

- Saving lives: ending lethal disregard as we phrase it (borrowing from the High Commissioner for Human Rights' powerful depiction). The Compact and the Progress Declaration of the International Migration Review Forum, although far from what we would most like to have seen, indicate a direction of travel from States that is clearer than the Convention that responses to irregular entry and stay must be in line with International Human Rights Law. This direction of travel from States is influenced in part

we assume by the work of the Committee, including your General Comment 2 – handing the baton between the Convention and Compact.

- Participation: the Convention has provisions on participation and the GCM makes reference to participation by migrants amongst other stakeholders, but the IMRF Progress Declaration contains more specific language on meaningful participation by migrants. This was not an easy win in the text, but an important one and one it would be good to see the Committee contributing to the interpretation and follow up of. This is something we would like to see reflected in your General Comment. The IMRF was a moment not just to hear from State but also from migrants and their calls for more meaningful engagement should be heeded by all of us working in this area.

Where language or interpretation by States drops below international law and standards the Committee must hold the line, but where the language of the Compact and Progress Declaration go beyond the Convention or add progressive specificity, the Committee can and should reinforce this in its engagement with States Parties and other activities.

Complementarity of follow up processes

In many ways I am more interested in the complementarity and mutual reinforcement of the follow up mechanisms for the Compact and Convention because they are less static than the texts themselves. And I am interested in this General Comment is a platform to strengthen this from.

The Convention has the stronger follow up and accountability mechanisms, but GCM follow up by the UN system offers the possibly of greater scale and reach. (Although with the caveat that both have much more limited reach into States that see themselves primarily as countries of destination.) I say this not to highlight the respective weaknesses but because these differences can add strength if used well in combination.

For example and the country level: The GCM speaks about national implementation plans, this is not a binding commitment in the Convention but comprehensive, coherent, cross-sectoral migration policy is a key to implementing the Convention. So the Committee can ask, recommend and guide on national implementation plans and sectoral policies. And vice versa your concluding observations and General Comments should be incorporated into the analysis and technical assistance provided through the work the UN Network on Migration at the country level to support GCM implementation. With States Parties then reporting to you on measures they have taken and the Committee providing further assessment, recommendations and guidance.

That example draws on the different strengths of the follow up mechanisms: the universality and comprehensiveness of the GCM, the country specificity and oversight of Committee, the ongoing engagement for technical assistance by the Network at country level, the reporting requirement of the Convention.

Additionally, it makes sense to mutually reinforce on the thematic work too, for example by bringing the Committee's expertise into the GCM follow up actions, including those shaped by the IMRF Progress

Declaration and again this is a two-way street. To give three examples (all referred to in the current draft workplan for the Network):

1. The Convention covers the right to liberty; the GCM calls for alternatives to immigration detention; the Committee adds to this through its General Comment 5; the Network adds technical support through the peer learning events it has provided a platform for; the Committee can further explore this in dialogue with States Parties when they report.
2. The Convention covers non-discrimination, including on grounds of race; the GCM contains an Objective and a Guiding Principle on non-discrimination; the IMRF Progress Declaration contains a commitment from States to

eliminat[e] all forms of discrimination, including systemic racism ... by reviewing, developing and implementing relevant legislation, policies and practices ...

This is something the Committee could progress through Concluding Observations or by further unpacking this in other activities, potentially in collaboration with the Committee on the Elimination of Racial Discrimination.

3. For obvious reasons neither the Convention nor the Compact mention COVID, but for obvious reasons the implementation and follow up mechanisms for both (the Committee and the UN Network and reviews) have engaged with the human rights impact for migrants of COVID and COVID responses. Whilst your guidance so far has not been joint, the commitment in the IMRF Progress Declaration to learn from COVID for preparedness for future health crises and the inclusion of this in the Network's draft workplan offer further opportunities to for collaboration and mutual reinforcement. The reporting, review and recommendations of the Committee can be reflected on to contribute to lessons learned from this pandemic to inform further guidance and technical support in preparation for future health crises to enable responses that have at their heart an aim to lower the human cost for migrants.

I will finish by saying I think this is a good moment to further explore the convergence of these instruments and the complementarity follow up and oversight mechanisms, the IMRF and in particular the consensus adoption and endorsement of the Progress Declaration indicate a maturing of migration multilateralism in the UN and with a human rights based framing. The GCM may not be a hard law instrument, but it has garnered a significant level of political buy in and this must be leveraged.

To come back to the toolbox, we will build together better towards migration justice if we understand well the different functions of the tools we have and how to use them in combination. Thank you for the work you are doing to explore this.

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