

Global Compact for Migration Third Round of Negotiations April 2018

Alianza Americas continues to be actively engaged in the negotiation process of the Global Compact for Safe, Orderly and Regular Migration. We encourage States to maintain the spirit of the New York Declaration for Refugees and Migrants along the negotiation process so that the final product includes actionable commitments that promote and protect the human rights of migrants and their families.

Acknowledgment of mixed flows and differentiation between migrants and refugees

Mixed flows are connatural to human mobility. Migrants and refugees leave their countries seeking protection and opportunities, travelling through the same routes, and facing similar challenges. The clear cut conceptual differentiation does not occur in practice and leaving out any reference to mixed flows, the principle of non-refoulement and international protection weakens the spirit of the NY Declaration. The Compact needs to acknowledge that migrants may have protection needs and that they must be given the opportunity to seek protection, according to international law. Furthermore, many refugees become migrants when they are unable to obtain the protection that they seek. A perspective that ensure complementary between the two Compacts and that upholds the principle of non refoulement is essential. It should be reflected from the Preamble and in almost all Objectives (3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20 and 21).

Border management should include effective individual assessment procedures, observing the principle of non-refoulement and protections for children, and victims of human trafficking and gender-based violence. The changes to Objective 12 undermine these efforts by focusing on legal certainty and predictability in migration procedures and deleting all mentions of mixed flows and asylum procedures. These changes ignore the human right to seek asylum and erode essential human rights protections. We encourage States to reinstate the prior version of Objective 12, and if not to add refugees and persons worthy of other forms of international complementary protection in the chapeau. Also, we want to insist on the need to include an action on information on asylum and other forms on international protection to ensure complementarity between the two Compacts.

Additionally, safeguards should be incorporated to ensure that persons in need of protection are actually able to leave the country where they are and enter another one to seek the protection that they need in Objective 11, by specific references to the **principle of non refoulement** in the chapeau and in actions b, c, and Objective 21, action e. The protection of **family unity** -also a

human right- can be achieved by adding that children should not be separated from their parents in immigration procedures in action d of Objective 12, g of Objective 13, and maintaining it in g of Objective 21.

Migratory status is key to protect migrants from discrimination, and to enable them to access human rights protections and services, without being targeted or threaten with immigration enforcement. Migrants prefer regular pathways that allow them to live without the need to hide, nor the fear of being forcibly removed from a life project that they were seeking to create for themselves and their families. When options for regular migration are not available, irregular migration becomes the only alternative. It is important to underscore that most irregular migration is not the result of unlawful entry but rather of visa overstays and the limited or inexistent regularization pathways. Developing regular pathways is a key step towards reducing irregular migration. We encourage States to maintain Objective 5 and all of its actions.

All migrants have **human rights and labor rights** and States have corresponding obligations in regard to all persons within their jurisdiction. There is no legal international basis to deny migrants rights or limit their protection on the basis of their migratory status, except for their right to enter a foreign country and political rights. States should refrain from implementing and enforcing their migration policies through limiting or denying rights on the basis of migratory status. We support the wording of Objective 15, particularly the chapeau.

The protection of migrant **worker's rights** regardless of migration status should be an important element of the Compact. Access to free grievance and dispute resolution mechanisms, free legal representation and effective and appropriate remedies are fundamental for all workers, including those who migrate to work. Migrant workers need the assurance that their data will be protected and that they will not fear immigration repercussions for exercising their labor rights. It is insufficient for the Compact to address migration contributions to development from the perspective of facilitating remittances flows and skills matching. The Compact must address effective protection for individual and collective rights of migrant workers and their families. It must also acknowledge that the denial or limitation of **human rights protections** on the basis of migratory status is contrary to international labour law and international human rights law. We strongly support the addition to the definition of human rights as a guiding principle, the chapeau of Objective 15, and actions 6j, 7d, 7h, 10 e, 13g, 15 b, 15 c, 15 f, and 15 g. We urge States to strongly support them, including the revisions in Draft 1.

Immigration Enforcement

Criminalization of irregular migration is not an effective deterrent. We encourage States to adopt a migration management approach through administrative law, that does not result in the deprivation of liberty or other fundamental rights. States have other policy tools and they must develop them comprehensively to make migration safe, orderly and regular.

Documentation is essential towards the Compact's goals and Objective 4 could be strengthened by including the migrant's right to be recognized as a person before the law and in the need for documentation to enjoy that right in the chapeau; adding in action 1, the issuance of identity documents and certificates at consulates at accessible fees; and in action 2, facilitating registration of births and marriages and the issuance of certificates.

Detention is not an effective deterrent against irregular migration and it creates the context for frequent and complex human rights violations. The Compact should take this opportunity to encourage the use of community-based alternatives to detention for all migrants as a specific action in Objective 13. Basic human rights guarantees must be ensured to all persons who are deprived of their liberty for immigration reasons including habeas corpus petitions and the right to legal representation. Such elements should be included in action c of that same Objective.

The use of the term **returns** to include both voluntary and forced processes erases the due process guarantees that should be incorporated into immigration proceedings. The emphasis on facilitating returns, fails to consider that their sustainability depends on the fact that returned migrants have the proper documentation to find a job, travel, and access services in their country of origin, and that economic, social and safety conditions allow them to resettle and reintegrate. The challenge is not how to process deportations swiftly, but rather how to create conditions that attract migrants' return and that enable deportees to rebuild their lives.

Objective 21 would greatly benefit from including due process elements and individual considerations that should be a part of an administrative or judicial decision to remove, deport, or expel a migrant from its territory in action e, considering its great implications. These elements include an independent adjudicator; individual proceedings; right to a defense; and the right to appeal the decision. Furthermore, immigration decisions should include due consideration to the length of a migrant' stay, their family ties, and their social and cultural contributions. As well as the principle of non refoulement, as stated earlier.

Implementation and capacity building

We want to stress the importance of aligning the Compact with the Sustainable Development Goals and its national and regional implementation mechanisms. It is also necessary to consider mechanisms and coordination with the Global Compact on Refugees. The necessary complementarity between the two Compacts must be addressed to avoid duplicating efforts and to fill in gaps. It is vital to ensure that people do not “fall through the cracks” between the two Compacts.

We insist on the need for an active involvement and participation of multiple UN agencies with mandates related to the objectives of the Compact. We want to stress the centrality of human rights and the need to incorporate a wider scope of UN programs and funds, specialized agencies, other entities, and, of course, the Secretariat. Specially, the OHCHR, UN Women, UNICEF, ILO, UNDP, UNHCR, WHO, must be engaged in its implementation. The Compact demands a coordinated effort from the UN system.

IOM was identified as a key agency for the implementation. We want to stress the importance of revising its mandate to include a human rights dimension in it so that it is aligned with the Compact. There is a need to continue working towards IOM’s full integration into the UN system, which includes a revision of its budgeting and financial resources, and further coordination with the rest of the UN system.

Follow-up and review

The follow-up and review should be carried by agencies that are not involved in the implementation. Failing to do so, undermines the value of monitoring and evaluation responsibility. The strength of the Compact relies on the possibility to critically assess how the UN System, States, civil society and local authorities are implementing it. Those agencies playing a critical role in the implementation should not be a part of the follow-up and review process.