

Global Compact for Migration: Second Round Negotiations March 12-15

Alianza Americas has been actively engaged in the negotiation process of the Global Compact for Safe, Orderly and Regular Migration. This immigrant-led network urges governments to live up to the promise of the New York Declaration for Refugees and Migrants and make actionable commitments towards the promotion and protection of the human rights of migrants and their families. These comments are offered as input to constructive dialogue with governmental delegations in order to strengthen the document with a practical perspective rooted in experiences of migrants and their families.

Differentiation between migrants and refugees.

Migrants leave their countries seeking protection and opportunities. The clear cut conceptual differentiation between migrants and refugees is not a part of real-life migration flows. The Global Compact on Migration needs to acknowledge that migrants may have international protection needs that they may voice later and request protection. Similarly, many asylum seekers, refugees, and other persons who seek international protection or who are unable to do so, become migrants against their will and in spite of their protection needs. This comprehensive perspective is very clear in the New York Declaration and should be maintained in the Global Compact on Migration.

Border management should include effective individual assessment procedures, observing the principle of *non-refoulement* and the protections for children and victims of human trafficking. Objective 12 describes efforts to develop status determination procedures and we would like to insist on the importance of maintaining it. However, Objective 11 appears to promote cooperation between States in border management, failing to incorporate safeguards that ensure that individuals in need of protection are actually able to leave the country where they are in danger, and enter another one to seek the protection. We suggest specific inclusions of the principle of *non refoulement* in Objective 11 actions b, c; and Objective 21 action e. To make this issue clear, an explicit reference to persons worthy of other forms of international complementary protection should be included in the chapeau of Objective 12.

Regular and Irregular Migration

Migratory status is often used as a criterion to discriminate, to deny access to human rights protections and services, and to target and threaten people 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 of visa overstays combined with limited or inexistent regularization pathways. Developing regular migration pathways will be a key step toward reducing irregular migration.

Migrants, as human beings, are right holders, regardless of migratory status. States have human rights obligation in regards to all persons within their jurisdiction. There is no legal international basis to deny rights or limit protections 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 invite State delegations to consider the significant body of work of the UN Treaty Bodies and Special Procedures and we offer our services to highlight some of those standards as negotiations advance.

We want to insist on the importance of maintaining the integrity of specific objectives and concrete actions in the Zero Draft Plus that ensure, protect and promote the human rights of all migrants and their families, irrespective of their migratory status. As specifically mentioned in the Zero Draft Plus, the inclusion of the operationalization of a number of specific Guidelines developed by the UN System (Objective 2 a, b, c, Objective 6 b, Objective 7 a, Objective 11 a), as well as general references to guidelines and principles (Objective 5 a, Objective 19 b) are positive elements that should be maintained.

The protection of migrant workers' 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 not sufficient for the Compact to address migration contributes to development from the perspective of how to facilitate remittance flows and the need for skills matching. The Compact must also address effective protections for the collective rights of migrant workers and their families.

The Global Compact on Migration needs to 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 support maintaining the definition of human rights as a guiding principle and action 10 e, the chapeaus of Objectives 11 and 15, and actions 12e, 13g, 15 c and 15 f. We urge states to desist from asking that it be removed.

Implementation and Capacity Building

We want to stress the importance of aligning the Global Compact on Migration with the Sustainable Development Goals and national and regional implementation mechanisms. It is also urgently important to ensure 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 participation of multiple UN agencies with mandates related to the objectives in the Global Compact on Migration. 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. Specifically, OHCHR, UN Women, UNICEF, ILO, UNDP, UNHCR, and WHO must be engaged in implementation. The Global Compact demands a coordinated effort across the UN system.

IOM was identified as a key agency during the first round of negotiations. 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.

Follow Up and Review

The follow-up and review should be carried by a different agency from the one coordinating implementation. The strength of the Compact relies on the possibility to critically assess how the UN System, states, civil society and local authorities are taking action. Those agencies that play a critical role in implementation should not be driving the follow-up and review process.