

Global Compact for Migration Fourth Round of Negotiations May 2018

Alianza Americas maintains actively engaged in the negotiation process of the Global Compact for Safe, Orderly and Regular Migration. We call on States to maintain the spirit of the New York Declaration for Refugees and Migrants during the negotiations, working towards a Compact that promotes cooperation for the protection and promotion of the human rights of migrants and their families.

Mixed flows and complementarity must be addressed in the negotiations of the two Compacts. As clearly stated in the NY Declaration, migration flows are mixed, and both refugees and migrants have human rights. The challenge is thus to develop two Compacts that strengthen protection and to ensure that all migrants and refugees are duly considered and that groups of individuals do not fall into the cracks of existing protection systems. We particularly welcome and support the inclusion of **natural disaster and climate change induced displacement** as adverse drivers in Objective 2.

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 in the Global Compact on Migration is contrary to the spirit and the letter of the NY Declaration (paras. 21-40). The Compact needs to acknowledge and address the protection needs of migrants under international law. Furthermore, refugees become migrants when they are unable to obtain the protection that they seek; and migrants may become refugees when they realize that they will face persecution if their return to their countries of origin. The principle of **non refoulement** is essential to uphold human rights. Its inclusion in the Compact strengthens human rights protections and ensures that persons fearing for their life, liberty or personal integrity have the opportunity to present their claims for protection before competent authorities. It is not exclusively an element of international refugee law, it is also part of international human rights law. It should be reflected in the Preamble and in Objectives 5 f, 11 Chapeau, 11c, 21 Chapeau, and 21e.

Immigration enforcement through the criminalization of irregular migration has proven to be an ineffective 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. This approach should be reflected in Objective 16 Chapeau.

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. 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, by adding: compliance with “international refugee law” in Objective 11b, and “safeguarding the principle of non refoulement” at the end of Objective 11c.

Editions to Objective 12 in Draft 1 weaken protection efforts by focusing exclusively on legal certainty and predictability in migration procedures and deleting all mentions of mixed flows and asylum procedures, undermining the right to seek asylum and eroding essential human rights protections. We encourage States to reinstate the prior version of Objective 12. If they persist with the current version, we recommend replacing in 12 Chapeau migrants with “persons crossing international borders”. 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.

Detention for immigration violations whether part of civil or criminal enforcement efforts does not dissuade migration, but rather creates the context for frequent and complex human rights violations. The Compact should take this opportunity to encourage the use of non-custodial community-based alternatives to detention for all migrants in Objective 13 Chapeau and by adding a specific action to this Objective. Basic human rights guarantees must be ensured to all persons who are deprived of their liberty for immigration reasons including habeas corpus petitions and due process guarantees, including the right to legal representation. Such elements should be included in 13e.

The use of the term **returns** to include both voluntary and immigration enforcement actions blurs due process guarantees that must be a part of all immigration proceedings. These guarantees, mentioned in Objective 21 e, 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’s stay, their family ties, and their social and cultural contributions. As well as the principle of non refoulement, as stated earlier.

Families should not be separated at ports of entry and in immigration enforcement actions. Furthermore, return decisions must take into consideration the impact of forcibly removing, deporting or expelling on the rest of the family, particularly when migrants have caretaking responsibilities for family members. 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 Objectives 12d, 13e, and 21e, and maintaining it in 5g, 7f, 8c, 13g, 16d, and 21g.

The emphasis on **effective and efficient cooperation on returns** fails to consider that their sustainability depends on the conditions that returned migrants encounter in their country of origin, including human rights protections. 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. Failing to consider these elements will only result in returning migrants emigrating once again.

All migrants have **human rights and labor rights** and States have corresponding obligations in regard to all persons within their jurisdiction. Human rights are indivisible and interdependent and thus **it is**

impossible to categorize some rights as fundamental or essential. Such efforts undermine the concept of human rights and aim at denying rights or limiting State obligations, contrary to the Compact's Preamble (para 2). The Compact should avoid making distinctions among rights.

There is no legal international basis to deny migrants rights or limit their protection on the basis of their migratory status, as clearly stated in the Human Rights cross-cutting guiding principle (para 14). Accordingly, 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 its Chapeau and 15c.

The Compact includes prohibitions of data sharing between immigration enforcement agencies and State agencies that provide social services and the administration of justice, sometimes called **firewalls**. Establishing a clear separation between them is based on two basic premises: immigration enforcement powers are limited, and migrants have human rights irrespective of their status. Such prohibitions must be maintained to ensure migrants rights to health, education, access to justice and to social service providers, the police, labor law enforcement agencies and the administration of justice. We support their inclusion in Objective 15c and 6j.

The Compact 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, and its inclusion in Objectives 15 Chapeau, 6j, 7d, 7h, 10e, 13g, 15b, 15c, 15f, and 15g. We urge States to strongly support all of them.

The protection of migrant **worker's rights** regardless of migration status is central. 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.

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

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 striving 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 and it is the main objective of the Compact that should be explicitly developed. We encourage States to maintain Objective 5 and all of its actions and to call for expanding and creating legal pathways for migration related to labor opportunities, family unity, studies, health treatments (in Objective 5d) and humanitarian reasons (in Objective 5f). It should be coordinated with the issuance of documentation to ensure effective access to such programs.

Migratory status should not be tied or conditioned to one employer. Migrant workers should have the same freedom that all workers enjoy and be able to change employment. Restricting their flexibility and possibility of changing employment only results in irregular migration. We urge States to support Objectives 6h, 6i, 6j, 6k.

Additionally, **regularization** programs are not a reflection of State weakness, but rather the admission of the need to expand and update legal pathways periodically. Regularization programs are a migration policy tool that enable States to document, include and integrate migrants living in their territory, with positive impacts on their security, public health, public education and social integration goals. A call on States to establish regularization programs periodically should be explicitly included in Objective 5.

Implementation and capacity building are essential for the Compact. We want to stress the importance of aligning the Compact with the Sustainable Development Goals and its national and regional implementation mechanisms. 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.

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.