

Global Compact for Migration Fifth Round of Negotiations June 2018

As we enter the fifth round of negotiations with a second draft of the Compact, Alianza Americas acknowledges the careful work of the Co-Facilitators in incorporating into the text the positions shared by many States, while addressing their concerns. Alianza Americas calls on States to continue to uphold the spirit of the New York Declaration for Refugees and Migrants, working towards a Compact that promotes cooperation for the protection and promotion of the human rights of migrants and their families. This is the path to make migration safe, orderly and regular.

The **vision and guiding principles** section is central to the Compact. The **rule of law and due process** principle could be strengthened by developing the content of due process guarantees in immigration proceedings. Access to justice, individual assessment, legal representation, interpretation or translation, and appeal procedures should be enumerated here. The principle of **national sovereignty** has already been strengthened, so there is no need to reference it in the implementation of the Compact.

Important advances have been made in this draft in terms of addressing **mixed flows and complementarity**. We appreciate acknowledgement of the mixed nature of migration, and that both refugees and migrants have human rights, as stated in the NY Declaration. The two Compacts must strengthen protections and ensure that all migrants and refugees are duly considered, upholding international law, and that groups of individuals do not fall into the cracks of existing protection systems. Hence, several objectives should be modified to apply to **persons crossing international borders**, not only migrants. At points of entry it is impossible to distinguish *a priori* between migrants, asylum seekers and persons in need of other forms of complementary protection. We thus suggest revising Objective 7 Chapeau, Objective 11 Chapeau, 11 d, and Objective 12 Chapeau to use “persons crossing international borders” rather than “migrants”. In that same spirit, we suggest including references to **international refugee law**, as now included in the Preamble, next to international human rights law, in 11b and 11d, as it contributes to strengthened international protection. Also, we insist on the importance of including the principle of **non refoulement** in Objective 11 Chapeau, 11c and 21e. Finally, we particularly welcome and support the inclusion of **natural disaster and climate change induced displacement** as adverse drivers in Objective 2.

Certainty and predictability in migration procedures strengthens international protection. We appreciate the editions to the title of Objective 12 and want to suggest the addition of “status”, so that it reads “status determination”, as well as in 12c.

Addressing adverse drivers and **ensuring that migration is safe**, including irregular migration, to prevent disappearances, loss of lives, and severe injuries is a shared goal. We believe that Objective 2 Chapeau should be edited to better reflect a spirit of cooperation and concern. In addition, “safety” should be added as one of the objectives of migration policies in Objective 3 Chapeau. Consular coordination is very important for relatives searching for missing migrants and it should be incorporated to 8d, as well as access to justice, as detailed below.

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. This approach should be reflected in Objective 16 Chapeau.

We suggest including specific limitations in terms of when information or data gathered by States will not be shared or used for immigration enforcement purposes. This element will result in achieving the Compact's Objectives without compromising them due to migrants' fear of immigration enforcement. We suggest adding this caveat "**information or data gathered by States will not be shared or used for immigration enforcement purposes**" in Objective 1 Chapeau, 6j, 7i, and adding "safe" to access to basic services in Objective 15 Chapeau. The addition of the assurance that apprehensions will not take place in places of service delivery is unfortunate and results in an invitation to apprehend elsewhere, hence we propose to add the caveat stated above in 15c as well and remove the apprehensions assurance.

Detention for immigration violations, whether part of civil or criminal enforcement, does not deter migration, and does result in pervasive and systemic human rights violations. The Compact should include judicial review in Objective 13 Chapeau.

The emphasis on **effective and efficient cooperation on returns** fails to consider the conditions that returned migrants encounter in their country of origin. 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. Hence the importance of international cooperation. Failing to consider these elements will only result in returning migrants emigrating once again.

We continue to be concerned about how to ensure that **returns are safe, human rights-based and dignified**, as stated in Objective 21 Chapeau. Including a human rights dimension to Objective 21 is necessary, thus we suggest adding "human rights-based" in the title. In that same spirit, we propose adding "to guarantee" to Objective 21 Chapeau. The use of the term **returns** to include both voluntary and immigration enforcement actions blurs due process guarantees that should be a part of immigration proceedings that result in the highest sanction a deportation or expulsion. Accordingly, we underscore the need to incorporate in 21e the principle of non refoulement, as stated earlier, and the relevance of including in immigration enforcement decisions due consideration to the length of a migrant's presence in the country, their social ties, cultural contributions and the protection of family unity.

All migrants have **human rights and labor rights** and States have corresponding obligations in regard to all persons within their jurisdiction. Revision 2 has incorporated human rights and international human rights law in multiple objectives, a very positive addition to the Compact. It is now necessary to strengthen migrants' **access to justice**, in order to ensure human rights protection. Access to justice entails filing an administrative or judicial complaint, requesting an investigation and seeking justice when private individuals and public officials have violated the law or committed crimes. Ensuring access to justice is necessary to strengthen human rights in the Compact and it should be reflected in Objective 8 Chapeau, and 8d, as well as in the Guiding Principles, as mentioned earlier.

The protection of migrant **workers' rights, ensuring decent work regardless of migratory status** is central. Access to free grievance and dispute resolution mechanisms, free legal

representation and effective and appropriate remedies are fundamental protections for all workers, including those who migrate to work. Strengthening protections for individual and collective rights of migrant workers and their families will contribute to safe, orderly and regular migration. Editions to Objective 6 in Revision 2 have strengthened it. We wish to insist that workers have the right to hold on to their contracts, travel and identity document and thus the Compact should not include “consensual retention” of such documents in 6i. We also stress the importance of ensuring workers that there will not be immigration enforcement consequences if they exercise their labour rights and demand protection in 6j.

Documentation is essential towards the Compact’s goals. We appreciate the editions to Objective 4 that reflect an understanding of the migrant’s right to be recognized as a person before the law and the need for documentation to enjoy that right. We want to insist on the importance of further strengthening 4c related to consular documentation, by adding birth and marriage certificates. These documents are essential to demonstrate identity, citizenship and for the protection of family unity.

Migratory status is key to protect migrants from discrimination and to enable them to access human rights protections and services, without being targeted or threatened 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. Developing **regular pathways** is a key step towards reducing irregular migration that should be explicitly developed as a main objective of the Compact. We encourage States to maintain the editions to Objective 5, that acknowledge and strengthen migration for labour, family, and academic reasons, and as a result of multiple factors that demand humanitarian visas. In this same spirit, we want to suggest strengthening the Objective 5 Chapeau by adding the development of pathways in countries of origin, transit and destination, as well as protection of family unity and the consideration of social ties.

Families should not be separated at ports of entry and in immigration enforcement actions. Furthermore, return decisions must take into consideration the impact of forcible removal or deportation on the rest of the family, particularly when migrants have caretaking responsibilities for family members. The protection of **family unity** -also a human right- has been strengthened with the editions on Revision 2. They should all be maintained.

The inclusion and strengthening of **gender** elements in the Compact is welcomed and appreciated. Accordingly, we suggest that “relevant basic” be removed as qualifiers of services for migrant women in 16f. And we also view as unnecessary the reference to migrant women in 17e. All migrants and their relatives should have access to complaint and redress mechanisms.

We support efforts made to address **vulnerabilities** in the context of migration. Objective 7 Chapeau should include vulnerabilities that result from a precarious migratory status, and 7b should include “cultural and religious” to the enumerated list of sensitive approaches that should be incorporated. The scope of Objective 7 should encompass all migrants in a situation of vulnerability, ensuring access to legal representation, options for regular status and should enable their access to justice. Also, 7j should include victims of crime and human rights violations. Finally, 12 b should include not only victims of trafficking in persons, but also victims of all crimes and the reference to aggravating circumstances for victims of abuse related to smuggling should be removed.

We support the addition of Objective 23 on **international cooperation**, we believe that it strengthens the Compact. Consistent with our prior comments we suggest including in Objective 23 Chapeau “with full respect for human rights and avoiding approaches that aggravate migrants’ vulnerability.” Furthermore, we believe that it is necessary to incorporate a role for UN human rights agencies that will ensure that cooperation agreements are consistent with international law, as a new paragraph.

Implementation is essential to the impact that the Compact may have, thus it is important to assess carefully the elements listed on Revision 2. The human rights dimension must be strengthened. Cooperation should be included in sub-para 44b and a new sub-para should include “the technical support of the Office of the High Commissioner for Human Rights, which will also be instrumental”. In that same spirit, in **follow-up and review**, a new paragraph should be added to include an invitation to universal and regional human rights treaty bodies and special procedures to contribute to the International Migration Review Forum. Finally, we believe that efforts should be made to incorporate **a greater role for civil society organizations**, that will participate in the implementation and oversight of the Compact. The voice of migrants, their families, their organizations, and the organizations that work in advocacy and service provisions for migrants should be included in follow-up and review.