

# Civil Society Open Letter to United Nations Member States on the Global Compact for Safe, Orderly and regular Migration

3 May 2018

Excellencies,

We, the undersigned members of civil society, write to you regarding the negotiations on the Global Compact for Safe, Orderly and Regular Migration (GCM). **Civil society is connected** across a diversity of networks, sectors and regions, and we share a **common vision** for a GCM that will improve the lives of migrants and communities across the globe. To achieve that vision we remain committed to working with you to ensure that the **GCM will reduce the exploitation and loss of life** faced by so many migrants and their families, as well as offer viable, long-term solutions.

We thank the Co-Facilitators in their efforts to maintain a document that attempts to address the needs and uphold the rights of all migrants, regardless of status, in a time of rising xenophobia. We also appreciate their efforts to take the views of civil society into account. Unfortunately, after three rounds of negotiations and a year of consultations and stocktaking, we see the very **real possibility** that the shared vision articulated in the **New York Declaration will be undercut**.

Withholding access to human rights based on migration status erodes existing good practices, violates international human rights obligations, and does not deter irregular migration. The failure to address the complexities of mixed migration risks letting migrants in vulnerable situations continue to fall through gaps in protection. Continued support for detention of children despite evidence of its long-term harmful effects undermines the human rights and best interests of the child. Finally, without the genuine intent to expand safe and regular pathways, your efforts and ours will mean little to the millions of migrants trekking across mountains and deserts, taking to the seas in overcrowded boats, and living, studying, and working among us in a constant state of precariousness.

This is not, however, a foregone conclusion.

*We, as civil society and as migrants, note **several key areas** that must be addressed in the time remaining in order to ensure the GCM will live up to the vision of the New York Declaration:*

## ○ **SAFE ACCESS TO SERVICES**

Access to education, justice in all areas of law - including labour, decent work and living conditions, and the highest attainable standards of health are just some of the fundamental rights enshrined in international human rights law and national legislation as belonging to **everyone regardless of status**. Yet during the negotiations we have seen Member States, many of them ostensible champions of human rights, arguing that equal access to these rights is contingent upon regular migration status. Moreover, there is inflexible pushback against methods of ensuring irregular migrants can access services and exercise their rights without fear of incrimination or arrest. Civil society has provided **multiple examples from all regions** where such measures allow for irregular migrants to safely report crimes, gender discrimination, and unfair labour practices; attend or take children to school; and receive medical attention. Rather than undermining the whole-of-government approach, **these tools are essential** to safeguard the trusted role of service providers in society.

## ○ **IMMIGRATION DETENTION**

In the New York Declaration, governments committed to protect and uphold the human rights and best interests of all migrant children by working towards ending the practice of child immigration detention. We welcome the inclusion of language that supports ending this practice by providing for non-custodial

alternatives and community-based arrangements. **Alternative solutions** that protect children and respect their rights without resorting to detention are proven to work effectively and efficiently. If the GCM is to remain aligned with its guiding principles of child-sensitivity and the respect, protection and fulfilment of the human rights of all migrants, it is imperative that the text retains its focus on **ending the practice of child immigration detention** and on using **detention of all other migrants only as a measure of last resort** while working to create, implement and expand alternatives.

○ **MIXED MIGRATION**

Migrants and refugees move in similar circumstances and along the same routes in mixed migration flows -- a reality of contemporary human mobility that is fuelled by the lack of safe and regular migration pathways. They often suffer the same human rights abuses, and the reasons why they leave their countries of origin are also intertwined, so much so that the same individual may be labeled a migrant or a refugee at different points in time. Addressing these **common challenges and similar vulnerabilities** was exactly what the New York Declaration set out to achieve. It is therefore essential that individuals who have not yet asked for, do not have access to, or have been denied asylum, and migrants in situations of vulnerability, are considered **fully within the scope of the GCM**. We also oppose strategies to deter large movements of migrants and refugees, including arrangements between transit and destination countries that deny **due process** to migrants.

We welcome the GCM's 360-degree vision to ensure that no one is left behind in global migration governance. While we recognize that the GCM and the Global Compact on Refugees are being developed in separate processes, to ignore the intimately linked experiences of refugees and migrants is to **ignore the reality both on the ground and facing decision-makers**. While there are specific rights derived from refugee law, protection based on human rights and situation-specific or individual needs is a broader concept that applies to all individuals and requires **communication and referral mechanisms between the two Compacts** to prevent protection gaps.

○ **SAFE AND REGULAR PATHWAYS**

Underpinning all these issues is the critical need to **expand safe and regular pathways and facilitate options for obtaining regular status**. Expanding these pathways is the key to creating an actionable GCM that upholds the vision of the New York Declaration. This does not mean providing blanket regular status to all irregular migrants in a territory. Rather, we urge States to have an evidence-based discussion on the ways in which they can cooperate and expand on already existing practices, such as humanitarian visas, family reunification and labour pathways that protect the rights of migrant workers. If the GCM is to achieve safe, regular and orderly migration, it must **provide the tools** necessary to meet this goal.

On 19 September 2016, the Member States of the United Nations committed to addressing large movements of refugees and migrants in a "humane, sensitive, compassionate and people-centered manner." As key stakeholders and subjects of this GCM, **civil society, migrants and their communities have a strong and important voice** in these negotiations. The GCM has the potential to protect the dignity of all migrants and to leave no one behind. As we enter into the final rounds of negotiations, we urge you to **stay true to the spirit of the New York Declaration** and engage in open dialogue. We appeal to you to be bold and to think long-term.

***We must seize this historic chance. All of us have come too far to go back now.***

Yours sincerely,