

REVIEW OF THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION - DRAFT REV 2, MAY 2018

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Prepared by: Mixed Migration Centre (MMC)

On the 28th of May 2018, the co-facilitators released the Draft Rev 2 of the **Global Compact for Safe, Orderly and Regular Migration (GCM)**, reflecting the progress from the deliberations of the first four rounds of intergovernmental negotiations. This review presents the MMC assessment of this new draft. It builds upon the **previous assessments and statements by the MMC** on the zero draft, zero draft plus and revised draft 1.¹

KEY POINTS

- MMC very much welcomes the new draft, as throughout the text in various objectives it includes a strengthened focus on human rights and the need for states to observe international human rights and humanitarian law. In particular, **MMC is pleased to see the newly added reference to the principle of non-regression** under the human rights section of the vision and guiding principles, to ensure that adoption of the GCM by no means could lead to going back on any of the already adopted instruments of human rights law.
- In the preamble, the following revised text is a major improvement and in a much better way **reflects the complex nature of mixed migration flows, where refugees and migrants may face similar challenges**. It also provides a better and more nuanced reference to the concept of vulnerability: *“We recognize that migrants and refugees may face many common challenges and similar vulnerabilities. They are all entitled to the same human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times. While both may be particularly vulnerable to the risk of violations and abuses of their rights, only refugees are entitled to additional protections under international refugee law”*. This reflects the spirit of the New York Declaration, and MMC would urge state parties to remain committed to this addition.
- **MMC is concerned about some of the change under Objective 6, dealing with decent work** and urges member states to reinstate some of the previous commitments. Details are included in the ‘review of selected issues’ below.

¹ A detailed assessment of the full GCM zero draft by the Mixed Migration Centre is available [here](#). A statement by the MMC ahead of the 2nd round of negotiations is available [here](#). MMC’s review of Draft Rev 1 is available [here](#).

- **The text under objective 7, dealing with addressing and reducing vulnerability in migration has improved in many ways:**
 - It now includes additional references to international humanitarian law and the need to protect and assist migrants in a situation of vulnerability and provide them with specialized care at all stages of migration, regardless of their migration status.
 - It now includes a commitment to prevent migrants from falling into an irregular status, as well as individual status assessment for migrants that have fallen out of regular status, without fear of arbitrary expulsion.
 - It now includes a commitment to facilitate access for migrants in an irregular status to an individual assessment for regularization.
 - It now includes a commitment to apply specific support measures to address vulnerabilities and assistance needs of migrants caught up in situations of crisis in countries of destination and transit.
- MMC is concerned about the deletion of the notion of ensuring public services are independent from immigration enforcement (the concept of ‘firewalls’) under Objective 7, and urges delegations to reinstate this. **We are, however, pleased with the various strong additions above and sincerely hope this will remain in the adopted GCM.** This reflects the spirit of the New York Declaration and is reflective of the reality of mixed migration and the protection needs for all people in mixed migration flows.
- MMC is very pleased about the **explicit commitment to uphold the principle of non-refoulement under Objective 8 and Objective 21.** As advocated for in the previous assessments and statements on the GCM by MMC, this principle applies to all migrants regardless of status as per International Human Rights Law. We hope this inclusion in the GCM takes away the common misunderstanding that the principle of non-refoulement only applies to refugees and urge all delegations to maintain this important principle in the final draft of the GCM. **The inclusion of this principle is an important tool to ensure complementarity between the GCM and the Global Compact on Refugees (GCR)** and to avoid situations where some people fall through the cracks between these two compacts.
- With regard to border management (Objective 11), MMC welcomes the added references to complaint mechanisms, individualized assessment and the commitment to ensure that all migrants are treated in accordance with International Human Rights Law. **These notions provide important protections for all people on the move at borders,** whereby MMCs 4Mi² data strongly indicates a high incidence of protection-related incidents and human rights violations at or near borders.
- **MMC is very pleased to see that, through several additions, the spirit of Objective 12 as it was in the zero draft is recaptured.** MMC – and many others - had previously expressed serious concerns over deleting the references to mixed migration, individual assessment and the right to seek asylum in the revised draft of the GCM. We urge all states and other stakeholders to ensure these references remain in the adopted GCM and are not taken out again. **Access to the right to seek asylum as well as individual assessments are crucial in the context of mixed migration,** where people in these flows cannot be *a priori* categorized as either refugees or migrants and nationality-based or blanket approaches should be avoided. These reinstated commitments provide another tool to ensure complementarity between the two Compacts.
- Objective 13 on detention includes various welcome additions to ensure that detention is for the shortest possible period of time, as well as against arbitrary detention and the need to act in accordance with International Human Rights Law. However, **MMC is concerned about the change in language with regard to child detention.** The previous draft committed to ‘ending the practice of child detention in the context of international migration’. The current draft commits to ‘working to end the practice of child detention. This commitment is less strong and should by no means be even further downplayed. MMC again urges all states to unequivocally commit to ending child detention in the context of migration. Furthermore, we urge all stakeholders to be ambitious and put a clear timeline on this.

² Mixed Migration Monitoring Mechanism initiative, which interviews approximately 10,000 refugees and migrants on the move per year in over 20 countries.

- **MMC is concerned about various changes in the text under Objective 15 on access to services, which constitute a regression from the commitments in the previous draft.** In two sections, there is now an explicit reference to the differential treatment and differential access to services based on migration status. We feel this is problematic, in particular with regard to access to healthcare, justice and education and urge the delegations to re-consider these changes.
- Furthermore and also under Objective 13, MMC is concerned about deleting the notion of *‘ensuring that personal data is not reported to immigration enforcement authorities’* and replacing this for an explicit reference to *“cooperation between service providers and immigration authorities”*, even though it is added that this should not exacerbate vulnerabilities of irregular migrants by compromising their safe access to these services or infringements to privacy rights, and that they are not apprehended at places of service delivery, including hospitals, schools and courts. While MMC [previously](#) expressed regret that the reference to ‘firewalls’ was deleted, these changes provide even further space for closer cooperation between immigration enforcement and service providers. **We urge delegations to recapture the original spirit of the concept of firewalls, even if not necessarily reverting back to that terminology.**
- With regard to return of children, we feel the language is weakened. **We urge states to reinstate the previous reference, which more explicitly made return of children conditional upon a best interest determination.**
- On the newly added Objective 23, **MMC feels the phrasing of the overall objective provides an opportunity to explicitly commit to complementarity between the GCM and the GCR.** In particular, this commitment could be added to the following sentence: *“We also commit to promote the mutually reinforcing impact between the Global Compact and existing international legal and policy frameworks, by aligning the implementation of this Global Compact with such frameworks, particularly the 2030 Agenda for Sustainable Development [..].”*
- In general, MMC is very concerned about the new Objective 23, and in particular the commitment to “increase international cooperation to accelerate the implementation of the 2030 Agenda for Sustainable Development in geographic areas from where irregular migration systematically originates”. **We urge states to avoid making international development cooperation priorities dependent on whether countries are origin or transit points for (irregular) migration.** Since economic development, up until a certain level, increases migration, the least developed countries are often not the countries where the highest numbers of migrants are originating from. By including this conditionality, there is a risk that those countries most in need of development aid will face significant cuts in available funding for development cooperation, simply because they may not be migrant-producing countries.

REVIEW OF ADDITIONAL SELECTED ISSUES

Preamble

- We **welcome the additional and explicit reference to the following core international human rights treaties** in the preamble, which further embeds the GCM in a solid foundation of human rights law: International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; International Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Rights of Persons with Disabilities.
- In the preamble, MMC welcomes the **added reference to the pioneering work of the former Special Representative of the Secretary-General** for International Migration and Development and his report of 3 February 2017.

Vision and guiding principles

- MMC is pleased to see the following revised statement: *“We also must provide all our citizens with access to objective, evidence-based, clear information about the benefits and challenges of migration, with a view to dispelling misleading narratives that generate negative perceptions of migrants.”*, since it includes a stronger

reference to the need to challenge narratives that generate negative perceptions of migrants. This is in line with the previous call by MMC in response to the zero draft to include **actions that help to create a more positive public discourse on migration**.

- In reference to situations where migration is an act of desperation, but may not fall under refugee protection, MMC welcomes the following addition: *“When it is, we must cooperate to respond to the needs of migrants in situations of vulnerability, and address the respective challenges”*. This provides another example of where **the revised draft is more reflective of the reality of mixed migration flows**.

Objective 2

- **Objective 2 now includes references to several additional drivers that compel people to leave their countries**, including food security, health and sanitation, education, armed conflict and all forms of violence, discrimination, rule of law and good governance, access to justice and protection of human rights. These are all important additional drivers, some of which may compel people to leave, but may not provide them with international protection under Refugee Law. By adding these drivers, the GCM now better recognizes that the drivers for the movement of people are various, often intertwined and influence each other.
- The added **objective/commitment to address vulnerabilities of persons affected by sudden- and slow-onset natural disasters** and to ensure that they receive appropriate humanitarian protection and assistance wherever they are is a major improvement of the text and we urge the delegations to keep this text in the final adopted GCM.

Objective 5

- MMC welcomes the addition to **commit to facilitate labour mobility at all skills levels**, as this better reflects labour market realities where there is demand and supply in destination and origin countries for/of potential labour migrants at all skills levels.

Objective 6

- MMC regrets to see the addition of ‘disproportionate or hidden fees’ to the text regarding recruiters charging costs to migrant workers. **To avoid debt bondage, states should commit to having no costs charged to migrant workers** by employers. Moreover, the notion of ‘disproportionate’, is unclear and subject to various interpretations.
- Under f), we **strongly urge delegations to reinstate the notion of holding employers accountable** when they are involved in human and labour rights violations, as it was in the Draft Rev 1.
- MMC feels **point i) has been weakened whereby "prohibition" to confiscate travel documents of migrant workers has been changed to "Take measures that prohibit the confiscation"**. This point is highly significant for the protection of migrant workers, many of which are unable to enjoy their fundamental human rights because of the confiscation of their contracts and especially travel documents by employers or by employment agencies. We urge states to go back to the original commitment to prohibit this practice.
- MMC is pleased to see the following additional commitment, which is **reflective of the current reality where many labour migrants end up in the informal sector**: *“Ensure migrants working in the informal economy have safe access to effective reporting, complaint, and redress mechanisms in cases of exploitation, abuse or violations of their rights in the workplace, in a manner that does not exacerbate vulnerabilities of migrants that denounce such incidents”*.

Objective 8

- In addition to the very welcome reference to the principle of non-refoulement as discussed under the key points above, **MMC commends the commitments to guarantee due process and individual assessments under Objective 8**. Equally important addition is the commitment to ensure that the provision of life-saving humanitarian assistance for migrants is not considered unlawful, to avoid further cases where those providing life-saving assistance are accused of migrant smuggling.

Objective 9

- MMC welcomes the added recognition that **smuggled migrants might also become victims of trafficking in persons** and therefore need adequate protection and assistance.

Objective 20

- MMC agrees with the added notion to respect that **remittances are private capital**, while committing to optimize the positive impact of remittances.

Objective 21

- As stated in the key-points above, **MMC is very pleased to see a second reference to the principle of non-refoulement, under this Objective dealing with returns.** Furthermore, we welcome the explicit linkage between sustainable reintegration and the need to avoid people becoming displaced again within their own country upon return. With regards to return of children, we feel the language is weakened. The previous draft included a commitment to only return children after a best interest of the child determination. In the current draft, it says the return process should 'include a best interests of the child determination'. **We urge states to reinstate the previous reference, which more explicitly made return of children conditional upon a best interest determination.**

Implementation, follow-up and review

- MMC welcomes the invitation to the Global Forum on Migration and Development to report findings, best practices and innovative approaches to the International Migration Review Forum. However, we would like to see the GCM to be more explicit about the role of civil society in engagement with the International Migration Review Forum. In particular, the **newly added notions that the International Migration Review Forum is an intergovernmental global platform, but also multi-stakeholder in nature is unclear and requires further elaboration.**
- MMC feels the **follow-up and review section remains weak**, especially with the added emphasis on "State-led approach" to the review process in point 47. Whether or not states live up to their commitments in this compact should also be assessed or reviewed by an independent body, not primarily by the states.



The **Mixed Migration Centre (MMC)** was established in **February 2018**. It brings together various existing initiatives working on data collection, research, analysis and policy development on mixed migration that the Danish Refugee Council (DRC), together with partners, has been hosting or leading in different regions. This includes the [Regional Mixed Migration Secretariat \(RMMS\) East Africa & Yemen](#), the [RMMS West Africa](#), the [Mixed Migration Platform \(MMP\)](#) in the Middle East, the

Global Mixed Migration Secretariat (GMMS) in Geneva and different programmes of the [Mixed Migration Monitoring Mechanism Initiative \(4Mi\)](#), which has monitors collecting data on mixed migration in over 20 countries across different migration routes globally, conducting over 10,000 in-depth interviews with migrants and refugees on the move annually. The MMC has teams in Geneva and in its regional hubs Amman, Dakar, Nairobi, Tunis and Kabul, where it works in close cooperation with regional partners, stakeholders and donors. The MMC is part of, and governed by DRC. While its institutional link to DRC ensures MMC's work is grounded in operational reality, it acts as an independent source of data, research, analysis and policy development on mixed migration for policy makers, practitioners, journalists, and the broader humanitarian sector. MMC positions do not necessarily reflect the position of DRC.

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