



## FINAL STATEMENT ON THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION IN ADVANCE OF THE 6<sup>TH</sup> AND FINAL ROUND OF NEGOTIATIONS 6 JULY 2018

The Mixed Migration Centre appreciates the strong commitment and dedication shown by the co-facilitators, state parties and all others involved in the process leading up to the final round of negotiations on the Global Compact for Safe, Orderly and Regular Migration (GCM).

If adopted at the end of 2018, the GCM will be a milestone for the international community. It has taken courage and commitment to get to the final round of negotiations with a strong and progressive draft. The GCM has the potential to significantly improve the framework for global migration governance and to contribute to better protection for all people on the move, whether seeking a better life, escaping violence or poverty.

Despite an admirable set of commitments, some key concerns still remain. During these times when negative narratives around migration and policy measures that negatively affect the lives of people on the move are increasingly dominant, UN Member States have a chance to show true courage and leadership by re-affirming their commitments to human rights, protection and saving lives of all people on the move. MMC calls upon all state parties to show courage and make a conclusive effort to improve the GCM on the following key issues:

**Non-refoulement:** The principle of non-refoulement applies to all people at all times, irrespective of their migration or asylum status. While reference to non-refoulement was explicitly included in the previous draft, it has now been taken out again. The text in objective 21 (*“upholding the prohibition of collective expulsion, and by refraining from returning migrants when there is a real and foreseeable risk of death, torture, or other irreparable harm”*) is a way to capture the right to non-refoulement without explicitly stating it. However, this is insufficient, given the common misunderstanding that non-refoulement only applies to refugees and the actual practice we witness almost on a daily basis (for example in Libya) where migrants are in fact returned to situations where they are at risk.

Recommendation 1: MMC calls upon state parties to re-instate the explicit commitment to uphold the principle of non-refoulement under Objective 8 and 21.

**Protection:** Throughout the negotiations there has been a push by some states that matters relating to “protection” should be addressed in the Global Compact on Refugees (GCR), and not in the GCM. At the same time, the GCR applies a narrow reference to international refugee protection. As a result, the protection gap between the two Compacts has widened. People who are compelled to flee due to reasons that do not strictly correspond to the 1951 Refugee Convention, risk falling into this protection gap. This includes those fleeing generalized violence, natural disasters or those who started their journey voluntarily, but are then forced to flee their initial country of destination. While refugees are entitled to specific international protection under International Refugee Law, this does not mean that migrants are not also entitled to “protection” of their human rights as guaranteed by International Human Rights Law.

Recommendation 2: MMC urges state parties to add stronger and additional references to protection of migrants, in particular under objectives 8 and 12.

**Access to asylum & status determination:** In the previous draft, the original spirit of objective 12 was recaptured, but unfortunately in the final draft, reference to *'status determination'* and *'information on the right to seek asylum or other adequate forms of protection'* have been deleted again. Both are crucial in the context of mixed migration, where people in these flows cannot be *a priori* categorized as either refugees or migrants.

Recommendation 3: MMC urges state parties to reinstate these references in objective 12.

**Mixed migration:** Over the course of the negotiations and consultations on the GCM and GCR, the drafts included fewer references to mixed migration, or even started to avoid the term altogether. In many contexts, and increasingly so, refugees and migrants travel together in mixed migration flows, and regardless of status, face similar risks and have similar needs and vulnerabilities. While mixed migration can provide a bridge between the two compacts to capture the full sphere of human mobility, denying its reality further fuels unhelpful binary thinking between voluntary and forced migration, between those in need of protection and those not in need of protection, or those who can return home versus those who cannot. The reality on the ground is more complex and nuanced. From operationally and humanitarian perspectives, this complexity can only be dealt with when acknowledging the reality of mixed migration. Avoiding the term 'mixed migration' also risks giving in to the negative connotation around migration, instead of challenging it.

Recommendation 4: MMC urges state parties to explicitly refer to mixed migration in objectives 7, 8 and 12 and reinstate the notion in the preamble of the previous draft that *'both refugees and migrants may be particularly vulnerable to the risk of violations and abuses of their rights'*, which unfortunately has been deleted to make a stronger distinction between refugees and migrants.

**Detention:** The commitment on detention of migrants separate from criminals has been deleted in the final draft. Notwithstanding general concerns about the use of detention, increasingly as a measure of deterrence, people detained for reasons related to immigration status should always be separated from people detained for criminal reasons. Deleting this commitment adds to an increasing trend of criminalization of migrants.

Recommendation 5: MMC urges state parties to reinstate the commitment to separate migrants from criminals in detention.

**Saving lives:** The final draft includes a clear commitment on saving lives at sea: *"We commit to cooperate internationally to save lives and prevent migrant deaths and injuries through individual or joint search and rescue operations, standardized collection and exchange of relevant information, assuming collective responsibility to preserve the lives of all migrants, in accordance with international law"*. However, in recent months we have witnessed how the work of NGO rescue ships has been criminalised and the ships impounded. Many organisations have had to stop their work in the Mediterranean Sea. While it may be too early to establish full causality, June 2018 was the riskiest month ever for sea crossings. Almost 1 in 10 people died or went missing trying to reach Europe. This is unacceptable and directly contravenes this commitment in the GCM. While not adopted yet, implementation, follow up, and accountability starts here.

Recommendation 6: MMC urges state parties to maintain the strongest possible commitment to saving lives and rescue at sea and to live up to these commitments in practice every day.