

Regional Consultation for Latin America of Civil Society Organizations towards the Global Compact for Safe, Orderly and Regular Migration¹

Quito, Ecuador, October 6, 2017

Introduction

The Latin America and the Caribbean region comprises one of the world's broadest and most diverse continental migratory corridors and, at the same time, records the highest inequality indexes.² Human mobility throughout the continent obeys structural causes including, alongside widespread social and political violence, excluding development models that displace entire communities forced to migrate due to a lack of decent living conditions. Our region has long witnessed intraregional-migration, migration among transnational and cross-border communities, transit migration and settlement of migrant populations from African and Asian countries, as well as deportations, rejections, forced returns, and voluntary returns.

Violence along the migration process and the absence of the rule of law generate new displacements and have other effects, such as families searching for disappeared or killed migrants, and that, to demand and have access to justice, are forced to migrate. In this sense, the criminalization of people living in contexts of mobility and the militarization of our territories increasingly restrict human mobility in Latin America and The Caribbean.

The risks and the ever-increasing violence against migrants during their journeys occur at a major scale, and are more brutal and barbaric in the region of El Salvador, Guatemala, Honduras, Mexico, and the United States. One ongoing tragedy is migrants and persons subject to international protection who are victims of crimes and human rights violations such as robbery, extortion, kidnapping, torture, human trafficking, arbitrary detentions, disappearances, and extrajudicial killings and homicides on their transit through Mexican territory and the United States, most often committed by organized crime groups in collusion with governmental authorities. One example of this is the massacre committed against 72 migrants in San Fernando, in the state of Tamaulipas, Mexico, on August 2010. Despite being condemned by several international and regional organizations and groups,³ this and other similar events continue to be unpunished.

¹ The Latin American and the Caribbean Regional Consultation (RCSCs LAC), was one of the seven regional consultations promoted by the United Nations and financed by the IOM (<https://refugeesmigrants.un.org/regional-civil-society-consultations>) for the elaboration of the Global Compact for a Safe, Orderly and Regular Migration.

The RCSCs LAC Consultation was called by Asylum Access Latin America and the Institute for Women in Migration, or IMUMI in collaboration with the Latin American block comprised by more than 60 networks and organizations that work in favor of migrants' rights, subject to international protection, their families, descendants and communities. It had the support of CAMMINA (*Alianza para las Migraciones de Centroamérica y México*) and the Heinrich Böll Foundation of Mexico, Central American and the Caribbean.

² See "La matriz de la desigualdad social en América Latina", CEPAL, 2016.

³ See reports from International Amnesty (2008, and annual reports from 2012 to 2016), Human Rights Watch (2016), the Inter-American Human Rights Commission (2013), and the Recommendations of the Committee on Enforced Disappearances (2015).

What is concerning is that valuable initiatives in Central America, such as the Central American Border Control Agreement signed by Guatemala, El Salvador, Honduras, and Nicaragua (CA-4), have suffered considerable setback as Nicaragua has included new requirements limiting the entry of persons from the other three countries parties to the agreement.

Moreover, collective expulsions of aliens⁴ have been reported and discriminatory and excluding public policies have been applied in The Caribbean, which have led resident migrant people in the Dominican Republic, as well as Dominicans of Haitian descent, to statelessness or to similar status. The lack of ratification of and accession to international treaties by Caribbean countries, such as the 1951 Refugee Convention of the Geneva Convention, the absence of proper national laws and comprehensive migration policies, makes it difficult to protect the rights of people in need of international protection. Additionally, environmental factors related to climate change and natural disasters determine forced migration and internal displacement in the region.

South America has assumed a position in favor of regional integration under a human rights perspective; nonetheless, regressive migration policies that affect mobility are starting to show, as the case of Argentina and its recent National Decree to modify the National Migration Law (*Ley Nacional de Migraciones*) and the case of Chile, where violations to immigration laws are equated to criminal offenses.

Migration from the region invites us to rethink transnational and extra-continental policies and actions, considering a multidimensional approach beyond government and corporate interests that result in workforce exploitation, and actions based on instrumentalized sociodemographic policies aiming to bring down the average age of the economically active population, finding new sources of income and reducing social pressure.

Immigration policies based on the control, detection, detention, and deportation of migrants, designed from a national security perspective and that comprise the externalization of frontiers based in militarization as a contention mechanism, have yielded, in addition to human rights violations, an increase in corruption and collusion of government authorities, as well as the criminalization of migrants and the promotion of xenophobia among locals. This policy, along with ineffectual economic investments and development projects, does not correspond to the reality of the region and is aimed at deterring and containing migration.

Because of patriarchal structures within societies and institutions in Latin America, people with diverse sexual and gender identities (LGBTTTIQ)⁵ and women in migration, face severe forms of gender violence, discrimination and violation of their rights, which affect their conditions in migration, access to their rights in terms of inclusion and access to international protection mechanisms.

⁴ Article 22.9 of the American Convention on Human Rights (CADH) explicitly prohibits the collective expulsion of aliens.

⁵ Lesbian, Gay, Bisexual, Transgendered, Transsexual, Two-Spirited, Intersexed, and Queer.

The lack of political will and the government's inability to respond to the need for protection of migrant boys, girls and adolescents (accompanied and unaccompanied), of persons subject to international protection⁶ and internally displaced persons, is reflected in situations such as the privation of their freedom in migratory detention centers, their criminalization, and the breaking of all types of family units, contrary to what national and international laws and standards that ensure respect of the principle of best interests of minors and the principle of *pro persona* establish, and to the no return and commitment with human rights, the right to equality, the inclusion and nondiscrimination and the Good Living principle as model for the development of the region.⁷

Lastly, the situation of insecurity, risk and lack of protection of the persons advocating for the human rights of migrants, persons subject to international protection and displaced persons, is accentuated due to the persecution not only by organized crime groups, but also by state and private agents.

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In this context, governments have failed to appropriately respond to the needs of persons in migrations. Therefore, the participation of all stakeholders is required to reorient immigration policies and guidelines with the purpose of ensuring a Compact that truly reflects the needs of migrants, persons subject to international protection, internally displaced persons, their families and descendants and their role as key social actors to achieve this.

- 1) The Compact should include **clear and accessible social participation mechanisms**. Migrants, persons subject to international protection, their families and descendants must be active subjects throughout the process of creation of the Compact, must be efficiently and timely consulted to ensure that they are the center of any action, design, implementation, monitoring and assessment of public policies. The Compact should foster and motivate the associative movement of migrants, so that they have their own voice and are able to express their needs and claims.
- 2) The Compact should ensure the **no regression on migration policies** and the integration of the international legal framework and respond to the implementation of the recommendations and consultation opinions of the Committee on the Rights of Migrant Workers and their Families, CEDAW, CDN, CEDR, ILO, ACNUR, UNICEF, UN Women, OHCHR, the Interamerican Human Rights Commission, the OAS, among others; as well as the recommendations issued by UN rapporteurs.
- 3) **States should eradicate racism, xenophobia and their political instrumentalization towards migration**. They must counteract discourses and

⁶ Persons subject to international protection are defined as those applying for status of refugee, asylum applicants, refugees and stateless persons.

⁷ Known as *Sumak Kawsay*, it is defined as the harmonious cohabitation among the living beings and between humans and nature, conscious of their interdependence and intrinsic complementarity towards a healthy and holistic life.

behaviors of this nature through inclusive policies that incorporate a constructive participation of the means of communication to promote inclusive narratives and approaches from an intercultural perspective.

- 4) States should **recognize and assess from an intersectionality approach**,⁸ the **negative impact of global and regional migration policies** not centered in the differentiated needs of migrants, persons subject to international protection, their families, descendants and communities. This assessment will enable the development of mechanisms to eliminate exclusions and conditions that place specific sectors of society, such as women, LGBTTTIQ people and ethnic or racial groups in vulnerable⁹ and discriminatory situations, or that generate violence in their countries of origin, transit, destination and return. In this sense, it is important to establish lines of action that respond to these causes,¹⁰ that generate forced migration or irregular migration, and not be limited to the management of migratory flows in these regions.
- 5) Incorporate the **best interests of girls, boys and adolescents** (NNA, in Spanish) and other recommendations set forth in the Child Rights in Global Compacts Initiative,¹¹ acts of a competent and specialized authority in child issues, and according to international standards on the subject, mostly considering the General Comments No. 6¹² and No. 14¹³ (2013) of the Committee on the Rights of the Child, and the Advisory Opinion OC-21 of the Inter-American Court of Human Rights. In the case of girls, boys and adolescents that migrate with their families, this principle should favor the no family separation guarantee.
- 6) The **specific causes that generate forced and internal displacement in the region, such as climate change, natural disasters, and megaprojects** that result in the removal from their land in detriment to the environment, as well as violence, violations to human rights, poverty, inequality, and political instability, should be considered a priority when designing migration policies. **For indigenous and tribal people, States should ensure the already established mechanisms to access a free and informed consent**, as set forth in ILO Convention No. 169 that allows

⁸ It refers to different exclusions that are intertwined in one person or group, from which multiple types of violence, inequality, and vulnerable situations arise.

⁹ As an example, see the Women in Migration Network document “El Pacto Mundial Sobre Migración: Qué es lo que necesitamos”.

[file:///C:/Users/DIRECCION/Downloads/SP_Key%20Considerations%20for%20the%20CGM%20\(3\).pdf](file:///C:/Users/DIRECCION/Downloads/SP_Key%20Considerations%20for%20the%20CGM%20(3).pdf)

¹⁰ See context and causes in migrations in Latin America established by the Latin American Block in the Global Forum on Migration and Development 2017, in Berlin, Germany. <https://estudiosfronterizos.org/2017/06/29/posicionamiento-de-organizaciones-y-redes-de-sociedad-civil-de-latinoamerica-en-el-marco-del-foro-mundial-sobre-migracion-y-desarrollo-2017/>

¹¹ Bhabha, Jacqueline and Dottridge, Mike. *Child Rights in the Global Compacts: Recommendations for protecting, promoting and implementing the human rights of children on the move in the Proposed Global Compacts*. Steering Committee for the Initiative for Child Rights in the Global Compacts. May 2017 <http://www.childrenonthemove.org/wp-content/uploads/2017/02/Working-document-29-June-2017.pdf>

¹² General Comment No.6 on the treatment of unaccompanied and separated children outside their country of origin.

<https://www.unicef.org/ecuador/UNICEF-ObservacionesGeneralesDelComiteDeLosDerechosDelNino-WEB.pdf>

¹³ On the right of the child to have his or her best interest taken as a primary consideration (art. 3, para. 1).

indigenous and tribal people to determine their own destiny regarding their lands upon the implementation of development projects by governments and corporations (transnational and national), including sanctioning mechanisms.

- 7) **States should clarify stakeholders, their responsibilities, shared and differentiated, and the concepts that orient the nature of the Compact**, according to the aforementioned principles and approaches, revisiting the proposals of the regional consultation made by the civil society of Latin America and the Caribbean, as well as other regional consultations. In this sense, the safe, orderly and regular migration concepts should be defined from a human rights perspective and not under a national security approach.
- 8) **Migratory regularization should be assumed as a State-policy and as an acknowledgement of the right to migrate.** Criteria and requirements for migratory regularization should not be discretionary or discriminatory, on the contrary, they should be subject to objective and accessible criteria and not pending on bureaucracy. Local documentation access policies should be the first response from States upon migratory irregularity, and States should commit to the promotion of regularization through information campaigns and policies under a gender perspective and territorial approach, contemplating family unity, rooting, humanitarian reasons, cross-border historical dynamics and the different formal and informal employment modalities as regularization criteria. Additionally, irregular entry or irregular migratory status should not be barriers to applying for residence, process linked to the obligation of countries of origin to provide consular protection to their nationals abroad. The criteria established in the Cartagena Declaration (1984) and the consultation opinions and international recommendations of the Inter-American Commission on Human Rights, as well as the CEDAW General Recommendation No. 26 (208) on migrant women workers should be implemented.¹⁴
- 9) Deportation, repatriation, forced returns and voluntary returns. **We demand total respect of the no return principle and reaffirm the prohibition to collective expulsions of alien people in all cases.** When the discussion processes of the Global Compact talk about returns, we must differentiate among deportations, the so called “voluntary repatriation”, expulsions, forced returns and voluntary returns. From the standpoint of the civil society, the only form of return considered consistent with the human rights approach is the total and effective voluntary return, based on a free decision of the migrant and under the proper security conditions. In the case of bilateral return agreements or memorandums, these should be based on the respect of

¹⁴ See recommendations for addressing women’s human rights in the Global Compact for Safe, Orderly and Regular Migration. Results of the experts meeting in Genève, November 2016. <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/addressing-womens-human-rights-migration-es.pdf?la=es&vs=4110>

human rights international law. State jurisdiction cannot be denied in international zones such as ports, airports, and similar, ensuring that migrants obtain correct information on the regularization possibilities and have access to the procedure for the determination of refugee status in those areas and at the borders.

- 10) On deprivation of liberty due to migration issues. We reiterate that a violation of immigration laws is an administrative violation and, at the same time, detention is an extreme measure; therefore, **we demand the elimination of any form of imprisonment, direct or subsidiary, for migratory causes, since it represents a violation of human rights, criminalizes migrants** and, in the exercise of the sanctioning power of the State, if fails to comply with the legality, necessity, proportionality, and exceptionality principles. The administrative arrest should not be applied as a sanction in case of violation of immigration laws and regulations, nor for reasons related to the control of migratory status, since it jeopardizes the physical, psychological, and emotional integrity of migrants, and can lead to cruel, inhuman, and degrading treatment, or even torture.

- 11) **Access to and full exercise of the rights of migrants, persons subject to international protection, their families, descendants and communities**, independently of their migratory status,¹⁵ should be a guiding principle of the Compact. States should recognize all rights: civil, economic, social, cultural, environmental, such as the right to decent work, to identity and nationality, to physical and emotional health, to equality and a life free from violence, as well as the right to truth, justice, effective and integral reparation and compensation of damages and rebuilding of memory, i.e., to portability of rights and good living. States should expand recognition of political rights of migrants, considering not only the right to vote but also the right to stand for election.

- 12) **Migrants should be favored with policies and programs that ensure enhanced labor conditions and inclusion into decent work.** For that purpose, regional governments should promote the ratification of ILO's C97, C143, C189 and C102.¹⁶ All women and men workers, independently of their nationality or migratory status, should benefit from labor protections and should be able to exercise their fundamental labor rights, including freedom of association, the right to collective bargaining and full access to justice and reparation measures. Labor migration programs should concentrate in labor protection for women and men workers and not tie them up or generate dependency from the employer. Temporary or circular labor programs that result in exploitation should be replaced by regular models that generate decent

¹⁵ The Inter-American Commission recommends that when migrants lack the documents required by national law, it should be defined as an **irregular migratory situation**, and that the terms "illegal" or "legal migrant" reinforce the criminalization of migrants and the false stereotype that because of being in an irregular situation, they are criminals. See Human Mobility Inter-American Standards, par. 150. <http://www.oas.org/en/iachr/reports/pdfs/HumanMobility.pdf>

¹⁶ Conventions C97 and C143 on Migrant Workers and the Promotion of Equality of Opportunity, and Convention C189 on Decent Work for Domestic Workers, and Convention C102 on Social Security (Minimum Standards).

conditions for the full exercise of rights, family unity, best interests of child and offer permanent regularization means.

- 13) **States have the obligation to recognize and assist agricultural internal migrants, ensuring their protection and full access to economic, social, cultural and environmental rights**, such as the effective access to justice, taking into consideration the differentiated needs that agricultural migrants have, the majority of whom are rural and indigenous communities that, in the historic context of the Latin America and The Caribbean region, is developed in situations of marginality, precarization of work and exploitation of labor rights.
- 14) **Access to justice should take a comprehensive approach.** States should increase mechanisms that ensure the victim's right to justice, not only for migrants and persons subject to international protection, but also for their families and persons advocating in their favor. Effective access to transnational justice mechanisms should be created ensuring the right to truth, justice, reparation and memory. The criminal complaints and investigation mechanisms should stick to international standards of universal and regional systems, that include integral and effective compensation of damages from where they are. In the tragic cases of disappearances and execution of migrants, it is necessary for the States to commit to achieve the massive crossover of information with the purpose of locating and identifying persons, making it necessary to create unified transnational databases that include genetic and *ante-mortem* information. The creation, continuity and amplification of mechanisms that constitute good practices for the identification of human remains¹⁷ should be promoted. In this sense, identification, notification and repatriation of remains protocols should be adopted. Finally, cooperation and coordination among States should be the main component to ensure the access to justice by migrants and the full eradication of these practices.
- 15) **Enjoyment of due process guarantees by migrants subjected to criminal proceedings.** In the case of migrants subjected to criminal proceedings, guidelines that ensure the realization of the fundamental right to due process of law and access to justice under the same conditions as nationals should be created. The right of any person being tried to have free and specialized legal counseling should be considered, and the right to a translator or interpreter free of charge, in case she does not understand or speak the language of the court or tribunal, consular protection and all other judicial guarantees, including the right to family unity, the right to a process in the presence of the person being tried, and an effective appeal process. Also, guarantee the respect of the fundamental right to human treatment in detention that all persons deprived of their liberty have, including the right to be treated with dignity, and have her life and physical, psychological and moral integrity respected during the detention.
- 16) A matter of the utmost importance is the **re-engineering of existing regional mechanisms** such as the South American Conference on Migration (SCM), Mercosur,

¹⁷ We are referring to the External Support Mechanism (2015) as a mechanism for effective access to justice, and the Forensic Commission (2013) and the forensic databases in Central America and Mexico so that forensic data can be crossed with the United States.

Unasur, the Andean Community of Nations, the Central American Integration System, to ensure the adequate, diverse, and permanent participation of civil society.

- 17) An **Inter-agency and Collegiate Committee of the Universal Human Rights System** should be integrated, in which the participation of governments, civil society, migrants, persons subject to international protection and their families, organizations, experts, academics, religious groups and corporations is guaranteed, for the discussion of controversies or interpretations, the monitoring of transnational, cross-border and local implementation, the assessment of the guidelines and actions set forth in the Compact and the establishment of sanctions for human rights violations, either by government authorities or private parties.
- 18) It is vital to implement **transparency and accountability mechanisms that include the assessment by the Inter-agency and Collegiate Committee** of the process of elaboration and implementation of the Compact, building consensus among agencies, governments, academics, experts, civil society organizations, migrants and the international community, as well as indexes to objectively evaluate the results.