

# STATEMENT AHEAD OF THE 2<sup>ND</sup> ROUND OF NEGOTIATIONS ON THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

MARCH, 2018



Prepared by: Mixed Migration Centre (MMC)

The second round of intergovernmental negotiations on the **Global Compact for Safe, Orderly and Regular Migration (GCM)** takes place from 12 to 15 March 2018. Ahead of the meeting, the co-facilitators released a 'zero draft plus' of the GCM and announced four issues requiring further discussion, including the '**differentiation between irregular and regular**' and the '**differentiation between migrants and refugees**'. This statement presents the MMC position on these issues, which are both at the heart of the mixed migration concept, which provides a lens needed to understand and address contemporary movement of refugees and migrants in mixed flows.<sup>1</sup>

## KEY POINTS

- The GCM zero draft clearly stated it is 'people-centred' and 'places individuals at its core'. When discussing differentiation between migrants and refugees and irregular and regular migrants, we call upon states to think about individuals before definitions.
- All migrants are human beings and are entitled to international human rights. This overarching and non-negotiable principle should guide the protection and treatment of migrants by states, whether refugee or migrants, whether regular or irregular.
- Regardless of status, people in mixed migration flows in many contexts face similar risks and have similar needs and vulnerabilities. The GCM should be reflective of this reality on the ground.
- While fully acknowledging and supporting the legal protection framework for refugees under the 1951 Geneva Convention (and its 1967 Protocol), overly stressing the distinction between refugees and migrants may have the adverse effect of a decreasing protection space for migrants.
- Discussions around the differentiation between refugees and migrants and the complementarity of the two Global Compacts should be guided by the reality of mixed migration, by the individual needs and rights of people on the move and by what is required to improve global governance of, and responses to, large flows of migrants and refugees and not by (competition) between agency mandates.

<sup>1</sup> A detailed assessment of the full GCM zero draft by the Mixed Migration Centre is available here:

[http://www.regionalmms.org/policy/MMC%20assessment%20of%20the%20Global%20Compact%20Zero%20Draft\\_19%20Feb.pdf](http://www.regionalmms.org/policy/MMC%20assessment%20of%20the%20Global%20Compact%20Zero%20Draft_19%20Feb.pdf)

- Migrants in vulnerable situations who are not refugees, risk falling through the cracks. MMC welcomes the commitment in the GCM zero draft to promote the operationalisation of the Global Migration Group ‘*Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations*’. MMC calls upon states to maintain this commitment.
- It is not possible to decide who is a migrant and who is a refugee a priori or based on nationality. The individual right to claim asylum and not to be treated on the basis of country of origin should be upheld.
- MMC strongly suggests to explicitly include and highlight the principle of *non-refoulement* of migrants in the GCM, since this concept applies to all migrants regardless of status.
- The New York Declaration included a wide range of commitments that apply to both refugees and migrants. When focusing more and more on the differentiation between refugees and migrants, we have to be careful not to drift too far away from these initial commitments.
- MMC acknowledges, as stated in the zero draft, that respect for the rule of law and due process is fundamental to all aspects of migration governance, which includes the issue of irregular migration. States have the sovereign right and power to determine the admission of non-nationals into their country as well as the removal and expulsion of non-nationals.
- However, when discussing the differentiation between regular and irregular, MMC aligns itself with the recent statement (16 February 2018) by the United Nations High Commissioner for Human Rights, and calls upon states not to criminalize cross-border movement, to establish a presumption against immigration detention in law, and to end all detention of children. The GCM should clearly reflect that having a rights-based approach to migration management, including irregular migration, does not mean infringing upon the state’s sovereign right to determine migration policies. Having a rights-based approach does not only benefit the individuals concerned, but promotes the respect for the rule of law and benefits both states and individuals.
- MMC acknowledges that return of irregular migrants and failed asylum seekers is part of migration policy. However, in the return process states should ensure the fundamental rights and dignity of each individual and returns should be sustainable and to the largest extent possible voluntary.
- MMC welcomes the inclusion of the concept of ‘firewalls’ in order to meaningfully separate immigration enforcement activities from public service provision and calls upon states to maintain this principle in the GCM when discussing the differentiation between regular and irregular.



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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