

NATIONAL CONSULTATION

POSITION OF THE GOVERNMENT OF GUATEMALA REGARDING THE

GLOBAL COMPACT

FOR SAFE, ORDERLY AND REGULAR MIGRATION (GCM) 

CONTENTS

I. Introduction	2
II. Conceptualization of Essential Terms for the Global Compact	3
1. Safe Migration	3
2. Orderly Migration	3
3. Regular Migration	4
4. Responsible Migration	4
III. Results of the Thematic Discussions	5
Theme 1. Human Rights of Migrants: Social Inclusion and Cohesion and Elimination of all Forms of Discrimination (Racism, Xenophobia, and Intolerance)	5
Theme 2. Migrations Caused by the Effects of Climate Change or Crisis Situations: Successful Strategies for Protection and Assistance, Public Policies for Sustainable Development, and Conflict Resolution	6
Theme 3. International Cooperation and Migration Governance in All its Dimensions: Borders, Transit, Entry, Return, Readmission, Integration, and Reintegration	8
Theme 4. Contributions of Migrants and Diaspora Communities to Sustainable Development: Remittances and Transferability of Benefits	9
Theme 5. Migrant Smuggling and Trafficking of Women and Children: Contemporary Forms of Slavery and the Proper Identification and Protection of and Assistance for Migrants and Victims of Trafficking	10
Theme 6. The Effects of Irregular Migration and Migration through Regular Channels: Dignified Work, Labor Mobility, and Accreditation of Skills and Qualifications	12
IV. Priority Themes	13
Migrant Children and Adolescents	13
Non-Detention of Children for Migratory Reasons	14

INTRODUCTION

The Government of Guatemala, being aware of the importance of the Global Compact for Safe, Orderly, and Regular Migration (GCM) for the country, decided to carry out an inter-institutional process to formulate a national position to contribute to the first phase of the preparatory process leading up to the Compact.

With this objective in mind, the Government of Guatemala requested cooperation from the IOM for purposes of carrying out the national consultation. The IOM responded to said request and immediately began organizing a training and guideline definition event, which was held on 9-10 October 2017. The Ministry of Foreign Affairs convened government institutions involved with migration and conducted the meeting. The objectives of this encounter were to provide the necessary information to the institutions concerning the GCM and to define general guidelines for formulating the country's position regarding the different themes that will be addressed by the GCM. The IOM was in charge of the methodology and moderation of the consultation event.

The event was inaugurated by the Vice-Minister of Foreign Affairs, Ambassador Pablo César García Sáenz.

The event agenda included six round table discussions within the framework of the thematic meetings being carried out as part of the first phase of GCM consultation. Introductory presentations were given upon commencement of each discussion, followed by work groups focused on each specific theme. Each discussion generated input from the participants to help develop inter-institutional guidelines for defining Guatemala's national position regarding the Global Compact. Each discussion centered on the sub-themes deemed most relevant in view of Guatemala's migratory reality.

This document presents the results obtained from the thematic discussions.

II. CONCEPTUALIZATION OF ESSENTIAL TERMS FOR THE GLOBAL COMPACT

As its name indicates, the Global Compact seeks to contribute towards achieving safe, orderly, and regular migration. Goal 10.7 of the Sustainable Development Goals (SDG) coincides with this objective, including as well the topic of responsible migration. Neither the New York Declaration nor the SDG, however, contain a definition of these terms.

In an effort to clarify the GCM's central objective, the inter-institutional meeting included a space for the institutions to dialogue on the meanings that, according to the Government of Guatemala, these terms should have within the context of the GCM. The conceptualizations proposed by the Government of Guatemala are described below.

1. Safe Migration

A fundamental principle for migration to take place in a safe manner is for States to acknowledge same as a right of all people. In this sense, States need to progressively acknowledge the right of each person to choose the place where they want to live, study, and work, even if that place is not in their own country.

Safe migration implies that States recognize all human rights for all people, including migrants, without discrimination based on their migratory status, age, sex, language, sexual orientation, political affiliation, religion, or ethnic background. This also implies that the life, integrity, and rights of each person be guaranteed by all States, regardless of that person's migratory status.

Furthermore, in order for migration to occur safely, it is necessary to ensure the comprehensive well-being of migrants in the countries of origin, transit, destination, and return, fundamentally with respect to their human rights and guarantee access to basic services (food, housing, healthcare, education, and others), as well as to increase efforts to ensure the well-being of vulnerable migrants, such as disabled persons, the elderly, migrant children and adolescents, LGBTI persons, and victims of trafficking in persons, among other groups.

For Guatemala, it is essential that States guarantee the integrity and security of all migrants, regardless of their migratory status, against any threat that endangers their life.

2. Orderly Migration

Orderly migration is that which occurs in accordance with procedures established by countries of origin, transit, and destination and, to the extent possible, in a planned and well managed manner. Said procedures should be fundamentally oriented to guaranteeing that migration may occur safely.

In order for migration to take place in an orderly manner, it is essential that the human rights of migrants be promoted and protected throughout the migratory process, and that family reunification processes be facilitated, especially in cases involving children and adolescents.

3. Regular Migration

For regular migration to occur, it is necessary that there exist programs for normalizing the migratory status of migrant persons.

To that end, it is also necessary that States acknowledge, in principle, the right of all persons to attain personal development anywhere, and consequently, the right of all persons to migrate in search of their development and that of their family members. This implies that States assume the obligation to guarantee that all migrants have access to basic services, regardless of their migratory status.

Finally, in order for regular migration to take place, it is necessary that migrants know their rights and obligations within the framework of the legislation in effect in the countries of origin, transit, and destination.

4. Responsible Migration

For migration to occur responsibly, it is necessary that both destination and transit countries assume the responsibility of guaranteeing migrant rights, including basic services such as housing, work, education, healthcare, and access to justice. In other words, responsible migration implies that States fulfill their international legal obligations, particularly those that have to do with guaranteeing the security, dignity, human rights, and fundamental liberties of migrants. It is also essential that the States of origin, transit, and destination assume the responsibility to inform migrants of their rights and obligations.

Furthermore, responsible migration implies that migrants comply with their rights and obligations during the entire migratory process in whichever country they find themselves.

Reaching the goal of responsible migration requires that States not just worry about the immediate management of migratory flows, but that they also promote the development of migrants, including by facilitating their access to dignified work opportunities, or else by promoting their socio-economic reintegration, as the case may be.

III. RESULTS OF THE THEMATIC DISCUSSIONS

Theme 1. HUMAN RIGHTS OF MIGRANTS

Social inclusion and Cohesion and Elimination of all forms of Discrimination (Racism, Xenophobia and Intolerance)

Guatemala considers it essential to provide a comprehensive, coordinated, and shared-responsibility response to migration in order to guarantee full respect for the human rights of migrants, regardless of their migratory status.

Regarding the human rights of migrants, not only was the universal nature of human rights affirmed, but also the inalienability of same, regardless of a person's migratory status. The protection of migrant human rights must be guaranteed in the countries of origin, transit, destination, and return. This protection should be priority particularly for groups of vulnerable migrants.

Based on acknowledgement of these principles, the international community must reaffirm that migration must be addressed with a human rights focus, and not exclusively from a security-based focus. A human rights focus naturally implies that migrants and irregular migration not be criminalized.

Along these lines, migration should not be seen as a problem to be solved; migration is a natural social process in all cultures, and has been throughout the history of humanity. Current migratory flows should be seen as development opportunities by the international community, not as harmful realities.

Destination countries should recognize the contributions of migrants (both those with regular status and irregular migrants) to the economies of the countries of destination and origin.

The objectives of the GCM should include the prevention of irregular migration, precisely to avoid the human rights violations to which migrants tend to be more exposed. To that end, it is essential to design information campaigns that promote orderly migration, warn of the risks of irregular migration, and stress the universal nature of human rights for all persons, regardless of their national origin or migratory status.

In this context, the Global Compact should commit to:

- Guarantee access to justice for migrants, a guarantee that is essential for the proper protection and defense of migrant human rights.
- Incorporate the international human rights standards related to migration governance into national legislation so that the latter may effectively contribute to overseeing, procuring, and restoring the rights of migrants.

Through the GCM, States must commit to the complete decriminalization of irregular migration. This implies that they commit to avoiding the detention of migrants based simply on their migratory status, and moving ahead with the immediate search for and implementation of alternatives to detention, especially in cases involving migrant children and adolescents.

Regarding the theme of social inclusion, one of the GCM's objectives should be the recognition of and respect for the right of migrants to personal development, which implies their right to access social services, while at the same time promoting knowledge and fulfillment, on the part of migrants, of their obligations and rights in destination countries. In this sense, policies, programs, and plans for the social inclusion of migrants should be developed at both the national and local levels.

The GCM commitments related to social inclusion should include the following:

- Create programs for social inclusion, integration and socio-economic and psycho-social reintegration throughout the migratory process.
- Encourage the participation of local governments in facilitating the integration of migrants, as well as the integration of diaspora communities and promotion of their involvement in the development of their communities of origin and destination.

Theme 2. Migrations caused by the Effects of Climate Change or Crisis Situations:

Successful Strategies for Protection and Assistance, Public Policies for Sustainable Development and Conflict Resolution

In discussing the factors that drive migration, the priority for the Government of Guatemala, within the framework of the Global Compact, is to strengthen efforts to reduce the vulnerability of certain populations and improve adaptation and mitigation strategies, including the facilitation of human mobility and attention to the affected communities, which require opportunities and living means to ensure their well-being and that of their families.

Regarding migrations caused by the effects of climate change or crisis situations, the principal objective of the GCM should be to guarantee the human rights of vulnerable migrants during disaster situations. Furthermore, it is fundamental to create policies and programs for serving migrant populations affected by climate change through global communication strategies designed based on a diagnosis of the geographical and climatic conditions of each country.

In similar fashion, it is essential to properly gauge the magnitude and importance of the displacements caused by natural disasters through the generation of information and awareness-raising and public information initiatives at all levels.

It is necessary for the GCM to seek increased financial investment aimed at mitigating the effects of climate change, providing incentives for research on environmental and climate change issues, and promoting the exchange of such information for formulating regional and global strategies. To that end, the Compact needs to promote more spaces for the analysis of and reflection on migrations caused by the

effects of climate change, natural disasters, and crisis situations, as well as the sharing of contingency plans or methodological guidelines among countries and regions.

The Government of Guatemala considers that, by way of the Global Compact, the international community should commit to:

- Strengthen the exchange of good practices at the global and regional levels concerning the management of migrations caused by the effects of climate change.
- Promote mechanisms that strengthen the management of migrations caused by the effects of climate change (for example, by establishing regional and global guidelines and strengthening information exchange efforts).
- Reinforce the commitment of developed countries to comply with international agreements regarding the environment and acknowledge their responsibility related to the migrations caused by said phenomenon.
- Strengthen the generation of statistics and research focused on migrations caused by climate change through research efforts at the national and international levels.

With respect to strategies for protecting and assisting migrants displaced by natural disasters and/or climate change effects, the GCM should adopt as one of its objectives the strengthening of mechanisms for identifying and referencing migrants in order to provide them with improved differentiated assistance.

To that end, inter-institutional and inter-sector coordination must be strengthened at both the national and global levels, for the development of and compliance with proper standards and protocols for providing protection and assistance to migrants affected by crises caused by natural disasters or conflicts. For purposes of formulating such standards and protocols, it is necessary to involve the migrant population, especially in the strengthening of policies for preventing and mitigating the effects of natural events.

In addition, with respect to strategies for protecting and assisting migrants in transit who have been displaced by natural disasters or conflicts, the following commitments are proposed for inclusion in the GCM:

- Increase the availability of information on climatic conditions along migratory routes.
- Provide information on the location of places offering protection options for populations affected by natural disasters.

Theme 3. International Cooperation and Migration Governance in all its dimensions:

Borders, Transit, Entry, Return, Readmission, Integration and Reintegration

Regarding the theme of international cooperation, the objectives of the GCM should include making international collaboration take place based on dialogue and permanent information sharing at all levels and all dimensions of migration governance. Cooperation among States must unconditionally guarantee that the human rights of migrants are respected regardless of their migratory status. It is fundamental that international cooperation prioritize specialized attention for the most vulnerable groups of migrants.

Through the Global Compact, States should strengthen their cooperation with actions to recognize the qualifications, education, and skills acquired by migrants in their destination countries, as one way to facilitate the processes of migrant integration and reintegration. This should be complemented by the creation and development of public-private alliances to enable access for migrants to opportunities for local and national reintegration, including strategies that allow application of the skills and knowledge acquired in the countries of origin and destination. In turn, this would allow qualitative and quantitative information on the labor skills and knowledge of migrants to be obtained, both upon arrival in destination countries and upon return to the country of origin.

Destination countries, within the framework of international cooperation, should commit to reducing the costs and requisites for hiring migrants, in order to increase labor opportunities while reducing the risks associated with the illegal recruitment and hiring of migrants. In like fashion, the GCM should reinforce international cooperation aimed at eradicating migrant child labor.

Based on the preceding, the specific commitments set forth in the GCM should include the following:

- Ensure political coherence within and between States to enable good migration governance through joint efforts between the institutions in charge of migration at the local, national, regional, and international levels.
- Adopt a focus based on the human rights of migrants that particularly strengthens the protection of vulnerable migrant populations.
- Develop mechanism for reintegrating returned migrants through labor, educational, healthcare, and socio-economic reintegration programs in their communities of origin.
- Incorporate migration as a cross-cutting theme into all public policies.

To follow up on the New York Declaration, which established, among its commitments to strengthen world migration governance, the incorporation of the International Organization for Migration (IOM) into the United Nations System, the Global Compact should assign to the IOM an active and leading role in developing, implementing, monitoring, and evaluation the GCM, in view of the IOM's expertise and capacities for strengthening migration governance at the global, regional, and national levels.

Theme 4. Contributions of Migrants and Diaspora Communities to Sustainable Development:
Remittances and Transferability of Benefits

The Government of Guatemala recognizes that the important link between migration and development is much broader than just the economic contributions migrants make to their countries of origin (e.g., through remittances). For this reason it expresses its concern in view of how little awareness exists regarding this contribution among the general population and many governments, especially those of destination countries. As such, Guatemala considers that the Global Compact should focus efforts on bringing proper and affirmative awareness to the contributions made by migrants to sustainable development.

In order to strengthen the positive relationship between migration and the sustainable development of countries, the GCM should include a commitment by States to facilitate and make more flexible the processes for migratory normalization, thus allowing migrants to work legally and enjoy the rights and assume the obligations this implies.

The GCM should serve to create public-private alliances that heighten awareness of the talents and labor and academic skills of migrants, thus facilitating their insertion into the labor markets of destination and return countries.

For Guatemala, the commitments established in the GCM regarding the contributions and migrants and diaspora communities should include the following:

- Destination countries should affirmatively recognize the talents and contributions of the migrants in their territory.
- Promote international cooperation among national employment services and the internationalization of same, in order to facilitate the placement of migrant workers.
- Review, update, and harmonize national labor legislation in line with international migratory and labor standards.

With respect to remittances, the GCM should acknowledge the key importance they have for countries of origin and destination. In this sense, the GCM must focus on ensuring proper, reliable, safe, and efficient conditions for sending remittances, which implies promoting specific policies to that end. Regarding the use of remittances, States should develop financing and investment programs so that persons who receive remittances have an incentive to invest their resources productively in their country of origin. The GCM should help to make visible the contribution of remittances in countries of origin.

By way of the GCM, the international community must commit to developing public policies that allow capitalization of remittances by public banking systems in order to invest related credits in local development projects, and training for remittance recipients on financial investment.

The Government of Guatemala considers that the principal commitments set forth in the GCM should be to:

- Reduce and regulate the costs of sending remittances.
- Dedicate a percentage of the tax revenue generated by the sending of remittances to economic and social development programs in migrant communities of origin.

Theme 5. Migrant Smuggling and Trafficking of Women and Children:

Contemporary Forms of Slavery and the Proper Identification and Protection of and Assistance for Migrants and Victims of Trafficking.

For the Government of Guatemala and the international community, the efforts to address the issues of trafficking in persons and migrant smuggling should maintain a human rights focus, which implies not criminalizing persons who have been the object of smuggling nor those who have been victims of trafficking.

The Global Compact must serve to combat the crimes of trafficking in persons and migrant smuggling by strengthening migratory control mechanisms at overland, air, and sea borders, principally to enable the detection of potential victims. This in turn implies building the institutional capacity of States to prevent irregular migration. To that end, it is necessary for States to commit, by way of the GCM, to training government officials in preventing irregular migration, and to including in national budgets sufficient resources for developing programs to prevent these crimes and assist victims of trafficking in persons and persons who have been the object of migrant smuggling.

The GCM must serve to establish programs for the temporary and/or permanent humanitarian protection of migrant victims of trafficking in persons, as well as the victims of any other contemporary form of slavery and vulnerable migrants subjected to smuggling. In order for this proposal to be effective, efficient processes must be established for granting such protection.

It is also proposed that the procedures for preventing and combatting these crimes and protecting the victims thereof be harmonized at the international level, respecting the national legislation regarding trafficking in persons. This implies that, by way of the GCM, each country commit to guaranteeing that the theme of trafficking in persons be properly regulated in its internal legislation, including the alignment thereof with the Palermo Protocol to ensure punishment for all forms of trafficking in persons.

Likewise, as part of a preventive strategy concerning these crimes, it is necessary that the GCM commit States to enacting or reviewing legislative and programmatic instruments that facilitate the detection of potential victims and the training and sensitization of officials regarding victim protection and assistance.

The GCM should call on states to acknowledge that the absence of options for regular migration is a driving factor of irregular migration, which in turn drives migrant smuggling and pushes persons towards becoming victims of trafficking. In light of this, it is necessary for States to develop programs that facilitate

family reunification processes in destination countries, thus helping to avoid cases involving migrant smuggling and trafficking in persons.

The Government of Guatemala considers that, by way of the Global Compact, States should assume a series of commitments such as the following:

- Prevent, combat, and punish the crimes of migrant smuggling and trafficking in persons in all their modalities, and guarantee protection for victims of trafficking and persons subjected to migrant smuggling.
- Promote and facilitate regular migration through the creation of work, training, and study programs.
- Enact specific legislation against migrant smuggling and harmonize, at the regional and international levels, the legislation related to this crime, in order to facilitate the prevention and combatting thereof. This in turn implies building the capacities of the institutions in charge of enforcing such legislation.
- Disseminate information on migrant rights through public and private communication media.
- Create information campaigns aimed at preventing trafficking in persons.
- Strengthen efforts to identify and protect potential victims of trafficking in persons.
- Develop programs for the restitution and reparation of the rights of victims of the crime of trafficking in persons.
- Establish national and international funds for trafficking victim restitution.

Theme 6. The Effects of Irregular Migration and Migration through Regular Channels:

Dignified Work, Labor Mobility and Accreditation of Skills and Qualifications.

The objectives of the GCM must include the analysis of the extent to which the underground economy and the lack of opportunities promote irregular migration, as well as efforts to promote the inclusion of migrants in social assistance and protection programs in destination and transit countries.

To achieve these objectives, binational or regional agreements must be formulated to facilitate migratory regulation and normalization processes through specific measures to reduce restrictive policies and the bureaucracy that at times become an obstacle to migrant normalization.

In order to achieve the aforementioned objectives, it is considered that the Global Compact should call for the following commitments:

- Regulate the recruitment of migrant workers in order to protect them from potential rights violations, while at the same time discouraging irregular migration.
- Develop bilateral migrant worker programs that allow migrant labor flows between countries to be normalized through the use of national public employment services.
- Guarantee the rights of migrant workers in destination countries, especially their labor rights, and facilitate the safe transmission of remittances.
- Create awareness-raising campaigns that provide information regarding the risks of irregular migration and the rights of migrants with irregular or regular status while in transit and in the country of destination.

Strengthen the consular networks of the countries of origin of migrant workers in order to provide comprehensive assistance to this population in destination countries.

With respect to the protection of labor rights and the promotion of employment security, it is considered that the objectives of the GCM must be aimed at strengthening the protection of labor rights and the promotion of employment security in an environment that is safe for migrant workers, as well as guaranteeing that migrant workers have access to labor-related justice.

To that end, among other actions the GCM must call on States to commit to developing systems for the detailed recording of socio-labor information concerning migrant workers in countries of origin and destination. The information so recorded may be used to detect and analyze labor migration flows for purposes of creating evidence-based public policies aimed at properly addressing and managing said flows. The participants considered that the business sector and chambers of commerce should be involved in the formulation of such policies.

In addition, the Global Compact should adopt the following commitments:

- Guarantee parity and equal labor rights between migrant workers and nationals, even with respect to collective bargaining agreements.
- Develop standards to adequately regulate the hiring of temporary migrant workers, both in countries of origin and in destination countries.
- Formulate policies that allow the portability of the social benefits earned by migrants who return to their country of origin or migrate to a third country.
- Give preference to a human rights focus rather than a security-based focus as an essential principle of migration governance.

IV. Priority Themes

Migrant Children and Adolescents

Guatemala considers it essential that States of origin, transit, destination, and return provide a comprehensive, coordinated, and shared-responsibility response to migration in order to guarantee full respect for the human rights of migrants, regardless of their migratory status, with special attention given to the most vulnerable groups, such as unaccompanied migrant children and adolescents, family units, and the elderly, among others. A greater commitment from countries is needed to review and improve national and international legislation.

The Government of Guatemala considers that migrant children and adolescents must be a priority theme of the Global Compact. One of the main commitments set forth in the GCM should be the implementation of campaigns to prevent the irregular migration of children and adolescents, including communication media campaigns. To fulfill this commitment, it is proposed that educational, labor, and social development institutions, as well as the private sector, be incorporated to ensure a comprehensive strategy that addresses all the socio-economic and psycho-social aspects that can help prevent the irregular migration of children and adolescents, based on their needs and interests. Among other aspects, such strategies should address the risks of migration, possible labor opportunities, and the necessary procedures for migrating in a safe, orderly, and regular manner.

In addition, the Government of Guatemala proposes, as another priority commitment to be adopted by the GCM, the creation of opportunities that maximize the positive impacts of migration in destination countries. One of the proposed mechanisms to make this possible is by promoting and facilitating incorporation into educational and labor settings, especially for populations that face greater difficulties in so doing.

Upon being included in the GCM, these mechanisms must, among other things: facilitate processes for validating and recognizing university degrees and skills acquired, on the part of both destination countries and countries of origin; promote and favor access to scholarships for migrant children and adolescents; and provide vocational training, micro-loans, and childcare services for migrant women workers.

Also necessary is the strengthening of reintegration programs, lobbying for normalization of irregular migrants residing abroad, specialized and differentiated protection for migrant children and adolescents and, in general, attention, assistance, and protection for all migrants.

Non-Detention of Children for Migratory Reasons

For the Government of Guatemala, ensuring the non-detention of children and adolescents for migratory reasons must be a firm commitment assumed by the international community through the Global Compact. On this topic, States must reaffirm their absolute commitment to respect the human rights of children and adolescents, and make their assistance and protection a maximum priority of migratory governance, in strict adherence to the best interests of the child.

To that end, an actionable commitment that must be set forth in the GCM is the creation of clear and precise guidelines, approved by the international community as a whole, regarding how to apply the principle of the best interests of the child at all times and stages of migration management and governance. Regarding this issue, it is fundamental that the international community acknowledge the principle that the detention of migrant children is incompatible with and contrary to their best interests. As such, it is necessary that the international community, by way of the GCM, commit to developing alternatives to detention for children and models that guarantee their right to family unity, which includes the right to reunification with their relatives, especially their parents, no matter what country they are in.

Finally, these guidelines should include the development of attention protocols that allow the rapid intervention of the applicable institutions at any stage of migration management involving children, particularly for purposes of verifying the need for international humanitarian protection (be this refuge or another form of international humanitarian protection), regardless of their migratory status and free from discrimination of any kind.

WITH THE SUPPORT OF:



International Organization for Migration (IOM)
The UN Migration Agency

This document has been prepared by IOM with the assistance of:

Regional Office for Central America, North America and the Caribbean:

Marcelo Pisani, Salvador Gutiérrez, Gabriela Rodríguez, Jorge Gallo, Analiessa Ibarra

Guatemala National Office:

Jorge Peraza, Alejandro Martínez, Honeyda Morales, Melissa Vega, Carolina López