

THE GLOBAL COMPACTS MUST SAFEGUARD THE PRINCIPLE OF NON-REFOULEMENT AND STRENGTHEN ACTION TO ADDRESS DISPLACEMENT AND MIGRATION IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE

This statement is supported by the following NGOs:

Asian Forum (Nepal)	International Catholic Migration Commission	Pan African Network in Defense of Migrants' Rights (PANIDMR)
Generalizia della Societa del Sacro Cuore (Society of the Sacred Heart)	International Presentation Association	Platform for International Cooperation on Undocumented Migrants (PICUM)
Civil Society Network on Migration and Development (CSOnetMADE)	Loretto Community	Religious of the Sacred Heart of Mary
Company of the Daughters of Charity of St. Vincent DePaul	Major Group for Children and Youth	Salesian Missions, Inc.
Congregations of St. Joseph	Maryknoll Fathers and Brothers	Save the Children
Congregation of Our Lady of Charity of the Good Shepherd	Maryknoll Sisters of St. Dominic, Inc.	Sisters of Notre Dame de Namur
Congregation of the Mission	Migrant Forum in Asia	Society of Catholic Medical Missionaries
Danish Refugee Council	Missionary Oblates of Mary Immaculate	Trade Union Mediterranean Sub-Saharan Migration Network (RSMMS)
Franciscans International	Mixed Migration Centre	Terre Des Hommes
Institute of the Blessed Virgin Mary-Loreto Generalate	NGO Committee on Migration	VIVAT International
	Norwegian Refugee Council	World Organization for Early Childhood Education (OMEP)
	Oxfam International	
	Pacificwin for Pacific Islands	
	Association of NGOs (PIANGO)	

As local, national, and international civil society organizations working alongside refugee and migrant communities around the world, we are concerned that the Global Compact on Refugees (GCR) and the Global Compact for Migration (GCM) are not safeguarding adequately the principle of *non-refoulement*. Further, we believe it is vital the GCM ensure solutions for people displaced and migrating in the context of disasters and climate change.

During the latest GCM negotiations, some Member States sparked an extremely disconcerting dispute about the inclusion of the principle of *non-refoulement* in any of the GCM text.

Confusion as to the application of the principle seems to have arisen primarily for two reasons. First, some states are asserting that under international law, the principle only applies to refugees. As outlined below, this is legally incorrect. All human beings have the right to leave any country to seek asylum and may never be forced to return to countries where they will face serious human rights abuses. The principle of *non-refoulement* is a norm which applies to all people at all times, irrespective of their migration or asylum status. As such, it does not rest on whether a person is entitled to international refugee protection, nor even whether they are a citizen or non-citizen of the country. It applies equally to refugees and non-refugees alike. It is therefore essential that the principle of *non-refoulement* be included and strengthened in both Global Compacts.

Second some states asserted that all matters related to “protection” should be addressed in the GCR. While issues related to international refugee protection (sometimes short-handed as “international protection”) certainly fall within the scope of the GCR, this does not mean that other migrants are not also entitled to “protection” of their human rights. Protection is at the very core of the international human rights framework.

Regarding displacement and migration in the context of disasters and climate change, some states argued during the latest GCM negotiations that this should be a matter for the GCR only. We are

deeply concerned by this development and strongly believe that displacement and migration in the context of disasters and climate change should be addressed in the GCM.

We look forward to the UNHCR's Assistant High Commissioner for Protection's briefing to Member States in New York on June 22 clarifying that nothing in the GCR prevents the inclusion of *non-refoulement* and migration in the context of disasters and climate change in the GCM.

With regards to the GCR, we remain deeply concerned that the statement: "*voluntary repatriation is not necessarily conditioned on the accomplishment of political solutions in the country of origin*" could open the door for significant violation of the principle of *non-refoulement*. If this statement remains in the text of the Programme of Action we encourage that explicit actions be elaborated to prevent refoulement in circumstances where voluntary repatriation occurs in the absence of political solutions.

Principle of Non-Refoulement

The principle of *non-refoulement* states that no person shall be rejected, returned, or expelled in any manner whatever where this would compel him or her to remain in or return to a territory where there is a likelihood of being subjected to torture, persecution or other serious human rights violations. This principle of international law permits no limitation or exception, and should be explicitly stated in both Compacts.

The principle of *non-refoulement* is often referred to in the context of refugee protection, as reflected in Article 33 of the Refugee Convention and in regional refugee law instruments. However, the principle is also a part of many other human rights treaties,¹ such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, as well as in the International Covenant on Civil and Political Rights and in regional human rights instruments.²

As outlined by the UN Human Rights Committee, *non-refoulement* is an integral component of the protection against torture or other forms of cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life. Similar conclusions were drawn by regional human rights courts, including the European Court of Human Rights.³ Protection against refoulement derived from these non-refugee specific standards is not limited to persons at risk on account of one of the five Refugee Convention grounds. Instead, all persons at risk of specific concerns such as torture, extra-legal execution, or enforced disappearance are entitled to protection against return.

The principle of *non-refoulement* is also customary international law.

Disasters and Climate Change

Disasters and climate change are already significant drivers of displacement and migration, and refugees and migrants are often those hardest hit by disasters and climate change. While recognizing that all possible measures must be taken to avoid displacement linked to disasters and climate change, it is also necessary to support strategies to ensure that people who are forced to move can do so safely, with dignity, and on their own terms. The negotiation of the GCM offers a critical opportunity to help ensure safety, dignity and lasting solutions for those who are migrating or displaced, or at risk of displacement, in the context of disasters and climate change.

Currently both draft Global Compacts include reference to disasters and climate change as drivers of movement requiring an international response. The draft GCM robustly states the importance of

protecting and providing humanitarian assistance to people on the move due to disasters, and ensuring long-term practical solutions for people compelled to move permanently due to sea-level rise, desertification, and other impacts of climate change. However, during intergovernmental GCM negotiations last week in New York, some states argued against inclusion of text relating to disasters and climate change - asserting that they should be included in the GCR only. We are concerned by these developments and strongly believe that migration related to disasters and climate change must be addressed in the GCM.

There is a legal protection gap for persons displaced across borders in the context of disasters and the adverse effects of climate change. In most cases, the circumstances forcing movement do not necessarily fall within the 1951 Refugee Convention's protection grounds, but those in flight are often experiencing trauma, protection, and humanitarian needs consistent with those of refugees. Both the GCM and the GCR should address human mobility in the context of disasters and the adverse effects of climate change in its different forms, and contain explicit reference to the Nansen Initiative Protection Agenda and the Platform on Disaster Displacement.

Therefore, we, the above signed members of civil society:

- Urge Geneva-based missions and central governments to ensure that Missions in NY reflect their State's commitments to the *non-refoulement* principle by confirming that UNHCR ExCom themselves have pointed out the fact that this very legal principle has grown into a human rights requirement beyond refugee law;
- Call on all States to ensure that the principle of non-regression be included in both Compacts; and
- Call on all States to ensure that commitments on addressing displacement and migration in the context of disasters and climate change are not removed from the GCM.

¹ *No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85. *Non-refoulement* also finds expression in the Declaration on the Protection of All Persons from Enforced Disappearances, art. 8(1), G.A. Res. 47/133, U.N. GAOR, 47th Sess., Supp. No. 49, at 207, U.N. Doc. A/47/49 (1992), and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, para. 5, E.S.C. Res. 1989/65, Annex, U.N. ESCOR, Supp. No. 1, at 53, U.N. Doc. E/1989/189 (1989). Additionally, as stated by Committee on the Rights of the Child's General Comment n. 6, *States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child... either in the country to which removal is to be effected or in any country to which the child may subsequently be removed... The assessment of the risk of such serious violations should... take into account the particularly serious consequences for children of the insufficient provision of food or health services.*

² See Articles 18 and 19 of the Charter of Fundamental Rights of the European Union (EU) and in Article 78 of the Treaty on the Functioning of the EU. Moreover, Article 3 of the European Convention on Human Rights and the EU asylum *acquis* have expanded the groups of persons covered by the principle of *non-refoulement* and the types of harm to which a person cannot be returned.

³ For example, see *Soering v. the United Kingdom*, 1/1989/161/217, Council of Europe: European Court of Human Rights, July 7, 1989, particularly paragraph 88.