

Latin American Civil Society Organizations and Networks Position Paper in the framework of the World Forum on Migration and Development 2017

The Latin American region has one of the most extensive and diverse continental migratory corridors in the world, at the same time it has one of the highest indexes of inequality in the world.¹ The issue of human mobility across the continent is caused by structural factors, particularly the widespread social and political violence and exclusionary development models that displace communities who, lacking in dignified living conditions, are forced to migrate. Our region is witness to intra-regional migration, between transnational and transboundary communities, the transit and settling of migrant populations from African and Asian countries, as well as those who have returned either voluntarily or as a result of deportation.

Violence throughout the migratory process and the absence of the State as a guarantor of rights, have generated new displacements and impacts, as is the case of families in search of disappeared migrants or victims of homicide, who, in order to demand and access justice, must also migrate. Likewise, the criminalization of migrant populations and the militarization of our territories increasingly restrict human mobility in Latin America.

The risks and increasing violence faced by migrants in the region over the course of their journey are occurring on an ever larger scale, particularly in El Salvador, Guatemala, Honduras and Mexico. A recurring tragedy is the situation faced by migrant people who have been victims of crimes, human rights violations and abuses such as robbery, extortion, kidnapping, torture, trafficking, arbitrary detention, disappearances and executions in their transit through Mexico, often committed by organized crime groups in collusion with the government. An example of this was the massacre of 72 migrant people in San Fernando, Tamaulipas, Mexico, in August 2010. This incident, as with other similar ones, has remained in impunity despite having being reported by various international organizations and regional organizations.

The South American region has demonstrated an interest in moving towards regional integration and adopting a human rights perspective in migration. Nevertheless, certain migration policies are beginning to affect mobility in a negative way. Such is the case with the recent modifications to Argentina's National Law of Migrations, passed by decree, and Brazil's presidential vetoes to the norm that was approved by Congress. It would even appear that the implementation of migrant detention centers is beginning to be considered as an option for the governments of South America.

Migration policies based on the control, detention and deportation of migrants, designed from a national security perspective and based on militarization as a containment mechanism, have also generated human rights violations, increased corruption and the collusion of authorities in these serious crimes, as well as the criminalization of migrants and increasing xenophobia among local populations.

On the other hand, due to the internal patriarchal structures in Latin American societies and institutions, people with diverse sexual identities (LGBTTTIQ)² and women in migration face greater situations of violence, discrimination and human rights violations, which in turn affect their conditions under which they migrate, enjoyment of their rights and access to international protection mechanisms.

The lack of political will and the inability of governments to respond to the protection needs of unaccompanied children and adolescents as migrants, refugees and internally displaced persons are reflected in situations such as

¹ See the "Social Inequality Matrix in Latin America" CEPAL, 2016.

² Lesbian, Gay, Bisexual, Transexual, Transgender, Travesti, Intersex and *queer*.

the deprivation of liberty in migratory detention centers. These run contrary to the dictates of national law and international standards for ensuring respect for the principle of putting the best interests of children first.

Finally, the situation of insecurity, risk and lack of protection for migrant rights defenders, refugees, displaced and asylum-seeking populations, is exacerbated by persecution not only from organized crime, but also from State and private forces.

I. Latin American Civil Society Demands

It is clear that governments have failed to respond adequately to the needs of people in contexts of human mobility and that the participation of all actors responsible for the redesign of migration policies and guidelines is required. Civil society and the migrant, refugee and internally displaced populations themselves are key social actors. The networks and organizations that endorse this position demand:

1. **Non-regression in the region's migration policy.-** All public policies implemented by States should promote hospitality and be based on a comprehensive approach to rights that includes migrants, asylum seekers, refugees and displaced persons in the public and social sphere, without criminalizing them. States must guarantee access to justice for these populations, under conditions of equality and non-discrimination, as is essential for the full exercise of all their rights.
2. **Access to justice, effective reparations for harm and the search for and identification of remains.-** States should expand mechanisms that fully guarantee the right to justice and the rights of victims (both migrants and their families) in criminal investigations, by adhering to international standards and ensuring an integrated approach to reparations for harms from their place of residence. In the case of disappearances and executions of migrants, Governments should commit to creating transnational databases, with *ante-mortem* and genetic data, to enable States to account for missing and murdered migrants, as well as a reliable record of their identity. It is necessary to guarantee the continuity and extension of existing mechanisms for the identification of remains, as well as the replication of the existing mechanisms for access to transnational justice.³
3. **End the detention of migrants, asylum-seekers and refugees for administrative reasons related to their immigration status.-** Governments in the region must show the political will to end immigration deportation and deportation policies. This should become the norm, rather than the exception.
4. **Policies for the prevention of migrant deportations.-** States should promote agreements and strategies to avoid deportation, even if this means developing safe and orderly repatriation programs, rather than focusing their efforts on the deportations.
5. **Adapt policies to assist asylum seekers and refugees.-** National and regional standards should be adapted to existing international standards on refuge and asylum. States should ensure access to the asylum and refugee procedure both at borders, diplomatic channels and within the territories, without immigration detention, with unrestricted compliance to the principle of non-refoulement. Likewise, reception mechanisms and full integration are required from the moment the application is initiated, agile and respectful mechanisms that respect international standards in determining the recognition of Statute for International Protection.
6. **Encourage mechanisms for regularization of migration.-** Means must be promoted to provide access to a regular stay that eliminates the risks to migrants during transit and arrival, as a way of encouraging the

³ We refer to the Mechanism for External Support (2015) as a mechanism for access to justice and the Forensic Commission (2013) and for the forensic databases from Central America and Mexico to cross referenced with those from the US.



integration migrant groups, as well as peaceful social coexistence. It is necessary to incorporate an analysis that goes beyond labor criteria as a basis regularization that would include humanitarian situations, family unity or reunification and other broad and integrated channels to facilitate access to immigration regularization.

7. **Policies that favor the integration of the migrant population.-** Inter-institutional programs for integrated insertion should be promoted using a mainstreaming approach that allows the deported, returnee, established migrant, asylum seeker or refugee population to enjoy all economic, social, cultural, environmental, civil and political rights, and to promote full integration based on the respect for cultural diversity, the principal of hospitality and using a rights-based approach.
8. **Implementation of verification and monitoring policies and programs for temporary jobs.-** Temporary worker population flows (both regular and irregular) must have policies and programs that favor better working conditions, hiring and facilities for the regularization of migration in order to combat deceit and exploitation. Those companies or employers that exploit or abuse workers must be punished. In addition, regional governments should initiate ratification campaigns for ILO Conventions 97, 143 and 189.⁴
9. **A gender perspective in migration policies.-** The State must recognize the impact and differentiated needs of migrant populations based on an intersectional⁵ approach that allows for the generating of mechanisms to eliminate exclusion and conditions that place specific sectors such as women or the LGBTTTIQ population in vulnerable, discriminatory or risky situations, or that could generate violence for migrants in their places of origin, transit, destination and return.
10. **Procedures that guarantee the best interests of migrant children.-** Governments in the region must promote adequate inter-institutional mechanisms for the special protection of migrant children that are consistent with those established in Advisory Opinion 21 of the Inter-American Court for Human Rights: prioritizing unity and family reunification and avoiding detention at all times, with due consideration for the best interests of children.
11. **Protection and full respect for indigenous communities in the region.-** International organizations such as the International Labor Organization and the United Nations High Commissioner for Human Rights, through their Special Rapporteur on Indigenous Peoples, should be thorough when monitoring the implementation of State mechanisms for access to free, prior and informed consultation that allow for indigenous peoples to determine their own destinies when it comes to the implementation of development projects by governments and transnational companies. Likewise, penalization mechanisms should be implemented when this right is not respected, or when illegal contracts are awarded for concession to their lands that involve the introduction of extractive companies and the implementation of mega-projects.
12. **Compliance with international protection standards in the framework of the implementation process for the Peace Agreements in Colombia.-** Governments in the region are urged to adhere to international protection standards in the framework for the implementation process for the Peace Agreements between the Colombian government and the FARC-EP. In this regard, we call for the commitment of the Office of the Rapporteur on Migrant Rights from the Inter-American Commission on Human Rights within the region, as well as other relevant bodies within the UN, such as the UN High Commissioner for Refugees, for the strict observance of such compliance. This is essential for guaranteeing the rights of internally displaced persons, refugees and victims abroad, and for peace building in the region.

⁴ Conventions C97 and C143 on migrant workers and the promotion of equal opportunities, and C189 on domestic workers.

⁵ This refers to the different forms of exclusion that intersect in a person or group and which lead to multiple forms of violence, inequality and situations of vulnerability.



Colectivo
Migraciones
para las
Américas



Plan de Acción Brasil
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13. **Recognition, support and non-criminalization of the work of migrant rights defenders.-** Governments should recognize the role of humanitarian aid and migrant and refugee defense carried out by civil society organizations, and of the families that participate as volunteers in shelters and other spaces. Therefore, States should exempt houses and shelters for the migrant and refugee population from the payment of service charges, as well as provide adequate and safe spaces in which they can carry out their work, ensure respect for their work and an end to the criminalization they face.
14. **The wide participation of civil society, migrants and refugees, as well as their families, in the design and creation of regional public policies.-** Governments in the region should promote clear and accessible mechanisms for social participation, in which all Latin American countries are represented as a necessary step for building a regional agenda for migration alongside civil society, migrants, refugees and their families. Spaces such as the South American Conference on Migration (CSM) and the Regional Conference on Migration (MCR) must have transparent and open spaces for the inclusion and effective participation of non-state actors.