

Comments and contributions to July 23rd
Revised version of draft Declaration to be adopted at the *High Level Meeting to address large movements of refugees and migrants* scheduled for September 19th, 2016

Excellencies,

We, the signatory organizations, salute the creation of another space for dialogue to address the challenges posed by international migration in today's world. Faced with these challenges the international community must develop responses focused on respect, protection and guarantee the human rights of migrants and refugees.

Our specific contributions to this process, and specifically to the draft Declaration to be adopted at the High Level Meeting, are based precisely on our long experience working in the field of human rights of migrants and refugees not only in Argentina, but also regional and internationally¹.

In this regard it is essential that the framework of this Declaration covers the following three points.

1. HUMAN RIGHTS AND STATE RESPONSIBILITY AS FOCAL POINTS OF THE DECLARATION

The United Nations Member States and the international community have achieved international consensus as to the intrinsic dignity of all persons without distinction with regard to the enjoyment of their human rights². International standards establish that States must respect, protect and guarantee³ the human rights of all people under their jurisdiction⁴. For this reason, it is essential that the Declaration to be adopted be reasoned on the standards of International Human Rights Law.

While the draft under discussion does make reference to them, we believe these international standards should be at the Declaration's introductory paragraphs. As a minimum, it should include a clause at the beginning of the text on how this Declaration should be interpreted in accordance with international human rights law, such as: "the States reaffirm that they agree to respect, protect and guarantee the human rights of all persons under their jurisdiction." **To this end we suggest that paragraph 1.14 become paragraph 1.4, and that 1.12 become 1.5. We therefore suggest specific language changes at the table annex.**

In certain sections of the Declaration – detailed below - we find the language of human rights to be weakened or subordinated to other issues. Strengthening this language is essential to ensure the respect, protection and guarantee of human rights as the focal point of the document.

¹ The Centro de Estudios Legales y Sociales (CELS) has been involved in the promotion and protection of the rights of migrants since the 1990s. This work is carried out today through strategic litigation both within Argentina and before the organs of the international human rights instruments (Inter-American Human Rights Commission, Committees of the United Nations, Special Rapporteurs etc.) as well as through research, publications and other activities. CELS has participated, among others regional and international processes, elaborating contributions to the Recommended Principles and Guidelines on Human Rights at international borders of the High Commissioner for Human Rights of the United Nations. CAREF is a civil association that works for the rights of migrants, refugees and asylum-seekers since 1973. It provides professional advisory services, counseling, training and social and legal assistance and also takes actions on the definition of policies of State. Since 2002, CELS, CAREF and the Faculty of Law of the University of Buenos Aires (UBA) have a Clinic for Immigrant and Refugee Rights. The Clinic advises and sponsors an annual average of 300 cases of migrant and / or refugee people. In turn, we had an important role during the reform process of the Migration Act of Argentina (Law 25,871 of 2003) and in developing its regulatory decree (2010), which inaugurated a new paradigm of migration in the country from a human rights perspective. Both organizations participated in the High Level Dialogue on Migration and Development 2013.

² States have the primary duty to respect the rights and freedoms recognized in international human rights treaties and to ensure to **everyone** under their jurisdiction the free and full exercise of those rights, without discrimination, as enunciated in the article 2 of the Universal Declaration of Human Rights of the United Nations.

³ The obligation to respect and ensure the rights "implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights." (Inter-American Court in Velásquez Rodríguez, paragraph 166)

⁴ The duty of ensuring all rights to any person under the jurisdiction of a State is not limited to the territory of the member State, but extends to all people under the State's authority and responsibility. (UN-HRC, 1981, §12.2, 12.3, UN-CESCR, 2003, §31 and EU. European Commission for Human Rights. Stocké v. Federal Republic of Germany. Decisión. 12 Oct. 2005, §166.)

2. THE ROLE OF RESTRICTIVE AND SECURITARIAN MIGRATION POLICIES IN GENERATING VULNERABILITY SUFFERED BY MIGRANT AND REFUGEE POPULATION

The adoption of this Declaration provides the international community with the opportunity to recognize and warn that the grave humanitarian crisis going on throughout the Mediterranean –also seen in other latitudes, such as Central America and the border between the US and Mexico – is also the product of restrictive migration policies that some States have designed, implemented or authorized. Indeed, these policies can be considered one of the deep, structural causes of irregular migration and situations of vulnerability faced by the migrant and refugee population. The increase in border control policies, “policing” or even military approach to borders reflect how States’ protection of entry and permanence within their territories has unbearable consequences on the human rights of thousands of people on the move.

International cooperation for development plays an important role related to structural causes of migration in countries of origin and transit, as is well acknowledged in the Declaration; however, such cooperation must not be conditioned by measures that prioritize the retention or containment of migration. This type of cooperation causes a tightening of mechanisms of control in States that are not destinations, or that could be termed mixed (transit and destination), operating as borders’ control for the arrival of migrants and refugees to other States. Experience shows that these States have not only been unable to effectively contain flows, they have further aggravated the violation of migrant and refugee persons’ human rights.

Moreover, militarization and securitization of borders in order to “stem” the flow of irregular migration plays a part in the creation zones in which national security take precedence over compliance with human rights standards. That is, securitization of borders serves to legitimize human rights violations through practices such as the detention of migrants and refugees and indiscriminate use of non-voluntary return. To overcome this paradigm the measures to be adopted in these zones must be framed within a clear policy that is consistent with and respectful of human rights, as set the *Recommended Principles and Guidelines on Human Rights at International Borders* of the United Nations High Commissioner for Human Rights (OHCHR)⁵.

3. MIGRATORY REGULARIZATION POLICIES AS KEY SOLUTION TO THE CHALLENGES SET FORTH IN THE DECLARATION

It is essential that we undertake a new but necessary path toward modifying the paradigm of migration regularization. This change in paradigm means that “Regulating migration” must cease to be synonymous with impeding, limiting, prosecuting and criminalizing, and instead become synonymous with guaranteeing the conditions for dignified and safe passage and permanence. Indeed, it should become synonymous with regularizing, with granting national documentation to migrant persons, whereby the regularization becomes a recognized right for all migrants, not the exception.

Based on our experience in the field assisting and advising migrants who are already in their country of destination, it is possible to confirm that when policies place access to local documentation – or migratory regularization – at their core, their impact on the effective exercise of migrants’ rights is enormous. In fact, it has been made evident that possession of local documentation is an important symbolic instrument and source of empowerment for the migrant population in that it re-signifies their social spaces, thus strengthening their exercise of citizenship. As a result, we believe guaranteeing access to regularization is one way to shape the operability of the 2030 sustainable development agenda, which includes access to quality education, health, decent work and reduction of inequalities, among others. In summary, while we do recognize that rights are held regardless of migration status, we believe that, in order for people to fully and effectively exercise their rights, access to documentation allowing migratory regularization must be included in the current debate.

National and local policies exist, as of today, which demonstrate that such goal is achievable. Several legislations in Latin America have incorporated migratory regularization at the center of its migration policies. The experiences of Argentina and Uruguay, for instance, reflect this paradigm shift. Other legislative changes in the region also indicate developments in the same direction, such as in the cases of Bolivia, the debate of immigration reforms in Brazil and the experience of regularization policies within the member countries of MERCOSUR (Southern Common Market).

Below we present some language proposals to the text of the Declaration on the basis of the arguments set out in paragraphs 1, 2 and 3, detailed earlier in this document.

⁵ The guidelines recommend practical measures for States, to achieve the human rights standards to which they are bound, vis-à-vis the rights-holders they encounter at international borders. The implementation of each guideline must adhere to the outlined principles. Available at http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf

LANGUAGE PROPOSALS TO THE TEXT OF THE DECLARATION

TEXTO ORIGINAL	TEXTO PROPUESTO
<p>1.4 In adopting a year ago the 2030 Agenda for Sustainable Development, we recognized clearly the positive contribution made by migrants for inclusive growth and sustainable development. Our world is a better place for that contribution. The benefits and opportunities of safe, orderly, regular and responsible migration are considerable and are often underestimated. Displacement and irregular migration, on the other hand, present complex challenges.</p>	<p>We suggest to DELETE this paragraph since the benefits of safe and orderly migration, and the importance of Agenda 2030 are listed and better argued in paragraph 1.15.</p>
<p>1.5 Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms. They also face many common challenges and have similar vulnerabilities, including in the context of large movements. “Large movements” may be understood to reflect a number of considerations, including: the number of people arriving; the economic, social and geographical context; the capacity of a receiving State to respond; and the impact of a movement which is sudden or prolonged. The term would not, for example, cover regular flows of migrants from one country to another. “Large movements” may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes.</p>	<p>1.5 Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms. They also face many common challenges and have similar vulnerabilities, including in the context of large movements. <u>International human rights standards determine a number of obligations for States in order to guarantee these rights and freedoms.</u> “Large movements” may be understood to reflect a number of considerations, including: the number of people arriving; the economic, social and geographical context; the capacity of a receiving State to respond; and the impact of a movement which is sudden or prolonged. The term would not, for example, cover regular flows of migrants from one country to another. “Large movements” may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes.</p>
<p>1.6 Large movements of refugees and migrants have political, economic, social, developmental, humanitarian and human rights ramifications which cross all borders. These are global phenomena which call for global approaches and global solutions. No one State can manage such movements on its own. Neighbouring or transit countries, mostly developing countries, are disproportionately affected. Their capacities have been stretched to breaking point, threatening their own social and economic cohesion as well as their development and security. In addition, protracted refugee crises are now commonplace, with long-term repercussions for those involved and also for their host countries and communities. These burdens must be shared with such countries on an equitable basis.</p>	<p>1.6 Large movements of refugees and migrants and have political, economic, social, developmental, humanitarian and human rights ramifications ramifications <u>consequences</u> which cross all borders. These are global phenomena which call for global approaches and global solutions that must <u>respect, protect and guarantee all human rights of migrants and refugees.</u> No one State can manage such movements on its own. (...)</p>
<p>1.8 Refugees and migrants in large movements often face a desperate ordeal. Many take great risks, embarking on perilous journeys which many may not survive. Some employ the services of criminal groups, including smugglers. Many fall prey to such groups or become victims of trafficking. Even if they reach their destination, they face an uncertain reception and a precarious future.</p>	<p>1.8 Refugees and migrants in large movements often face a desperate ordeal. Many take great risks, embarking on perilous journeys which many may not survive. <u>Many suffer human rights violations by border and security agents.</u> Some employ the services of criminal groups, including smugglers. Many fall prey to such groups or become victims of trafficking. Even if they reach their destination, they face an uncertain reception and a precarious future, <u>due to restrictive migration policies.</u></p>
<p>1.9 The challenge to world leaders is moral and humanitarian. We are determined, first and foremost, to save lives. We are also determined to find long-term and sustainable solutions. We will</p>	<p>1.9 The challenge to world leaders is moral and humanitarian. <u>The current situation is a human rights challenge to world leaders in order to save lives.</u> We are determined, first and foremost, to</p>

<p>combat with all the means at our disposal the abuses and exploitation suffered by countless refugees and migrants in vulnerable situations.</p>	<p>save lives. We are also determined to find long-term and sustainable solutions, <u>that should include regularization policies.</u> We will combat with all the means at our disposal the abuses and exploitation suffered by countless refugees and migrants in vulnerable situations. <u>We will take measures in order to generate migration policies based on a human rights approach. We commit to working toward ending militarization and securitization of migration control.</u></p>
<p>1.10 We acknowledge a shared global responsibility to manage large movements of refugees and migrants in a humane, sensitive and compassionate manner, while acknowledging that there are varying capacities to respond to these movements. International cooperation, and in particular cooperation among countries of origin or nationality, transit and destination, has never been more important; win-win cooperation in this area has profound benefits for humanity. Refugees and migrants involved in large movements must have the comprehensive policy support, practical assistance and legal protection consistent with States' obligations under international law. We also recall our obligation to respect their human rights and fundamental freedoms fully, and we stress their critical need to live their lives in safety and dignity. We pledge this support to those affected today as well as to those who will be part of future large movements.</p>	<p>1.10 We acknowledge a shared global responsibility to manage large movements of refugees and migrants in a from a <u>human rights perspective</u> humane, sensitive and compassionate manner. (...) We also recall our obligation to respect, <u>protect and guarantee</u> their human rights and fundamental freedoms fully, and we stress their critical need to live their lives in safety and dignity</p>
<p>1.14 We reaffirm the purposes and principles of the United Nations Charter. We reaffirm also the Universal Declaration of Human Rights and Fundamental Freedoms and the core international human rights treaties. We reaffirm, and will fully protect, the human rights of all refugees and migrants, regardless of status; all are rights holders. Our response will demonstrate full respect for international law and where applicable international human rights law, international refugee law and international humanitarian law.</p>	<p>1.14 <u>1.4</u>. We reaffirm the purposes and principles of the United Nations Charter. We reaffirm also the Universal Declaration of Human Rights and Fundamental Freedoms and the core international human rights treaties. We reaffirm, and will fully <u>respect, protect and guarantee</u> the human rights of all refugees and migrants, regardless of status; all are rights holders. Our response will demonstrate full respect for international law, <u>including international human rights law</u>, and where applicable international human rights law, international refugee law and international humanitarian law.</p>
<p>2.1 Underlining the importance of a comprehensive approach to the issues involved, we will ensure a humane, sensitive, dignified, gender-responsive and prompt reception for all persons arriving in our countries, and particularly those in large movements, regardless of their migratory status. We will also ensure full respect for their human rights.</p>	<p>2.1 Underlining the importance of a comprehensive approach to the issues involved, we will ensure a <u>human rights centered</u>, humane, sensitive, dignified, gender-responsive and prompt reception for all persons arriving in our countries, and particularly those in large movements, regardless of their migratory status. We will also ensure full <u>respect, protection and guarantee</u> of their human rights.</p>
<p>2.3 Recognising that States have rights and responsibilities to manage and control their borders, we will implement both on arrival and return border management procedures, including disembarkation procedures and security and identification procedures, which are in conformity with applicable obligations under international law, including international human rights law and international refugee law. We will ensure that public officials and law enforcement officers who work in border areas are trained to uphold the human rights of all persons crossing, or seeking to cross, international borders. We acknowledge that States, while obliged under international law to examine any request for asylum made at their borders, are entitled to take measures to prevent</p>	<p>2.3 Recognising that States have rights and responsibilities to manage and control their borders, we will implement both on arrival and return border <u>policy management</u> procedures, including disembarkation procedures and security and identification procedures, which are in conformity with applicable obligations under international law, including international human rights law and international refugee law. We will ensure that public officials and law enforcement officers who work in border areas are trained <u>must guarantee</u> uphold the human rights of all persons crossing, or seeking to cross, international borders. We acknowledge that States, while obliged under international law to examine any request for asylum made at their borders, are</p>

<p>illegal border crossings and to protect against terrorists entering their countries. We will strengthen international border management cooperation, including in relation to training and the exchange of best practices. We will intensify support in this area for host governments and help to build capacity as appropriate.</p>	<p>entitled to take measures to prevent illegal border crossings and to protect against terrorists entering their countries. We will strengthen international border management cooperation, including in relation to training and the exchange of best practices. We will intensify support in this area for host governments and help to build capacity as appropriate.</p>
<p>2.4 In large movements of refugees and migrants, we will make efforts to collect accurate information. We will distinguish correctly between refugees and migrants, and identify correctly their nationalities, as well as their reasons for movement.</p>	<p>We suggest to DELETE this paragraph since the benefits of collecting this information are better argued in paragraph 2.17.</p>
<p>2.12 Reaffirming that all individuals seeking to cross international borders are entitled to due process in the assessment of their legal status, entry and stay, we will consider alternatives to detention while these assessments are underway. We will review policies that criminalize cross-border movements. Furthermore, recognizing that detention is never in the interests of children, we commit to working toward the earliest possible ending of this practice.</p>	<p>We agree with the proposal submitted by the group of Latin American countries with regard to this paragraph:</p> <p>2.12 Reaffirming that all individuals seeking to cross international borders are entitled to due process in the assessment of their legal status, entry and stay, we will consider alternatives to detention while these assessments are underway. We will <u>move away from review policies that criminalize cross-border movements and from practices of detention for the assessment of their legal status.</u> Furthermore, <u>we commit to never detain children for this purpose.</u></p>
<p>2.14 We recognize that refugees and migrants in large movements are at greater risk of being trafficked and of being subjected to forced labour. We will, with full respect for the rules of international law, vigorously combat human trafficking and migrant smuggling, including through targeted measures to identify victims of trafficking. We will provide protection and support for the victims of human trafficking, and will ensure that they are not penalised for crimes committed as a direct result of human trafficking. With a view to disrupting the criminal networks involved, we will review our national legislation to ensure conformity with our obligations under international law on migrant smuggling, human trafficking, maritime safety as well as with international standards for border management. We will implement the United Nations Global Plan of Action to Combat Trafficking In Persons. We will establish or upgrade, as appropriate, national and regional anti-human trafficking policies. We note initiatives such as the African Union Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants, the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, and the Work Plans against Trafficking in Persons in the Western Hemisphere. We welcome reinforced technical cooperation, on a regional and bilateral basis, between countries of origin, transit and destination on the prevention of trafficking and smuggling of human beings.</p>	<p>We suggest to DELETE this paragraph since its content is already included in other paragraphs of the document and especially in paragraph 2.13.</p>
<p>2.16 We commit to combatting discrimination in our societies against refugees and migrants and will undertake efforts aimed at their integration and inclusion. Relevant national policies will be developed to these ends in conjunction with civil society (including faith-based organizations), the private sector, employers' and workers' organizations and other stakeholders. We also note the obligation on refugees and migrants to observe the laws and regulations of their host countries.</p>	<p>2.16 We commit to combating discrimination in our societies against refugees and migrants and will undertake efforts aimed at their integration and inclusion. <u>We recognize the importance of regular channels and regularization policies to enable both integration and prevention of discrimination of migrants and refugees.</u> Relevant national policies will be developed to these ends in conjunction with civil society (including faith-based organizations), the private sector, employers' and workers'</p>

	<p>organizations and other stakeholders. We also note the obligation on refugees and migrants to observe the laws and regulations of their host countries.</p>
<p>3.1 We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status. We will cooperate closely with each other to facilitate and ensure safe, orderly, regular and responsible migration, including return (whether voluntary or otherwise) and readmission. We recall at the same time that each State has a sovereign right to determine who to admit to its territory.</p>	<p>3.1 We are committed <u>to respect, protect and guarantee</u> the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status. We will cooperate closely with each other to facilitate and ensure safe, orderly, regular and responsible migration, including return (whether voluntary or otherwise) and readmission. We recall at the same time that each State has a sovereign right to determine who to admit to its territory, <u>always respecting international human rights law.</u></p>
<p>3.14 We will consider more opportunities for safe, orderly, regular and responsible migration, including employment creation, Labour mobility, circular migration, family reunification and education---related opportunities. We will pay particular attention to issues such as protection of the labour rights of migrants, recruitment and other migration---related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people.</p>	<p>3.14 We will consider more opportunities for safe, orderly, regular and responsible migration, including <u>decent work employment creation, labour mobility, circular migration</u>, family reunification and education---related opportunities. <u>We recognize the important role of regularization policies to strengthen the self-reliance of migrants and to guarantee their human rights.</u> We will pay particular attention to issues such as protection of the labour rights of migrants, recruitment and other migration---related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people.</p>
<p>3.15 We strongly encourage cooperation between, on the one hand, countries of origin or nationality and, on the other, countries of destination and other relevant countries in ensuring that migrants who do not have a legal right to stay in the latter can return to their country of origin or nationality in a safe, orderly and dignified manner. Such cooperation would include ensuring proper identification and provision of relevant travel documents. Any type of return, whether voluntary or otherwise, must be consistent with international human rights law and in compliance with the principle of non--refoulement. It must also respect the rules of international law and must in addition be in keeping with the best interests of the child and with due process. We support enhanced reception and reintegration assistance for those who are returned.</p>	<p>3.15 We strongly encourage cooperation between, on the one hand, countries of origin or nationality and, on the other, countries of destination and other relevant countries in ensuring that migrants who do not have a legal right to stay in the latter can return to their country of origin or nationality in a safe, orderly and dignified manner. Such cooperation would include ensuring proper identification and provision of relevant travel documents. Any type of return <u>must be, whether voluntary or otherwise, must be and</u> consistent with international human rights law and in compliance with the principle of non-refoulement. It must also respect the rules of international law and must in addition be in keeping with the best interests of the child and with due process. We support enhanced reception and reintegration assistance for those who are returned.</p>