



POSITION PAPER

Ensuring Safe and Dignified Return and Sustainable Reintegration

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SUMMARY

The Global Compact for Safe, Orderly and Regular Migration (GCM) represents a significant commitment to improve migration governance; it is also an opportunity to maximise the benefits and to address the challenges associated with migration today. To support Member States with the implementation of the GCM, the United Nations Network on Migration (Network) has been established, with several thematic working groups on key priority areas of the Compact. This paper, developed as part of the Network's Working Group on Return and Reintegration, not only restates commitments under the GCM, but also identifies key principles, and our common position on migrant return and reintegration. It seeks to assist States and other stakeholders to operationalize Objective 21 of the GCM to cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration, along with the other relevant GCM objectives. In its work on return and reintegration, the Network seeks to develop effective tools to support States in strengthening and improving laws, policies, and practices to ensure that returns are safe and dignified and reintegration is sustainable, in line with international legal frameworks and standards.

DEFINITIONS

Return – There is no universally accepted legal definition of return. Broadly speaking, “return” is used to refer to the various ways that non-nationals—whether independently, with assistance, or by force—return or are returned to their country of origin or another country to which they have previous ties. In the absence of a universal definition, and for the purposes of this paper, “return” can be understood as:

An umbrella term to refer to the various forms, methods and processes by which migrants return or are compelled to return to their country of origin or habitual residence, or to a third country. This includes, inter alia, independent departure, assisted, voluntary or spontaneous return, deportation, expulsion, removal, extradition, pushback, handover, transfer or any other return arrangement. The use of the term ‘return’ provides no determination as to the degree of

voluntariness or compulsion in the decision to return, nor of the lawfulness or arbitrariness of the return (see, e.g. A/HRC/37/34).

While broad, this definition is of limited scope and is not intended to include the repatriation of refugees, which is typically a distinct process, both practically and legally.

Sustainable Reintegration – There is no universally accepted legal definition of sustainable reintegration. For the purposes of this paper, “sustainable reintegration” can be understood as:

A process which enables individuals to secure and sustain the political, economic, social and psychosocial conditions needed to maintain life, livelihood and dignity in the country and community they return or are returned to, in full respect of their civil, political, economic, social and cultural rights. This should include targeted measures that enable returning migrants to have access to justice, social protection, financial services, health-care, education, family life, an adequate standard of living, decent work, and protection against discrimination, stigma, arbitrary detention and all forms of violence, and that allows returnees to consider that they are in an environment of personal safety, economic empowerment, inclusion and social cohesion upon return.

INTRODUCTION

The issue of return and reintegration is a complex one, involving varying and sometimes conflicting interests and priorities in national policies, public opinion and international cooperation. In many countries, the issue of migration, and particularly irregular migration, has been the subject of intense political and public debate. Some States have taken steps to expand access to safe and regular migration channels and to regularize the status of migrants in irregular situations within their territory. Meanwhile, others have attempted to increase the effectiveness of return, often under the assumption that increased returns make for more effective migration policy, contribute to safe, orderly and regular migration, or build public trust in the State’s ability to effectively manage borders.

Many who migrate to other countries do so through safe, orderly and regular means. However, in the absence of accessible regular migration pathways, or opportunities to access long-term regular status, some migrants are left with few options other than to resort to irregular and often unsafe migration channels, including the services of migrant smuggling networks, or to fall into irregularity after having migrated regularly. Restrictive migration policies and limited access to regularization pathways contribute to the occurrence of such situations.

Like decisions to migrate, decisions to return are unique to each person and are influenced by a range of factors. Many migrants return to their countries of origin spontaneously whether out of a desire to return home, to reunite with their families, because of a sense of achievement of their migration goals, or as a result of changed conditions in either their host country or country of origin. Others may be assisted to return, for example through pre-return counselling, logistical, financial and/or reintegration support.

Others, when they do not fulfill the legal criteria to remain, including those who have fallen out of regular status despite having entered a country regularly, may be forcibly returned by States to their countries of origin or to a third country. However, forced returns must always take place in accordance with obligations under international law, including due process, the prohibition of collective expulsion and the principle of

non-refoulement. Some returnees will ultimately migrate again, whether through regular or irregular channels.

Some States offer migrants assistance before, during and/or after the return, in order to ensure returns are safe and dignified and to improve the chances of reintegration being sustainable. However, return and reintegration processes may be de-linked and, due to lack of agreed minimum standards for assistance, reintegration support can vary greatly from country to country and is not always available or sufficient to address the specific rights and needs of migrants, their families and their communities. Returning migrants have diverse capacities, aspirations, vulnerabilities and individual circumstances requiring a range of tailored return and reintegration support measures. For example, in the case of children “return” may mean moving to a country where they have never resided, of which they have no memory, or where they have limited cultural or family ties. Additionally, there are multiple adverse drivers and structural factors that compel people to leave their country of origin, which require investments in sustainable development and in creating conducive political, economic, social and environmental conditions for people to fulfil their personal aspirations and to lead peaceful, productive and sustainable lives in their own country. Without taking these factors into account, reintegration may neither be effective nor sustainable, particularly when there is a lack of cooperation between origin and destination countries or when return and reintegration fail to uphold international law and standards.

In the GCM, States have reaffirmed their commitment to facilitate safe and dignified return in accordance with obligations under international human rights law, and to create conducive conditions for sustainable reintegration of migrants in their country of origin (A/RES/73/195, para. 37). They have further committed to ensure that their nationals are duly received and readmitted, in full respect for the human right to return to one’s own country and the obligation of States to readmit their own nationals. In State-to-State relations, readmission agreements may be signed to facilitate the re-entry of migrants, typically in the context of forced return. This should be distinguished from the right to return to one’s own country, which is an individual human right (see, e.g. UDHR, Art. 13(2)). The GCM provides a unique opportunity to strengthen cooperation between countries of origin, transit and destination—based on key principles, safeguards and positive practices—to ensure returns are safe, dignified and uphold human rights, to reduce the precariousness and related vulnerabilities of returnees, and to promote child-sensitive and gender-responsive sustainable reintegration in countries of origin.

COMMON POSITION

1. All return, readmission¹ and reintegration practices must comply with international human rights law and standards, including being gender-responsive, upholding child rights, and considering the specific rights and needs of migrants in vulnerable situations. All returns must guarantee due process, individual assessment and effective remedy, including the right to appeal with suspensive effect. Countries of origin should ensure that their own nationals are duly received and readmitted, in full respect for the human right to return to one’s country, noting in this context objective 21 of the GCM.
2. No State shall expel, return or otherwise remove a person to the territory of any country in which that person’s life or freedom is threatened or in which there are substantial grounds for believing that person would suffer torture and other cruel, inhuman or degrading treatment or punishment, or other

¹ For the purposes of this paper, readmission is understood as the act of a State to accept the re-entry of an individual, whether their own national or the national of another State.

irreparable harm, consistent with the principle of *non-refoulement*. Arbitrary or forced returns that violate the principle of *non-refoulement* and/or the prohibition of collective expulsion are strictly prohibited under international law. For cases involving children, the precondition to the return of any child – whether the child is unaccompanied, separated or within a family – is that return has been found to be in their best interests through an individual and participative process aimed at identifying a sustainable solution with the central involvement of child protection authorities. States should examine each individual child’s case in their own right and in an age- and gender-sensitive manner, and take into account the specific rights and vulnerabilities of children, as well as the particularly serious consequences of traumatic returns on children’s mental health and well-being and the impact of disrupted or insufficient access to services upon return, including education, shelter, food, health and other rights.

3. To determine whether return is in the best interests of the child, States should implement a formal, multi-disciplinary, individual, documented, best interests procedure that aims to identify a sustainable solution that protects the long-term best interests and welfare of the child by considering all options. This procedure should be carried out by independent and impartial decision-makers, and led, co-led or guided by child protection authorities, with the views of the child duly heard and considered throughout. It also entails an obligation to collect in-depth information about the child’s individual needs, family situation, level of integration in the country of residence and the environment and conditions in the country of origin (physical, material, social, psychosocial and legal safety) that may impact the safety and dignity of return or the sustainability of the child’s reintegration. When it is determined that return is in the best interests of the child, child protection actors should collaborate across borders prior to and during the return and an individual reintegration plan should be prepared with the child’s input. When children are unaccompanied or separated, a competent and independent guardian appointed by the State should accompany children throughout the return process. Unaccompanied children should only be returned to appropriate non-custodial and community-based reception and care arrangements when a best interests procedure has found this to be in the best interests of the child. Other sustainable solutions include remaining in the country of residence, moving to and integrating in a third country, for example for family reunification, or other solutions as identified on a case-by-case basis. Reintegration assistance should be provided to all returning children, including children returning with family members.
 4. Where detention is used in the context of returns, it must be an exceptional measure of last resort, applied for a legitimate purpose and for the shortest necessary period of time, following the exhaustion of all possible alternatives to detention. Any detention must be in accordance with and authorized by law and must not be arbitrary, adhering to the principles of legality, necessity, and proportionality. It must be based on individual assessments carried out by authorized officials, and subject to procedural safeguards, including judicial review. The decision to use detention must also consider and address the special circumstances, vulnerabilities and needs of individuals, including for example as related to gender, age, sexual orientation, disabilities and past experiences. This entails considering the risk of gender-based violence and availability of gender-responsive health care including reproductive health services. States have an obligation to protect all migrants from potential abuse, exploitation and gender-based violence in immigration detention centers. Children and families must never be detained for reasons related to their migration status, including in the context of return proceedings. Families should remain together at all times in non-custodial, community-based contexts, consistent with the child’s best interests and right to family life.
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5. Notwithstanding the sovereign prerogative of States to carry out forced return, consistent with applicable international law, voluntary return should be given preference to forced return. Where voluntary return takes place, it must respect migrants' free, prior and informed consent to the voluntary return process. This requires, among other things: the absence of physical or psychological coercion, intimidation or manipulation; the provision of timely, unbiased and reliable information communicated in a language and format that is accessible and understood; sufficient time to consider other available options and to ready oneself for the return; and the possibility of withholding or reconsidering one's consent if the proposed activities, circumstances, or available information change. States must not use real or implied threats of action that could amount to violations of international law including, among others, torture and ill-treatment, arbitrary detention, family separation, the lack of access to asylum or other protection under international law, or the deprivation of food, housing health care or other access to services to motivate voluntary returns. When migrants do choose to return home voluntarily, countries of origin should ensure that their own nationals are duly received and readmitted, in full respect of every migrant's right to return to their own country and State's obligation to readmit its own nationals.
 6. Return is only one among several options available to any migrant. States are encouraged to provide a range of alternative options to return so that when migrants do return, they have greater agency in choosing to return home safely and voluntarily, and to better prepare themselves for their economic, social and psychosocial reintegration in their communities of origin. In the GCM, Member States have committed to expand and diversify the availability and flexibility of pathways for safe, orderly and regular migration, including pathways for admission and stay based on labour and decent work, educational opportunities, upholding the right to family life, and responding to the needs of migrants in vulnerable situations. Examples of alternative options to return include a right to temporary or permanent residence in the country based on compassionate, humanitarian or human rights grounds; relocation to a third country; regularization or special leave to remain for migrants in irregular situations or at risk of falling out of regular status; and/or specific protection, including a right to remain, for migrant victims of trafficking or aggravated smuggling, and for migrant children based on upholding their best interests, or other migrants in vulnerable situations.
 7. When migrants do return, both they and their communities of origin should be assisted in achieving sustainable reintegration in a holistic fashion, consistent with their rights under international human rights and other applicable bodies of law. Safe and dignified return and sustainable reintegration will not be possible whenever migrants' safety, dignity and human rights are threatened. Policies or practices that deny or neglect migrants' civil, political as well as economic, social and cultural rights upon return are incompatible with safe and dignified return and sustainable reintegration. This includes the failure to provide rehabilitation and access to justice and compensation for migrant victims of torture, trafficking, exploitation, non-payment or retention of wages, or other crimes; to ensure access to education, health, housing, food, water and sanitation, and other basic services; to uphold decent work and labour law standards; to confront racism, xenophobia, stigma and related intolerance faced by returning migrants; to avoid the re-victimization of victims of trafficking, such as their criminalization in the country of origin for migration-related offenses; to avoid returns to situations of destitution or homelessness; to avoid returns to so called "no man's land" between borders; and to address the specific risks and needs upon return faced by migrants in vulnerable situations, including migrant women and children.
 8. Countries of origin that receive returnees often require support towards the attainment of Sustainable Development Goals and reaching the furthest behind first, while addressing the particular needs of
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returning migrants. An integrated approach to reintegration, building on national and local development plans, should be adopted to address all civil, political, economic, social, and cultural rights affecting reintegration at the individual, community, and structural levels. This includes aspects such as the rule of law and governance, social protection, inclusion and social cohesion, access to justice, health, housing, education, psycho-social support and decent work.

9. To the extent possible, all returnees should be assisted in their reintegration process through effective partnerships, which can include legal, social, financial and other interventions designed to facilitate inclusion into national and local systems and services. Robust support for individual as well as community-based sustainable reintegration should include both returnees and host communities. Investing in children and young people and equipping them prior to return through education, skills development and psychosocial support can ease their reintegration. The earlier reintegration planning can be started prior to return, and the more returnees themselves are involved as active partners, the more likely it is to succeed, especially for migrants who have spent extended periods of time outside of their country of origin. Exploring how return migration can contribute to sustainable development outcomes in the home country should be prioritized by governments in both countries of destination and origin, and reintegration policies and practices should be aligned with national development plans, as applicable.
 10. Access to decent work should be a priority of socioeconomic and labour market reintegration plans, as having a job is key to sustainable reintegration into the home country. States are encouraged to provide an orientation process for returning migrants, taking into account returnees' levels of educational attainment, language skills, skills acquired formally or through non-formal and informal learning, and professional experience, to accelerate their reintegration into the labour market. Additionally, the reintegration process should ensure mechanisms for skills certification and foreign degree recognition of returning migrants, as well as flexible learning pathways and skills development for child and young migrants. Close collaboration with national and local job centres, social partners, efficient labour matching schemes and private sector partnerships can also contribute to sustainable labour market reintegration. Likewise, entrepreneurship opportunities, when appropriate, should be part of migrant reintegration plans, particularly through technical and financial support mechanisms.
 11. Ensuring access to social protection for returning migrants and the portability of their social security benefits facilitates sustainable reintegration. Social protection not only contributes to poverty reduction, it can also help in reducing inequalities and social exclusion of returning migrants and their families, allowing them to better contribute to their communities.
 12. Interventions aimed to achieve sustainable reintegration should ensure that returning migrants are engaged along with other key actors. It is important for government authorities to coordinate their work and collaborate with relevant stakeholders including migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, national human rights institutions, the media and other relevant stakeholders.
 13. States should ensure and facilitate independent monitoring of all return and reintegration processes to guarantee they are carried out in accordance with international human rights law and standards, including for the prevention of arbitrary detention, torture and ill-treatment, and the principle of *non-refoulement*. Monitoring should include a short-, medium- and long-term assessment of the impact of return on individuals' lives. Multidisciplinary mechanisms should be established to monitor the
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situation of returning migrants, including children and families, such as their inclusion in national systems and the reintegration assistance they receive.

14. States should ensure that all migrants are informed, in a language and format accessible to them, of their right to report human rights violations during return and reintegration processes, and that they can file complaints at any time during the return and reintegration process to ensure access to justice and effective remedy.
15. States should commit to fill in monitoring, evaluation and learning gaps on return and reintegration, in particular by identifying key challenges and sharing promising practices for safe and dignified return and sustainable reintegration.

RETURN AND REINTEGRATION IN THE CONTEXT OF COVID-19

In May 2020, the UN Network on Migration has called on States to [suspend forced returns during the COVID-19 pandemic](#) in order to protect the health of migrants and communities, and uphold the human rights of all migrants. Instead, States should consider extension of work, school and other residence permits, expanding access to safe and regular pathways for entry and stay of migrants in vulnerable situations, and regularizing the status of migrants in irregular situations within their territory.

At the same time, for those migrants who wish to return home, States should facilitate safe and dignified return through the provision of return assistance and reintegration support, maintaining communication and close cooperation between relevant authorities in countries of origin, transit and destination to ensure that migrants and communities remain safe.

Where quarantine measures are in place, States should ensure that such measures are not disproportionate and do not discriminate against returnees. Quarantine must never amount to arbitrary deprivation of liberty and States should ensure migrants' access to health, housing, education and other rights.

As a priority, returning migrants and their families, as well as the communities to which they are returning, should be protected from health risks related to COVID-19. To avoid the risk of new transmission of the virus, it is key that States of origin, transit and destination cooperate to prioritize human rights-based, child-sensitive and gender-responsive responses and put in place adequate measures to ensure diagnostics, treatment and vaccines are accessible without discrimination based on nationality, migration status or other criteria.

The COVID-19 crisis makes it even more important that returnees are included in national and local systems and services on arrival and are able to access social protection and other rights upon return. States must also be able to meet the immediate needs of returning migrants, including housing, food and non-food items, medical, educational, legal and psychosocial support, as well as relevant information on COVID-19. Special efforts should be made to engage communities of return to prevent violence, stigma and discrimination against returnees.

