

Mapping

Gaps and positive practices for safe and dignified return and sustainable reintegration

December 2021



**United Nations
Network on Migration**
Working Better Together

/ FOREWORD

On 23 May 2018, the UN Secretary-General established a [UN Network on Migration](#), as a successor to the Global Migration Group, to ensure effective, coordinated, UN system-wide support to the implementation of the [Global Compact for Safe, Orderly and Regular Migration](#) (GCM).¹ In all its actions the Network seeks to uphold the vision and guiding principles of the GCM² and is guided by, inter alia, the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, international human rights, humanitarian, labour and other international law, as well as the 2030 Agenda for Sustainable Development.

The Network is comprised of 39 UN entities, with IOM serving as its Coordinator and secretariat, and an eight-member Executive Committee (DESA, ILO, IOM, OHCHR, UNICEF, UNDP, UNHCR and UNODC) providing overall guidance and leadership to the Network, including by setting the Network's strategic priorities and adopting an annual workplan. The Network's first annual workplan identified a number of workstreams to support the operational rollout of the GCM, and associated Working Groups have been established to develop relevant tools and guidance and to facilitate coordinated action at the regional and country levels.

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).³ 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.⁴ 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.

The Network's Working Group on Return and Reintegration seeks to support the implementation of a number of GCM objectives, including Objective 21:

"COOPERATE IN FACILITATING
SAFE AND DIGNIFIED RETURN
AND READMISSION, AS WELL
AS SUSTAINABLE REINTEGRATION"

¹ A/RES/73/195.

² People-centred, International cooperation, National sovereignty, Rule of law and due process, Sustainable development, Human rights, Gender-responsive, Child-sensitive, Whole-of-government approach, and Whole-of-society approach.

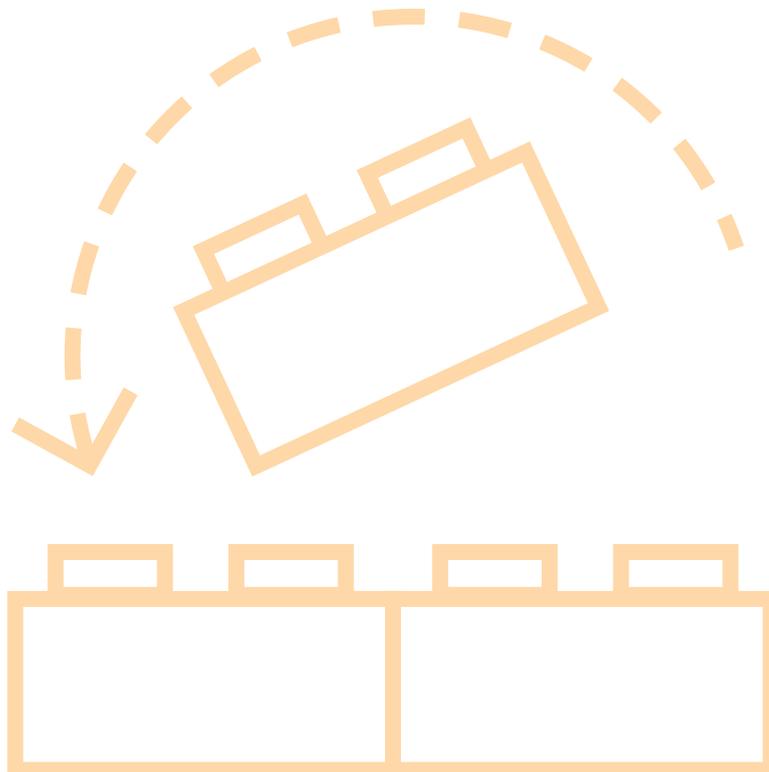
³ A/RES/73/195, para. 37.

⁴ 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

by ensuring that any return of migrants is safe and dignified and that reintegration into their home countries is sustainable. As a first step, the Working Group has conducted this Mapping of gaps and good practices for safe and dignified return and sustainable reintegration in order to capture the key challenges faced by migrants, States, civil society and other stakeholders with regard to return and reintegration, as well as to identify a range of positive practices to facilitate better GCM implementation and learning in the future.

This Mapping is not designed to provide an exhaustive analysis, but rather provides a snapshot of key challenges and opportunities, while pointing readers to additional resources. The Mapping identifies several challenges, including related to the impact of COVID-19, and positive practices from a number of States representing a diversity of geographic regions, migration contexts, government ministries, UN entities, as well as civil society and other stakeholders.

This Mapping provides a useful tool for raising awareness of different approaches and aims to contribute to a common understanding on how to best integrate people-centred, sustainable, human rights-based, gender-responsive, child-sensitive, whole-of-government and whole-of-society approaches into future design, implementation and evaluation of return, readmission and reintegration practices.



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I 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 resource, “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.

II. Methodology

This *Mapping* was developed jointly by the members of the UN Network on Migration's Working Group on Return and Reintegration, which collectively represent UN entities, civil society organisations, academics, and other stakeholders in all regions of the world. While not intended to be exhaustive, the gaps and positive practices identified in this resource are based on Working Group members' experiences and activities at national, regional and global levels and represent the Working Group's collective understanding of some of the most pressing challenges and notable positive practices in the context of safe and dignified return and sustainable reintegration. Gaps and positive practices have been identified across the full cycle of return and reintegration and have been grouped according to three distinct, but inter-connected phases of (i) pre-return; (ii) return; and (iii) post-return and reintegration. Cross-cutting principles apply to each of the three phases of return and reintegration.

III. Cross-Cutting Principle

Human rights



The GCM is based on the UN Charter, the Universal Declaration of Human Rights, and the nine core international human rights treaties. In adopting the GCM, States have acknowledged their obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status and across all stages of the migration cycle, including through return and reintegration processes.⁵ They have also committed to fulfil the objectives and commitments outlined in the GCM, in line with its vision and guiding principles, which include human rights, and emphasized that the GCM is to be implemented in a manner that is consistent with rights and obligations under international law.

⁵ Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, para. 15 (Human rights).

Migrants' human rights should be at the core of return and reintegration considerations, and a human rights-based approach (HRBA) should be adopted in all return and reintegration programs and activities. In particular, States should ensure that throughout all stages of return and reintegration processes, all migrants, regardless of status, are guaranteed the human rights to *inter alia* life, freedom from torture and cruel, inhuman and degrading treatment, liberty and security of the person, due process, access to justice and remedy, health, an adequate standard of living (including food, shelter and housing), social protection, private and family life, *non-refoulement*, the prohibition of collective expulsion, consular protection, access to information, privacy, data protection, and decent work. All return and reintegration processes should also incorporate key human rights norms, principles and standards, including equality and non-discrimination, participation and inclusion, accountability and the rule of law, and the obligation to protect all migrants, including migrants in vulnerable situations, regardless of their migration status.

In practical terms, as discussed in further detail below, within the context of return and reintegration, States must ensure that no migrants are subject to *refoulement* or collective expulsion, and that each individual subject to return is guaranteed an individualized consideration of his or her case that respects due process and procedural guarantees, including access to interpretation, legal representation, and the right to appeal. States should also ensure that voluntary returns only occur with migrants' free, prior and informed consent and are free of any coercion. During the return itself, migrants' human rights may be particularly at risk, and must be carefully protected, including through access to justice and accountability and adequate monitoring mechanisms. States must also respect, protect, and fulfill migrants' economic, social and cultural rights, including the rights to health, an adequate standard of living, and social protection through all stages of the return and reintegration process, including pre-return and post-return.

States should also take measures to combat all forms of discrimination, racism, racial discrimination, xenophobia and related intolerance against migrants and their families, throughout all phases of the migration cycle, including in the context of return and reintegration.



Gender-responsive

The GCM includes gender-responsive as a cross-cutting and interdependent guiding principle.⁶ Through this guiding principle, the GCM ensures that the human rights of all migrant women, men, girls, boys and those who identify outside those binary categories are respected regardless of sex and gender, and that their specific needs are properly understood and addressed. The GCM mainstreams a gender perspective and promotes gender equality and the empowerment of all women and girls, recognizing their independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood.

The GCM also upholds the principle of non-discrimination, which provides that States respect and ensure rights without distinction including based on sex. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) commits States Parties to condemn and take steps to eliminate discrimination against women in all its forms, which is defined as any, “distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women...of human rights and fundamental freedoms.” In its General Recommendation No. 26 (2008) on women migrant workers, the CEDAW Committee also clarified that migrant women should be able to return to their countries of origin free of coercion and abuse.

Accordingly, the promotion of gender equality and the empowerment of women and girls should be key to return and reintegration considerations and proactive measures must be taken to eliminate any gender-specific discrimination in return and reintegration policies or practices, to respond to the differing return and reintegration challenges faced by migrants on the basis of their gender, and to ensure access to rights and related services by all.

In practical terms, States should ensure that assessments regarding the return or removal of a person - include the risk of gender-based violence and ensure that the particular gendered health and safety needs of individuals are identified and responded to in the context of return procedures, including specific protection protocols for migrant women and girls. Migrants in vulnerable situations because of personal characteristics such as their age, gender identity, sexual orientation, disability or health status—including pregnant and nursing migrants, migrant girls, and LGBTI migrants—will require specific gender-responsive protection interventions. States should understand and respond to structural gendered barriers to information and rights, through access to services and justice throughout the migration cycle, recognising where gender discrimination negatively impacts the irregularity or informality of migration and isolation of migrants.

Upon return, States must recognise and address the gendered nature of stigma and discrimination, and ensure non-discriminatory access to reintegration assistance, including gender-responsive reintegration services and access to economic opportunities.

⁶ *Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, para. 15 (Gender-responsive).*



Child-sensitive

The principle of child-sensitivity runs through all aspects of the GCM,⁷ which promotes existing international legal obligations regarding the rights of the child. The Convention on the Rights of the Child states that all children are entitled to the same rights without discrimination based on their status or that of their parents or legal guardians, which means that all children should be treated first and foremost as children.

The GCM upholds the principle of the best interests of the child as a primary consideration in all situations involving children. The precondition to any return of a child, whether s/he is unaccompanied, separated or with family, is that return has been found to be in their best interests through an individual procedure aimed at identifying a sustainable solution and conducted with the central involvement of child protection authorities. This best interests procedure should include a child-specific risk assessment that considers the child's legal, physical, material, and psychosocial safety, as well as an in-depth evaluation of the child's particular needs, attachments and level of integration. The views of the child should be duly heard and considered, with child-friendly information, support and legal assistance made available at all stages of the return and reintegration process.

A child-sensitive approach to the issue of return requires careful consideration of child-specific drivers of migration – including avoiding domestic violence and seeking family reunification – and of potential rights violations that would lead to refoulement if the child were to be returned.⁸ At all stages, it should be possible for the child and/or family to avail themselves of procedures to determine and resolve residence status, including a range of regular pathways for admission and stay such as family reunification. Even when the return of children is legally permissible in accordance with the principle of *non-refoulement*, reintegration in the country of origin might not be a sustainable solution in the best interests of some children, particularly if there are strong cultural, educational or family ties or if they have spent most of their lives in the country of destination.

For accompanied children, family unity should be respected throughout the whole return and reintegration process unless it has been demonstrated that this is not in the child's best interests. For unaccompanied and separated children, family tracing should be considered, but should only be carried out by qualified actors and following a best interests procedure, to ensure that restoring contact would

⁷ Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, para. 15 (child-sensitive).

⁸ As the Joint General Comment No.3/22 of the Committee on the Rights of the Child and Committee on Migrant Workers (2017) states: "The Committees are concerned that some States parties choose to recognize a narrow definition of the non-refoulement principle. The Committees have already pointed out that States shall not reject a child at a border or return him or her to a country where there are substantial grounds for believing that he or she is at real risk of irreparable harm." Child-specific forms of persecution that should be taken into account when considering granting asylum to a child include: risk to the child's life, survival and development; threats of child marriage and other forms of gender-based violence; forcible recruitment into state and non-state armed groups; and trafficking and other forms of exploitation and abuse, including the worst forms of child labour. CMW/C/GC/3-CRC/C/GC/22, para. 46.

⁹ See: UN Guidelines for the Alternative Care of Children, 24 February 2010, at: <https://undocs.org/en/A/RES/64/142>; UNSG report on the status of the UNCRC, with a focus on children without parental care, 26 July 2019, at: <https://undocs.org/A/74/231>; UNGA Resolution on the Rights of the Child, 'Promotion and protection of the rights of children', 18 December 2019, at: <https://undocs.org/A/RES/74/133>

not be contrary to a child's best interests. If family reunification is being considered as a sustainable solution, a family assessment will be necessary, including of the family's agreement and ability to care for the child and to provide suitable immediate and long-term care. If no family option is available, an assessment of the quality and suitability of alternative care arrangements in the short, medium and long term may be necessary.⁹

No child should ever be detained for migration-related purposes at any stage in the process – not while their immigration status is being resolved and their best interests determined, nor pre-return once a decision has been issued – as immigration detention is never in a child's best interests. Instead, children and families should be supported to remain in non-custodial, community-based contexts. Unaccompanied and separated children should be provided quality alternative care in a safe and protective environment (ideally family- and community-based care) in compliance with the UN Guidelines for the Alternative Care of Children, as well as a trained guardian and a legal representative.¹⁰ All children should have access to case management, psychosocial support and other local and national systems and services, in particular health, education and child protection. National child protection and other systems should include migrant children into their programmes and services without discrimination.

Return can be a highly traumatic event for children and how it takes place can greatly impact a child's ability to reintegrate back home. If return is found to be in the child's best interests, it should be implemented through voluntary departure with reintegration assistance. The timing of departure should take into account considerations that affect children's education, physical, mental and emotional health, safety and well-being, such as finishing school terms, examinations and trainings; obtaining school, medical documents and birth certificates; or making arrangements for coping with special educational and health needs. Children should be escorted by staff trained in child protection who can ensure adequate handover of custodial responsibility.

When a child is being returned when this has been found to be in their best interests but not in line with their wishes, their views should be taken into account and safeguards must be in place that ensure child-appropriate and gender-sensitive enforcement by staff in civilian clothing trained in children's rights, including a child protection specialist, and it should not involve the use of force or physical restraints or other forms of coercion against children or their family members.

Bi-lateral agreements and coordination mechanisms for cross-border collaboration between child protection, immigration and law enforcement actors should be established to ensure a continuum of care and protection before, during and after return.

An individual plan for the child's return and sustainable reintegration should be developed and implemented with the child's and family's input and engagement (including in the case of unaccompanied children returning to family in the country of origin), to ensure each child's legal, physical, material and psychosocial safety and well-being. Authorities should ensure that returning children can access case management, psychosocial support and local and national systems and services on arrival, including civil registration, health, education, child and social protection. Arrangements should also be made for medium to long-term independent monitoring of children and families' situation in the country of origin, to ensure reintegration is sustainable.

¹⁰ *Ibid.*

IV. Mapping of gaps and positive practices

A. Pre-return

1. Upholding the prohibitions of *refoulement* and collective expulsion

The Challenge

By virtue of the principle of non-*refoulement*, no one may be extradited, deported, expelled, returned or otherwise removed when there are substantial grounds for believing that the individual would be at real or foreseeable risk of death, torture or cruel, inhuman and degrading treatment or punishment, enforced disappearance or other irreparable harm, at the hands of State or non-State actors.¹¹ The principle of *non-refoulement* also includes the prohibition of indirect *refoulement*, the removal to a third country from which the individual may then be removed to the country in which they face a real or foreseeable risk of the proscribed irreparable harm. Under international human rights law, the principle does not admit any exceptions or derogations, and it applies during all phases of the migration cycle, including during return and at international borders.¹² A *child-sensitive approach to the principle of non-refoulement* includes a substantiated risk to the child's life, survival and development as well as deprivation of liberty, and requires careful consideration of child-specific human rights violations and child-specific drivers of migration.¹³

According to the prohibition of collective expulsion, every migrant has a right to an individualized assessment of the full range of individual circumstances that may militate against the expulsion of each particular individual. Push-backs, including arbitrary or group expulsions, may violate this prohibition and place migrants at risk of *refoulement*.¹⁴ Despite these clear prohibitions in international law, there are multiple examples of States failing to fully reflect them in their laws and practices, including by not including sufficient safeguards against *refoulement* in screening procedures, systematically returning migrants based on an arbitrary personal characteristic, such as national origin, or returning large groups of migrants without providing sufficient guarantees to ensure that the personal circumstances of each migrant are genuinely and individually taken into account. These challenges have been highlighted by some States' response to the COVID-19 pandemic, where thousands of migrants have been pushed back, expelled or forcibly returned without procedural safeguards and individual assessments.

¹¹ See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 3; and Human Rights Committee, general comment No 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para 12.

¹² New York Declaration for Refugees and Migrants, A/RES/71/1, para.24

¹³ CMW/C/GC/3-CRC/C/GC/22, para. 46.

¹⁴ CMW, art 22. CMW, General Comment No 2, para. 51. Human Rights Committee, General Comment No. 15, para. 10. .

►►►► The Response

By ensuring individualized assessments before returns that fully and meaningfully consider all possible real and foreseeable risks of death, torture, ill-treatment, enforced disappearance or other irreparable harm, States can comply with the international law prohibitions of *refoulement* and collective expulsion.

Closing the Gap

- The GCM recognizes the vital function of these safeguards and commits to upholding the prohibition of collection expulsion and of returning migrants to a real and foreseeable risk of death, torture and other cruel, inhuman or degrading treatment or other irreparable harm.
- This commitment includes the determination, at the national and international level, of clear and mutually agreed return and readmission procedures that uphold procedural safeguards, guarantee individual assessments and legal certainty, in full compliance with international human rights law.

2. Ensuring due process and procedural guarantees

The Challenge

Due process and procedural safeguards are crucial for upholding the principle of non-*refoulement*, the prohibition of collective expulsion and other possible bars to return, such as the right to private and family life, and the best interests of the child. They are also key to preventing arbitrary detention in the context of return. At a minimum, any person subject to forced return has the right to have their case examined and decided individually and to receive effective notice of the return decision in a language and format accessible to them, including child-friendly materials and formats where appropriate, to be able to challenge the decision or a pre-removal detention order before a competent and impartial authority. For children, it also requires a formal, multi-disciplinary, individual, documented, best interests procedure, that 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, and – in the case of unaccompanied or separated children - a competent and independent guardian appointed by the State accompanying them throughout the return process.

Due process procedural guarantees also include access to legal representation and interpretation, fair trial guarantees, and access to an effective remedy, including suspension or withdrawal of the return order pending examination of the appeal by the appeal authority.¹⁵ In reality, however, such safeguards may be inaccessible or ineffective, and migrants are often unaware of their due process rights. These practices are at odds with widely recognized international law and standards.

¹⁵ International Law Commission, Draft articles on the expulsion of aliens, Art. 26 and Art. 27.

▶▶▶▶ The Response

In order to ensure that return procedures fully respect human rights, States must ensure returns only take place in accordance with all elements of due process of law, including procedural safeguards.

Closing the Gap

- The GCM upholds due process, individualized assessment and effective remedy in the context of return.
- This commitment includes that forced returns are only carried out by competent authorities following the exhaustion of legal remedies, in compliance with due process guarantees and other obligations under international human rights law.
- It also requires that return processes be gender-responsive and child-sensitive, and that migrants be provided with necessary legal, financial and psychosocial assistance to effectively navigate the return process.

Promising practice: judicial control of return decisions for children

In Italy, children cannot be deported, without prejudice to their right to follow their parents if the latter are deported and except for reasons related to public order and State security.¹⁶ The law on unaccompanied children¹⁷ provides that a Juvenile Court has judicial control over decisions regarding the voluntary return of children when family reunification in the country of origin or a third country is deemed to be in the child's best interests, only after listening to the child and guardian's opinion and taking into consideration the results of social assessment of the family situation in the country of origin or third country and the situation of the child in Italy.

3. Access to economic, social and cultural rights and related services

The Challenge

International human rights law guarantees its protections to all individuals, regardless of migration status. Under the International Covenant on Economic, Social, and Cultural Rights (ICESCR), with limited and targeted exceptions,¹⁸ States must ensure equal access to rights for everyone under their jurisdiction, without discrimination of any kind.¹⁹ This includes migrants in an irregular situation, who should enjoy non-discriminatory access to health, education, social security, just and favourable conditions of work and an adequate standard of living, including adequate food, and housing.

However, in many countries, migrants, in particular those in an irregular situation, face obstacles in accessing and enjoying their economic, social and cultural rights. In some instances, these obstacles

¹⁶ Italian Immigration Act (law n. 286/98), Article 19 comma 2 (a)).

¹⁷ Law on "Protection Measures for Unaccompanied Minors" (law n. 47/17).

¹⁸ Committee on Economic, Social and Cultural Rights, "Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights", para. 8.

¹⁹ E/ C.12/ GC/ 20, para. 30.

are imposed by States in an effort to compel migrants to leave their territory. In such circumstances, migrants may choose to participate in assisted voluntary return programmes as their only means of accessing economic and social services to which they are otherwise entitled.²⁰ When States restrict or withhold access to economic, social and cultural rights, migrants may face such coercion that they are unable to make a voluntary and independent decision to return home, and any subsequent reintegration is less likely to be sustainable. This is particularly true in the case of children, who may spend crucial years of their childhood in legal limbo before being returned without access to education and skills development crucial to their sustainable reintegration. The COVID-19 pandemic has highlighted how denial of access to health care, social protection, and other basic services may cause some migrants to feel compelled to return in conditions lacking safety and dignity.²¹

▶▶▶▶ The Response

By ensuring all migrants, regardless of status, have access to economic, social, and cultural rights and related services without fear of information regarding their status being passed to immigration authorities potentially triggering forced return or other immigration enforcement actions, States can better ensure that returns are safe, dignified and voluntary, and creating safer, more equal, and more prosperous communities.

Closing the Gap

- The GCM commits to ensuring that all migrants, regardless of their migration status, can exercise their economic, social and cultural rights through safe access to basic services.
- States should ensure cooperation between service providers and immigration authorities does not exacerbate vulnerabilities of migrants in irregular situations, compromise their safe access to basic services or unlawfully infringing upon migrants' human rights.

Promising practice: establishing firewalls to immigration enforcement

In Switzerland, “firewalls”²² have been adopted in the fields of health care and education to ensure service providers do not transmit information about the migration status of individuals to law enforcement, or put migrants at risk of arrest or deportation for exercising their rights.

²⁰ A/HRC/38/41, para. 30.

²¹ See Statement by the UN Network on Migration, “Forced returns of migrants must be suspended in times of COVID-19”.

²² Firewalls are measures to separate immigration enforcement activities from public service provision, e.g. in the fields of education, health care, housing, social security, labour protection, and criminal justice. They are implemented by States and other actors to ensure that migrants in an irregular situation are not denied their human rights.

4. Promotion of regular pathways for admission and stay

The Challenge

Many migrants are compelled to leave their homes for reasons that do not fall within the refugee definition in the 1951 Convention.²³ Where migrants, including those in vulnerable situations, fall outside the legal category of refugee, care must be taken to ensure that their human rights are nevertheless respected, protected and fulfilled, including that they have access to appropriate human rights and humanitarian-based admission and stay. Return may not always be legally or practically feasible or reintegration sustainable, and policies that focus only on the return of migrants, without exploring available pathways for admission and stay, risk violating international human rights law and generating cycles of repeated precarious migration. Individuals who are unable to return or to be removed from the territory may find themselves in a situation of legal limbo, without access to regular status and unable to access essential rights and services, and often pushed into undeclared work and exploitation. Many children cannot be returned (regardless of their eligibility for refugee or other legal status) because this would exacerbate existing, or create new, vulnerabilities, which is not in their best interests. This often translates in practice to unaccompanied and separated children being forcibly returned soon after their 18th birthday, after living through years of uncertainty without having access to regular pathways to stay. In cases involving children in families, many States do not assess what is in the best interests of each individual child and often forcibly return children who have spent most of their lives in, and are fully integrated in, the country of destination, without considering regularization of the status of the whole family.

▶▶▶▶ The Response

By expanding the availability and flexibility of regular pathways for admission and stay, States can enhance the safety and well-being of migrants, respond to the human rights protection needs of migrants in vulnerable situations, and ensure they give effect to binding international human rights law obligations, including inter alia the principle of non-refoulement, the best interests of the child and the right to family life, while benefitting origin and destination societies.

By establishing and using adequate best interests procedures for all children, particularly where forced return is being considered, States can establish whether return is in the best interests of children and young people transitioning to adulthood. When it is not, States should make pathways to regular migration status available, on grounds such as length of residence, family and social links, level of integration, educational enrolment or employment.

Closing the Gap

- The GCM commits to addressing and reducing vulnerabilities in migration by enhancing the availability and flexibility of pathways for regular migration, as well as by facilitating transitions in migration status to prevent migrants from being placed at risk of forced return.

²³ Report of the Secretary General, A/70/59, para. 18.

²⁴ OHCHR-DLA Piper, Admission and stay based on human rights and humanitarian grounds. A mapping of national practice, December 2018.

- This includes commitments to adopt regular pathways for admission and stay in a manner that responds to the rights and needs of migrants in vulnerable situations, including those compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, among others.

Promising practice: expanding the availability of regular pathways

New Zealand has expanded the use of pre-existing temporary work quotas to target migrants from disaster-affected areas and areas facing the adverse impacts of climate change. In Spain, migrants can apply for a residence permit on grounds of social integration (*arraigo social*); if they have been victim of racially motivated crimes or domestic abuse; if they suffer from a severe disease requiring health care not accessible in the country of origin; and where there is a risk of refoulement. In Argentina, temporary residence can be granted to migrants when there is a presumption of risk of death in the country of origin due to the lack of medical treatment.

Promising practice: facilitating the regularization of status

In 2014 and 2017, Morocco implemented two regularization campaigns, which benefitted migrants with serious illnesses, families, and unaccompanied or separated children. In 2017, Argentina granted access to temporary residence to Haitians in response to the situation in Haiti, in particular the multiple natural disasters that the country had experienced.

Promising practice: alternative pathways to regular status for children

In Germany, the Apprenticeship Deferment Law of 2015/16 provides for the deferment of removal for young people who have turned 18 years old if they are able to find a valid apprenticeship, and the Residence Act allows for “well-integrated” young people who have legally resided in Germany for four years to be granted a residence permit if they apply before the age of 21. In the Netherlands, the “Children’s Pardon” was introduced in 2013 to provide a solution for children who had been staying in the Netherlands for at least five years without being granted a residence permit. However, this scheme has been discontinued.

5. Consular assistance and protection

The Challenge

Many migrants, particularly those in irregular situations, lack proper identity and travel documents allowing them to migrate in conditions of safety and dignity. Migrants may also require civil registry documents, such as birth, marriage and death certificates while abroad. In transit or upon arrival they may require information in a language and format they understand, including on human rights and fundamental freedoms, appropriate protection and assistance, options and pathways for regular migration, and possibilities for safe and dignified return.

In the event of an accident, illness, death, or human rights violations and abuses, migrants may require consular protection outside their country of origin in the form of specialized assistance, advice, support, or counselling including in cases of forced return, arrest or detention, child protection, or changing circumstances in the country of origin. However, migrants often lack meaningful access to consular officials or the ability to communicate with consular representatives, particularly while in transit or in locations without established diplomatic missions.

In the context of return, migrants may wish to return home voluntarily but lack the necessary documentation or support to do so. Others may be at risk of forced return, stranded at borders, or deprived of their liberty in pre-removal detention, sometimes for prolonged periods of time, and require consular assistance. In some cases, long and complex procedures or a lack of institutional contacts or cooperation between consular authorities in countries of origin, transit and destination can make safe and dignified return difficult to achieve. The appointment of consular officials as well as labour attachés to countries of destination is an important measure for countries of origin to ensure the protection of migrant workers.

►►►► The Response

By strengthening cooperation between countries of origin, transit and destination regarding the provision of consular protection and assistance, States can facilitate access to documentation, information, assistance and other services, in order to ensure predictability, safety and dignity in return and readmission.

Closing the Gap

- In the GCM, States committed to strengthen consular protection of and assistance to their nationals abroad, in order to better safeguard the rights and interests of all migrants at all times.
- States also committed to provide training to consular officers on human rights-based, gender-responsive and child-sensitive actions in identifying, protecting and assisting their nationals abroad who are in a situation of vulnerability.
- States are also encouraged to foster institutional contacts between consular authorities and relevant officials across countries of origin, transit and destination; to provide greater opportunities for migrants and their families to access and communicate with consular representatives and missions; and to ensure all migrants in detention are able to communicate with consular officials.

Promising practice: protocol for the consular care of unaccompanied migrant children and adolescents

In Mexico, a protocol developed by the Mexican Ministry of Foreign Affairs in coordination with UNICEF, is a tool designed to strengthen the intervention mechanisms of the Mexican State's consular personnel to protect unaccompanied migrant children and adolescents. It provides tools for child-sensitive interviewing and assessment, to ensure an adequate referral of cases, focusing the intervention on the application of the principle of the best interests of the child.

6. Avoiding immigration detention

The Challenge

Deprivation of liberty for reasons related to migration status is a widely-used enforcement measure employed during all phases of return procedures that can have severe repercussions on a person's physical and mental health and well-being and may violate migrants' human rights. In many countries, people suspected of breaching immigration laws, including children and families, face arbitrary detention at borders or prolonged or indefinite detention as they await the outcome of return procedures. Migrants can also find themselves deprived of liberty upon return whether in the country of origin or a third country, which can make sustainable reintegration impossible.

Such practices increase migrants' vulnerability to human rights violations and often limit their access to justice and effective remedies. Often, those in detention are not provided means to challenge this measure or are denied due process and procedural safeguards. As has been well documented, the conditions of detention in some countries can amount to inhuman and degrading treatment, or even torture.²⁶ When forced return is not possible for legal or practical reasons, or because of crises such as the COVID-19 pandemic, detention can become prolonged or even indefinite, and thus arbitrary, particularly in countries that lack adequate legal provisions for this measure or do not provide a time limit for detention.

▶▶▶▶ The Response

By prohibiting the immigration detention of children and families, and avoiding immigration detention generally, ensuring it is only used as an exceptional measure of last resort, satisfying principles of legality, proportionality and necessity, and only after consideration of less invasive, non-custodial, community-based alternatives to detention, States can uphold their international law obligations and the administrative nature of immigration infractions. This will allow migrants to make more voluntary and informed choices about whether and how to return to their countries of origin, and facilitate safe and dignified return and sustainable reintegration.

Closing the Gap

- The GCM commits to take a human rights-based approach to any detention of migrants including in return proceedings, ensuring that immigration detention follows due process; is non-arbitrary; is based on law, necessity, proportionality and individual assessments; is carried out by authorized officials; and is for the shortest possible period of time.
- The GCM also commits to prioritize non-custodial alternatives to detention that are in line with international law, and States agreed to work to end the immigration detention of children and families consistent with the obligation to uphold the best interests of the child.

²⁶ See, e.g A/HRC/37/50.

Promising practice: multi-lateral freedom of movement agreements

In many South American countries laws and policies significantly limit the use of immigration detention through adoption of freedom of movement agreements and a range of non-custodial alternatives to detention.

Promising practice: prioritizing alternatives to detention

In Canada a National Immigration Detention Framework was adopted in 2018 that prioritises ATD. As a result of COVID-19, a review of the detention population was undertaken and many detainees were released into ATDs - detentions dropped by 61% between March and November 2020. Canada has found that in all ATD instances, support in the community (e.g. provision of stable housing and socio-health programming) is essential to increase an individual's likelihood of compliance and helps to mitigate risk.

7. Access to justice and effective remedy

The Challenge

For both legal/jurisdictional and practical reasons, return often prevents migrants from accessing justice and obtaining effective remedy for claims such as breaches of contract or labour law or human rights violations or abuses. Returns have been documented to cut off migrants' access to justice in the State from which they are being returned, including for claims relating to the legality of the return itself, or to entitlements in that State.

If migrants are unable to remain in the country of residence until their claim is resolved and remedies obtained, nor effectively able to pursue the claim post-return, they are in fact denied justice. Particularly where visa status is tied to employment, unscrupulous employers are able to exploit the prospect of loss of status and forced return as a means of compelling work on terms other than those in the worker's contract. When migrants are unable to collect due wages, benefits and other entitlements, or to access justice for exploitation, and other human rights violations or abuses, they are less likely to be able to successfully reintegrate post-return.

If migrants return to their country of origin before an effective investigation, prosecution of wrongdoers and compensation of victims or their relatives is able to take place, they may effectively be denied their right to an effective remedy. Where migrants are not ensured access to complaint mechanisms, legal assistance and information, in a language and format they understand, they cannot be understood to have access to justice and effective remedies.²⁷ The COVID-19 pandemic has exacerbated this challenge, as hundreds of thousands of migrant workers have been forcibly returned while owed months or years in wages, benefits and other entitlements.

²⁷ SRHRM, *Study on the return and reintegration of migrants*, A/HRC/38/41, 4 May 2018, para. 92(g).

▶▶▶▶ The Response

States can ensure access to justice and effective remedy throughout the return and reintegration process by establishing mechanisms to suspend return/deportation proceedings until outstanding claims are resolved, including for non-payment of wages or other forms of labor exploitation, and remedies obtained; and through facilitating access to justice and effective remedy for migrants who have already returned to their country of origin through exercise of "shared responsibility", such as by designating power of attorney to consular officials or other parties.

Closing the Gap

- The GCM recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance, including throughout the return and reintegration process.
- The GCM commits States to ensure effective remedy in their cooperation for safe and dignified return and encourages States to facilitate sustainable reintegration by, inter alia, ensuring returning migrants have access to justice, including through access to national and regional complaint and redress mechanisms with a view to promoting accountability and addressing governmental actions related to discriminatory acts and manifestations carried out against migrants and their families.
- States are also encouraged to adopt specific measures to prevent, report, address and provide effective remedy for all forms of exploitation and abuse, including sexual and gender-based violence.

Promising practice: joint and several liability

In the Philippines, rules to implement the Labour Code have been adopted to include the provision of "Joint and solidary liability" of foreign employers and recruitment agencies for violations against migrants happening during the course of overseas employment contracts. This means that both the private recruitment/placement agency and the foreign principal/employer can be held individually liable for ofaccess to justice claims or obligations due to the overseas Filipino worker.



B. Return

8. Assisted voluntary return upholding migrants' free, prior and informed consent

The Challenge

While the prohibitions on collective expulsion and refoulement establish important limitations on the ability of States to return migrants forcefully, migrants are nevertheless free to leave any country, or to return to their country of origin voluntarily. While voluntary return should be given preference to forced return, in practice, the circumstances surrounding voluntary returns are often complex. In cases of voluntary return, particular care needs to be taken to ensure respect for migrants' free, prior and informed consent. This requires, among other things: 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, including collecting essential paperwork for oneself and one's children; and the possibility of withholding or reconsidering one's consent if the proposed activities, circumstances, or available information change.

Returns cannot be considered voluntary if States attempt to motivate returns using the real or implied threat of 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. At the national level, legal and regulatory frameworks often lack relevant procedural safeguards and protection protocols to ensure that returns are voluntary, including access to legal assistance, interpreters, translators and other support necessary to make a decision, as well as access to justice and remedy for human rights violations or abuses that effectively deny voluntariness.

Another challenge is the absence of support measures to assist migrants in their voluntary return process. As the COVID-19 pandemic has demonstrated, in some circumstances migrants would wish to return home but lack the necessary logistical or financial support to do so. For this reason, they often become stranded in countries of transit or destination. In other cases, migrants find themselves in irregular situations and confronted with the possibility of detention or forced return, due to the lack of available pathways for safe and regular migration, or the absence of support measures to assist them in their voluntary return.

Where children and young people are involved, the lack of flexibility in the timing of departure is a common challenge, and may cause interruptions in school terms, examinations and trainings; difficulty obtaining relevant documents; or making arrangements for special educational and health needs upon return. This is often accompanied by inadequate return and reintegration planning, without the necessary input and engagement by both child and family, especially in the case of unaccompanied children returning to their families in the country of origin.

►►►► The Response

By ensuring migrants' free, prior and informed consent to voluntary return processes, States can ensure that returns are voluntary and reduce the risk of refoulement or coerced returns, thus also ensuring that migrants are better prepared for reintegration and minimizing unsafe cyclical migration.

Closing the Gap

- In the GCM, States have committed to promote gender-responsive and child-sensitive return and reintegration programmes, that may include legal, social and financial support, guaranteeing that all returns in the context of such voluntary programmes effectively take place on the basis of the migrant's free, prior and informed consent.

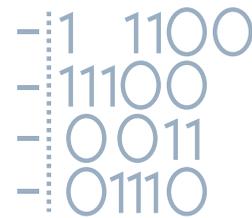
Promising practice: procedural safeguards for children and families facing returns

Following the United Kingdom government's commitment to end immigration detention of children in 2010, a new process for family returns was developed to increase family take-up of voluntary return and Assisted Voluntary Return. Families enter the process after their appeal rights have been exhausted or they indicate that they want to return voluntarily. The process does not revisit the return decision, but seeks to ensure the welfare of children and the wider family and to better prepare families for return, including by giving families the opportunity to take responsibility for their own return or to seek further judicial review before enforcement actions commence.

Promising practice: multi-stakeholder dialogue and cooperation on voluntary return and reintegration

The Bali Process is a forum for policy dialogue, information sharing and practical cooperation to help address challenges of people smuggling, trafficking in persons and related transnational crime. The Bali Process, co-chaired by Indonesia and Australia, has 49 members including UNHCR, IOM, UNODC and ILO. The "Voluntary Return Support and Reintegration Assistance for Bali Process Member States" Project provides a regional mechanism to assist the voluntary, safe and dignified return of stranded migrants, when no other funding or support is available to support their voluntary return. It also supports asylum seekers and refugees wishing to voluntarily return to their country of origin on the basis of an informed decision and in accordance with established principles and procedures.

Assistance provided includes pre-departure counselling, including vulnerability assessments, pre-embarkation assistance and medical checks, transportation, reception and provision of reinstallation grants. A Technical Experts Group on Returns and Reintegration has also been established to gather experts from Bali Process members and facilitate information sharing on return and reintegration, including key policy initiatives, trends and issues, and to identify opportunities for cooperation and capacity building. During this annual meeting, the project presents the main trends in terms of vulnerabilities and needs encountered by the migrants who returned under this scheme, and the identified positive practices in terms of reintegration, with the aim of encouraging Bali Process Member States to adopt such practices and return assistance under their own legislations and agreements.



9. Right to privacy and protection of personal data

The Challenge

The individualized assessment required to ensure that returning migrants are not at risk of refoulement and that children are only returned when this is in their best interests necessarily requires consideration of particular elements of migrants' personal history, including details that may be considered intimate, sensitive, or that could put the migrant at risk. Efforts to facilitate returns through the collection and sharing of biometric and identity data may also put individual privacy and migrants' data security at risk, and increase the vulnerability of migrants to discrimination and other human rights violations or abuses.

Because of these risks, it is important to center migrants' rights to privacy and personal data protection throughout the return and reintegration process. Return processes and data collection should not re-traumatize or otherwise harm migrants, and should comply with international standards, principles, and best practice on protection of personal data. Migrants should be meaningfully informed when their personal data is taken and used and the reasons for these actions, be able to provide or withhold consent for such data collection and use, have full access to any personal data collected and the ability to rectify errors, as well as the right to a remedy in the event of any misuse of personal data.

In accordance with the principle of purpose limitation, data should not be used for purposes other than the ones for which they are originally collected. This means in practice that personal data processed for one purpose (such as accessing health care, education or social services) should not be re-purposed by authorities to achieve the goal of immigration enforcement, including return.

In the context of determining whether migrants can be forcibly returned, or whether return is in the best interests of the child, individual assessments should, including ensure the protection of sensitive information and confidential access to legal assistance.

▶▶▶▶ The Response

By putting in place safeguards and best practices designed to fully protect migrants' personal data and respect their human right to privacy, including necessary firewalls between immigration enforcement authorities and service providers, as well as between authorities in countries of origin, transit and destination, States can facilitate returns that are human rights-based, gender-responsive and child-sensitive and conform with the right to privacy, data protection, the principle of non-refoulement, and other human rights.

Closing the Gap

- The GCM commits to the collection of information to identify nationals and issue travel documents in order to facilitate safe and dignified return and sustainable reintegration with full respect of the human rights of migrants, including the right to privacy and protection of personal data.

- Any collection of data from migrants should also be done in a manner that is gender-responsive and reflective of the best interests of the child.

Promising practice: binding privacy and data protection regulations

In the European Union, a General Data Protection Regulation (GDPR), is required to be implemented by all Member States, and includes strong safeguards for the right to privacy, data protection and security. The regulation applies to any data collected for people within the EU, including for migrants in the context of return, readmission and reintegration. Among other things, the regulation requires purpose limitation (only processing data for the legitimate purposes explicitly specified when collecting it), data minimization (only collecting that data which is absolutely necessary for the purposes specified), storage limitations (only keeping the data for as long as necessary for the specified purpose) and accountability.

10. Protection of family life

The Challenge

Return policies often do not sufficiently take account of the preservation of family unity and respect for family life, resulting in family separation, loss of contact or migrants going missing. Seeking family reunification is a driver of migration, and States' laws and policies on family reunification are often very limited and their procedures very challenging to navigate. Owing to slow or complicated family reunification procedures in countries of destination, migrants may feel compelled to embark on dangerous journeys to try to join family members, or to return to their countries of origin, often out of despair, where they remain separated from their families. Reintegration into family and community structures can also be challenging, owing to the stigma associated to return in some countries.

For unaccompanied and separated children, family tracing is not always carried out by qualified actors and following a best interests procedure, to ensure that restoring family contact would not be contrary to a child's best interests. Furthermore, family reunification often lacks a family assessment, including of the family's agreement and ability to care for the child, and provide suitable immediate and long-term care.

For accompanied children family unity is not always respected throughout return and reintegration processes, resulting in family separation that is not in the child's best interests. The separation of families as a result of returns is often related to the overuse of immigration detention, which represents a clear child rights violation, and to the return of parents while children are allowed to remain in the destination country, which often breaks families permanently.

²⁸ See, e.g. A/HRC/38/41, para. 92(e).

▶▶▶▶ The Response

Simplifying procedures and widening criteria for family reunification, and expanding regular pathways based on the right to family life and the best interests of the child can reduce the damage caused by family separation and ensure family unity is respected throughout the return and reintegration process. At no point should the right to family life - including prompt family tracing by qualified actors - be jeopardised unless demonstrated not to be in the best interests of the child." By strengthening international and cross-border cooperation to clarify the fate and whereabouts of missing migrants and provide answers to their families, States can minimize migrant vulnerabilities, and increase chances of successful integration in destination countries or reintegration into family and community structures in countries of origin.

Closing the Gap

- The GCM includes commitments to uphold the right to family life and family unity, the best interests of the child, and to empower migrants and societies to realize full inclusion and social cohesion. Fulfilling these commitments includes prioritizing family reunification as a national short, medium and long-term policy goal, including as a part of return policies, for migrants at all skills levels.
- It also includes ensuring that return and readmission processes involving children are carried out only after a determination of the best interests of the child, take into account the right to family life, family unity, and that a parent, legal guardian or specialized official accompanies the child throughout the return process, ensuring that appropriate reception, care and reintegration arrangements for children are in place in the country of origin upon return.

Promising practice: Widening eligibility criteria for family reunification

The 2020 EU Pact on Migration and Asylum includes a requirement that EU Member States should include siblings as well as as well as spouses and minor children in their eligibility criteria for family reunification, replacing the previous more limited requirement of only spouses and minor children. Further, the Pact states that families formed in transit countries will now also be able to benefit from a right to family unity.

11. Return monitoring

The Challenge

Due to lack of oversight and potential use of coercion or force, the actual return—whether independent departure, assisted, voluntary or forced return—constitutes one of the most sensitive elements of the migration cycle. Multiple incidents of disproportionate use of force or coercive methods used by State authorities have been documented in practice. In some cases, these methods are enshrined as systemic policies to “push back” migrants at borders or to create a

“hostile environment” for migrants in irregular situations by denying their access to health care, housing, food, social protection and other rights. In the case of children, return can be a highly traumatizing experience, for example when they witness the use of force or coercion against their parents, or in the way returns are executed. The use of coercion or force, or insufficient access to information and procedural safeguard can also call into question the voluntariness of returns. However, even where coercion or force are absent, return processes and procedures may lack sufficient access to information or procedural safeguards necessary to account for individual vulnerabilities and protection needs. Concerns also arise where there is a lack of adequate protection protocols or these protocols are not being adhered to. For example, in the context of the COVID-19 pandemic, there have been reports of returns taking place without adequate screening and measures to protect migrants’ health.

UN human rights experts have urged States to ensure independent monitoring of all stages of the return process, notably during pre-removal, return, reception, and reintegration. Such monitoring should be human rights-based, gender-responsive, and child-sensitive, and should be carried out with full operational and financial independence. Migrants should be made aware of monitoring mechanisms and of their right to report any human rights violations that may occur during the return process.

►►►► The Response

Independent return monitoring is a key safeguard for returnees. The presence of independent observers reduces the risk of disproportionate use of force, collective expulsion and refoulement. It also serves to de-escalate tensions and increase accountability of return staff. States should establish independent, effective and human rights-based monitoring mechanisms throughout the return and reintegration process, in partnership with relevant stakeholders such as UN entities, civil society organizations, national human rights institutions and migrants themselves, in order to be confident that returns are compliant with legal obligations, and that reintegration can be sustainable.

Closing the Gap

- The GCM includes a commitment to establish or strengthen national monitoring mechanisms, in partnership with relevant stakeholders, that provide independent recommendations on ways to foster accountability and guarantee safety, dignity and human rights of returnees. This commitment applies throughout the duration of the return process.
- This commitment also entails ensuring that such monitoring mechanisms are child-sensitive, gender-responsive, and are designed to protect the human rights of migrants, particularly migrants in situations of vulnerability.

C. Post-return and reintegration

12. Addressing stigma and discrimination



The Challenge

Stigma and discrimination may put a returning migrant in a situation of vulnerability upon their return. Return, especially unplanned or involuntary return, is often associated with debt, unmet family commitments, and shame. The migrant may be or feel shamed by their family and community due to the perceived “failure” of their migration when returning before they planned to or as a result of being seen as having transgressed in some way.²⁹

Discrimination, including on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other grounds, may also have been at the root of some migrants’ initial decisions to leave their country of origin. In these instances, migrants are likely to face the same or similar discrimination upon return. Returning migrants may also be perceived by communities of origin as having assimilated to the culture of countries of destination, and face discrimination or stigma as a result of this perception. Migrant women may face gender-specific discrimination upon return, including based on gender stereotypes related to the social acceptability of women migrating alone or with their children. In the context of the COVID-19 pandemic, returnees have faced stigma, discrimination, violence and harassment as a result of being perceived as potential carriers of the disease.

▶▶▶▶ The Response

By working with migrants and communities of origin, transit and destination to combat stigma and discrimination, States can help to ensure returns are safe and dignified and reintegration is sustainable. Returnees face less stigma and discrimination when they are able to return in a voluntary manner at a point in time during their migration trajectory that fully suits their respective needs and those of their family. A holistic solution to addressing stigma and discrimination should also seek to expand pathways for safe and regular migration, to avoid the risks of stigma and discrimination associated with irregular migration. Full inclusion in local systems and services, case management, psychosocial support and working with both returnees and communities of origin are also key.

Closing the Gap

- The GCM includes a commitment to eliminate all forms of discrimination, counter manifestations of racism, racial discrimination, violence, xenophobia and related intolerance against migrants and to ensure the sustainable reintegration of returning migrants into community life by creating conducive conditions for inclusion and social cohesion and ensuring migrants have equal

²⁹ See Schuster, L. and Majidi, N. (2015). *Deportation Stigma and Re-migration*. *Journal of Ethnic and Migration Studies*, 41(4), pp. 635-652, at 641-642.

and non-discriminatory access to social protection and services, access to justice, and other forms of assistance in order to participate as active members of society and contributors to sustainable development in the country of origin upon return.

- Meeting this commitment includes addressing the stigma and discrimination that migrants may face upon return, by working with migrants and their communities of origin.

Promising practice: Addressing misinformation and fear in communities of return

In Guatemala the government and international partners are addressing the discrimination, stigma and violence that returned migrants—including children—are facing due to fears and misinformation about COVID-19 in communities of return. Radio campaigns are being used to dispel myths with the goal of promoting greater tolerance among and between communities.

13. Avoiding vulnerability in the country of origin

The Challenge

When individuals and their families face pre-existing, exacerbated or new vulnerabilities after return, this is unlikely to result in sustainable reintegration. Whether returns create new or exacerbate existing vulnerabilities, including the risk of internal displacement, depends on a range of factors including the individual situation or circumstances of the person who is returning, conditions faced in transit or in countries of destination including elements of the return process/procedure, as well as conditions in the country to which they are returning.

Returns may create new, or exacerbate existing, vulnerabilities upon return if migrants are denied access to information or other rights prior to return, or if individuals are not provided sufficient time to prepare themselves for departure, including by collecting civil registry, travel or other identity documents; arranging money, a phone and other necessities; finishing the school year or any ongoing training in the case of children and youth; settling outstanding contractual obligations; or providing for needs upon arrival. Migrants may also become vulnerable upon return, for example, if they do not have social networks in the country of origin, have spent most of their lives in the country of destination, do not speak the language necessary for life in the country, do not have access to decent work or livelihood opportunities, or do not have access to other rights in their country of origin. Forced returns raise particular concerns, especially if they are implemented despite pending appeal procedures or deny migrants their human rights including the excessive use of force, prolonged or arbitrary detention, lack of access to legal assistance or other procedural safeguards, or family separation, among others.

▶▶▶▶ The Response

Through effective and individualized pre-return assessment, best interest procedures, human rights-based return procedures and reintegration support, and post-return monitoring, States can reduce the vulnerability of migrants to human rights violations or abuses upon return. Pre-return vulnerability

assessments can help to assess whether reintegration can be sustainable upon return or whether returns would either exacerbate existing or create new vulnerabilities upon return.

Closing the Gap

- In the GCM, States committed to respond to the needs of migrants in situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights.
- They have also committed to facilitating safe and dignified returns, which can result in sustainable reintegration.
- To realize these commitments, States are encouraged to establish comprehensive policies and develop partnerships to provide migrants with necessary support at all stages of migration and to ensure returning migrants are assisted in their reintegration process.

14. **Appropriate reception, care and reintegration of children**

Although all returnees face their own reintegration challenges, there are several factors that can make reintegration especially challenging for children. For many children “return” means going to a country where they have never resided or of which they have no memory. They may have no strong social ties there and often struggle to (re)establish positive relationships with their relatives, peers or community, especially when they have spent a long time away. They may not speak the language or share the culture of their country of origin. They may face particular obstacles in accessing basic services such as health, housing, protection and education, or face particular discrimination and stigma as returnees, including from their own families or communities.

At national and local levels, very few governments have adopted comprehensive policies or allocated budgets specifically aiming to support returning children and youth. Funding for reintegration programming tends to be focused on adults and on economic needs, despite evidence of the deep social and psychosocial needs of child returnees. Returnee children have rarely been adequately engaged in developing individual return and reintegration plan, and child protection actors rarely engage in cross-border collaboration and planning prior to a child's return. Often returnee children are not able to access local and national child protection systems and child and family support services, as well as other services that they particularly need for their social inclusion, such as psychosocial support, cultural adaptation and language classes. Returnees are not systematically known to the authorities and little data exists on the numbers of returnees coming back to each local area nor of their specific needs disaggregated by age group.

▶▶▶▶ The Response

By ensuring that individual plans for children's sustainable reintegration are developed—together with children, families, and guardians (for unaccompanied children)—and that coordination mechanisms for cross-border collaboration between child protection actors in countries of origin,

transit and destination are in place prior to return, States can ensure that there is a continuum of care and protection for each child. By ensuring that returnee children can access case management, psychosocial support and local and national systems for assistance and social services on arrival, including civil registration, health, education, child and social protection, and that the response involves a diversified range of resources and coordinated multi-sectoral interventions focused on a successful reintegration process for children and their families, States can aim to ensure each returnee child's legal, physical, material and psychosocial safety.

Closing the Gap

- The GCM commits to promoting child-sensitive return and reintegration programmes and highlights the need to ensure that appropriate reception, care and reintegration arrangements for children are in place in the country of origin upon return.

Promising practice: Multi-functional community centres in Albania

In Albania, a case management process was established for returnee families needing support for social protection or inclusion. This process is tailored to the needs of each member of the family and includes an age- and gender-specific response to needs. Social workers lead an initial needs assessment of the family, and make referrals to the municipal social services or to its multifunctional community centres. These conduct a thorough assessment of the families and design a reintegration plan with roles and responsibilities taken by the different public or private service providers: dealing with issues related to accommodation, economic empowerment, safety, legal/administrative (documentation and registration), educational support, social integration, and family relationships. This project is managed by the municipalities, with support from an NGO, and it ensures that civil society is involved and closely monitoring the delivery process.

15. Reintegration assistance and access to rights and related services post-return

The Challenge

In many countries, there are significant challenges to sustainable reintegration, including lack of legal or policy frameworks supporting reintegration; difficult conditions in the country or community of origin including stagnant economic situations, lack of access to justice, health care, education, social protection and decent work; discrimination, stigma and abuse against returnees; and family situations which may impact upon sustainable reintegration.

A lack of data on returnees and their experiences often makes it difficult to provide targeted services or interventions to returnees, or to know what assistance is most needed or successful. Where reintegration assistance is provided a lack of reintegration planning and assistance tailored to each individual returnee's needs can further limit the effectiveness and sustainability of reintegration. Even in communities where reintegration assistance exists, a lack of information on available services and programmes means returnees are frequently unaware of them, and a lack of coordination among

different stakeholders can make the delivery of targeted services or interventions less effective. Reintegration assistance is often designed and financed as a parallel programme with insufficient efforts to strengthen or connect with local and national systems and services (civil registration, health, education, child protection, social protection).

▶▶▶▶ The Response

By providing reintegration assistance that responds to the rights and needs of individual returnees and also of communities, States can ensure access to rights post-return and support sustainable reintegration. A holistic approach to sustainable reintegration responds to all civil, political, economic, social, and cultural rights of returning migrants, as well as their communities of origin. Individual assistance is combined with a range of community-based initiatives and efforts to address the underlying and often structural adverse drivers of migration and to strengthen local and national systems and services.

Closing the Gap

- The GCM commits to cooperation in facilitating sustainable reintegration, and to the creation of conditions for personal safety, economic empowerment, inclusion and social cohesion.
- This includes commitments to promote gender-responsive and child-sensitive return and reintegration programmes that may include legal, social and financial support, guaranteeing that returning migrants are assisted in their reintegration process through effective partnerships.
- It also includes commitments to facilitate the sustainable reintegration of returning migrants into community life by providing them with equal access to social protection and services, justice, psychosocial assistance, vocational training, employment opportunities and decent work, recognition of skills acquired abroad, and financial services, as well as to identify and address the needs of the communities to which migrants return.

Promising practice: integrated approach towards reintegration

In 26 countries in the Sahel and Lake Chad, North Africa and Horn of Africa regions, governments, UN entities and stakeholders from civil society work collectively to support sustainable reintegration of returnees and facilitate access to relevant services. For instance, in Cameroun, counsellors from the Ministry of Youth Affairs and Civic Education provide counselling and orientation on the elaboration of business plans. In Ethiopia, led by the Federal Urban Job Creation and Food Security Agency as well as National Partnership Coalition, the SOPs for National Reintegration Directives linked to the proclamation on prevention and suppression of trafficking in persons and smuggling of migrants were developed and endorsed in October 2020.

16. Access to labour markets and decent work

The Challenge

There are a number of structural and circumstantial challenges that can prevent returnees' reintegration into the labour market under decent work conditions. Some are inherent to the migration experience. For example, a prolonged stay abroad often creates challenges for returnees to find employment opportunities, primarily due to the loss of contact with networks in their home country. When back home, returnees may not have access to up to date information about employment services and the current labour market. Many returnees are concentrated in low-skilled informal employment or under-regulated sectors, characterized by precarious conditions.

The inaccessibility of support from financial institutions for obtaining loans for starting businesses, which often require a proof of residency, might further restrict their options to develop entrepreneurship. Moreover, lack of national identity cards also limits returnees' ability to access support services and to establish themselves within a locality. Pressure on job markets and access to land in areas of return might increase competition and tension within communities. If access to jobs and livelihoods is unavailable in the place of return, including in rural areas, then returnees may be compelled to move to urban areas in search of employment opportunities, and face a higher likelihood of falling into poverty and/ or engaging in cyclical migration.

Due to the impact of the COVID-19 pandemic, many migrant workers have lost their jobs in countries of destination and had to return to their country of origin, in some instances forcibly. In addition to these unexpected returns migrants' ability to access decent jobs is even more limited due to lockdown and other restriction measures, as well as challenging economic conditions in general, thus creating enormous difficulties for returnees in meeting basic needs for themselves and their families.

▶▶▶▶ The Response

By providing an enabling environment that facilitates access to sustainable employment opportunities and promotes decent work, including as part of socioeconomic recovery efforts from COVID-19, States can enhance the economic reintegration of returnees in a sustainable manner. Social and private partners play an important role in, inter alia, the analysis of labour market needs and absorption capacity as well as for employment promotion measures fostering labour market reintegration. Providing operational support through income-generating opportunities for both returnees and communities in areas of return might also be a factor for successful reintegration processes.

Closing the Gap

- The GCM commits to uphold the economic, social and cultural rights of migrants and to promote returnees' equal access to social protection, vocational training, employment opportunities and decent work and to ensuring access to financial services for developing entrepreneurship opportunities.

Promising practice: Strengthening institutional capacity to provide economic support to returnees

In Ethiopia, the government, UN entities, and stakeholders from civil society worked collectively to improve migrant reintegration by supporting the combined socio-cultural, economic and psychosocial/ health reintegration of returnees. Employers provided access to wage employment while other partners provided individualized and rights-based reintegration assistance to returnees with a particular focus on women and girls. The programme strengthened institutional capacity to provide economic empowerment support to returnees such as career counselling, market-oriented skills, and sustainable livelihood training e.g. through job-placement or access to finance to start up businesses.

Guatemala established employment promotion one-stop shops at the rural level (VUME rural) to provide young rural entrepreneurs, with special focus on returning youth migrants, with labour intermediation, orientation and information services.

17. Skills certification and recognition

The Challenge

Returnees can play an important role in facilitating the transfer of new qualifications and skills to countries of origin. However, this has never been an automatic process. The recognition procedure for returnees can include recognition of formal qualifications acquired in the country of destination, as well as recognition of informal and non-formal learning. The benefits of skills recognition at the individual level include addressing employability /access to decent work, skills utilization and career advancement, and facilitation of access to further skills development / learning opportunities.

In many countries of origin, national qualification systems do not have fully established systems for recognition of prior learning (RPL). This situation could be attributed not only to the absence of a conceptual framework, but also to the lack of involvement of key stakeholders, in particular employers. The presence of a large informal economy is also a factor since formal recognition procedures for qualifications and skills are usually not required to obtain informal employment. Another common challenge is that training delivery is not competency-based and modular, which prevents RPL candidates from acquiring only those competencies that are missing for a qualification over relatively short periods of time. For returning migrant youth, who have learnt and developed skills whilst living in their host country with a view to supporting themselves and their families, the lack of certification and recognition of these skills can be a major source of frustration and undermine chances of sustainable reintegration.

►►►► The Response

Employment services providers, in particular public employment services with a mandate to work with returnees, could provide assistance for labour market reinsertion. The services should ideally allow returnees to (i) collect data from their overseas employment, including any skills training, into a comprehensive portfolio; (ii) map that data against identified national competency standards; (iii) be assessed; and then (iv) achieve formal recognition of their new skills and work experience.

Closing the Gap

- The importance of skills permeates the GCM, highlighting that skills and sustainable reintegration need to be addressed comprehensively, for example by ensuring vocational training and skills development address drivers of migration; that labour mobility schemes are in accordance with labour market needs; and that pathways for regular migration optimize skills-matching.
- The GCM encourages States to invest in skills development and facilitate mutual recognition of skills, qualifications and competences, and to provide equal access to vocational training and recognition of skills acquired abroad to facilitate sustainable reintegration.

Promising practice: Services for returning migrant workers in the Philippines

The Philippines has developed a Skills Registration Database for return migrant workers in Davao province. Six government agencies under the leadership of the Technical Education and Skills Development Authority (TESDA) oversee the Permanent Returning Overseas Filipino Workers Network. The network operates to link return migrant workers with businesses and other opportunities, focusing on their skills and work experiences acquired abroad. In 2015 TESDA launched the Onsite Assessment Program (TOAP) to allow returning Filipino migrant workers to acquire a certification or recognition of their technical skills and knowledge, targeting those in vulnerable occupations, such as domestic workers. As of December 2018, a total of 2,681 returnees had benefited from TOAP.

18. Access to social protection

The Challenge

Returning migrants risk losing entitlements to social security benefits in their country of origin due to their absence. Eligibility for social protection can be challenged due to the length of employment or residence in a country; nationality or migrant status; or the nature of employment, including informal work, domestic work, self-employment, and seasonal agricultural labour. They may also face practical obstacles to effectively access social protection due to, amongst others, a lack of information, language barriers and a lack of representation. Lack of access to social protection by families increases the difficulties for children to reintegrate in the country of origin. Women migrant workers, over-represented in the informal economy and among workers in an irregular situation, are often particularly impacted. Migrants may contribute to social security schemes but not receive

any corresponding benefit and face constraints in the portability of these rights due to the absence of social security agreements. If migrant workers cannot maintain or transfer their social security rights/benefits even though they did contribute for several years, this can be a disincentive to return. Access to social protection, together with skills recognition and other measures, remains key to unlocking the potential of returning migrant workers to help their home economies rebuild better after the COVID-19 pandemic.

►►►► The Response

Extending social protection coverage improves migrant workers' income security and reduces poverty, inequalities and social exclusion. States should : (1) provide access to contributory and non-contributory social protection including national social protection floors to extend social protection coverage for migrant workers and provide returning migrants and their dependents with access to essential health care and basic income security; (2) ensure the portability of social security entitlements enabling returning migrants to maintain their acquired social security rights and rights in the course of acquisition (by providing for the totalisation of qualifying periods completed in different countries); (3) include social security provisions in bilateral labour agreements.

Closing the Gap

- The GCM calls for extending social protection to migrant workers and enhancing the portability of social security entitlements and earned benefits in line with International human rights instruments and labour standards.

Promising practice: International cooperation for portability of benefits

Bilateral social security agreements can enable the portability of social security rights and benefits. The France – Tunisia social security agreement foresees that benefits acquired while working in France can be paid and transferred to Tunisia including sickness, maternity, employment injury, old-age, survivors' and invalidity benefits.

19. Post-return and reintegration monitoring

The Challenge

After return, migrants can face severe risks in the country of origin or in third-party countries of return, including in connection to failed asylum applications or the return of victims of human trafficking. In addition to civil and political rights, returns may also create real and foreseeable risks to the economic, social and cultural rights of returnees. Return monitoring that is limited to the return procedure and does not extend to reception and identification of returnees upon arrival, or to more long-term post-return dynamics in the country of origin, often fail to document and address critical risks to returning migrants.

Often, the harms that migrants might face upon return can be anticipated. However, in the absence of more robust pre-return assessments States and other stakeholders are often unaware of whether returns would exacerbate existing, or create new, vulnerabilities upon return. There is also a lack of rights-based post-return and reintegration monitoring to verify, among other concerns, whether officials in countries of return detain returnees, whether they maintain accurate records of returning migrants in accordance with rights to privacy and data protection, as well as whether returnees are able to access necessary identity documents, have immediate health care needs after arrival, are not deprived of food, clothing and housing, and whether returning children face barriers to accessing education, health and other rights. Multidisciplinary mechanisms are necessary to monitor the situation of returning child migrants, their inclusion in national systems, and the reintegration assistance they receive for a sufficient period of time after their return to ensure their reintegration has been successful and they have continued access to rights and protection.

▶▶▶▶ The Response

To anticipate and avoid harm after return, States can use insights from rights-based post-return monitoring to improve country of origin reports, pre-removal vulnerability assessments, return procedures and post-return reintegration assistance.

Closing the Gap

- The GCM commits to the establishment or strengthening of national monitoring mechanisms on return, in partnership with relevant stakeholders, that provide independent recommendations on ways and means to strengthen accountability, in order to guarantee the safety, dignity, and human rights of all returning migrants.
- This is also a part of the commitment to establish comprehensive policies and develop partnerships that provide migrants in a situation of vulnerability, regardless of their migration status, with necessary support at all stages of migration, as well as protection of their human rights.