

# How to Ensure Inter-State Cooperation on Safe, Orderly and Dignified Return?

## *Ideas for the UN Global Compact for Migration*

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### 1. ***Contours of cooperation on return according to the New York Declaration***

The commitment for all States to cooperate closely on return<sup>1</sup> and readmission features prominently in the [New York Declaration for Refugees and Migrants](#). The Declaration considers the dignified return of irregular migrants and the corresponding need for cooperation not only as an integral part of the overarching concept of safe, orderly and regular migration<sup>2</sup>, but also as a necessary step towards **guaranteeing the credibility of asylum systems**.<sup>3</sup> According to the declaration, such cooperation should take place between all relevant countries with the aim of ensuring that

“migrants who do not have permission to stay in the country of destination can return to their country of origin or nationality in a **safe, orderly and dignified manner, preferably on a voluntary basis**, taking into account national legislation in line with international law”.<sup>4</sup>

Noting that cooperation on return and readmission forms an important element of international cooperation on migration,<sup>5</sup> the Heads of State and Government and High Representatives described the following elements of such cooperation:

- Ensuring proper **identification** and the provision of relevant **travel documents**.
- Full implementation of existing **readmission agreements**.
- Enhancing **reception and reintegration assistance** to returnees.
- Compliance with relevant **human rights obligations**, with an explicit reference to the principle of *non-refoulement*, the best interest of the child, due process as well as special needs of vulnerable groups such as children, elderly, disabled and victims of trafficking.<sup>6</sup>

As the New York Declaration foresees the inclusion of “return and readmission, and improving cooperation in this regard between countries of origin and destination” in the [Global Compact for](#)

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<sup>1</sup> Please note that the New York Declaration (rightly) considers the issue of the return of (former) refugees as a part of a Comprehensive Refugee Response Framework, i.e. the [Global Compact on Refugees](#) which will be negotiated under the aegis of UNHCR in parallel to the Global Compact for Migration. For this reason and also due to considerable differences between the concepts of return of irregular migrants and return of (former) refugees, this policy brief which focuses on possible modes of cooperation to be included in the Global Compact for Migration deals only with the question of return of irregular migrants.

<sup>2</sup> Para. 41.

<sup>3</sup> Annex I, Comprehensive refugee response framework.

<sup>4</sup> Para. 58. Emphasis added.

<sup>5</sup> Ibid. It was also expressly reaffirmed that states must readmit their own nationals (para. 42).

<sup>6</sup> Para. 58.

[Safe, Orderly and Regular Migration](#) (GCM)<sup>7</sup>, we will try in this policy brief to provide ideas for action relating to each of the above-mentioned elements. But to put things in context, it is worth to first elaborate on the particular interests of relevant actors, which shape such cooperation.

## 2. *Who wants what?*

Unsurprisingly, the **main concern of destination countries** is to protect their sovereign right to decide who enters and leaves their territory. In addition, as also confirmed by the New York Declaration, they regard the enforcement of return decisions both as essential to ensuring the credibility of the protection systems as well as a key tool in the fight against irregular migration. Against the background of rising populism surfing on the waves of anti-immigrant sentiments in the Global North, reinforced by the feeling of losing control over borders, return has recently made it to the top of the political agenda of destination countries. As a result, return policy and its perceived successes or failures have become highly politicised. There is mounting pressure on national politicians in countries of destination, especially within the EU, to deliver concrete results in the area of return and this pressure is then passed onto countries of origin and transit. As a consequence, cooperation in the area of return has even started to overshadow traditional development aid and other areas of bilateral and multilateral cooperation.<sup>8</sup>

**Countries of origin** are often reluctant to cooperate with countries of destination despite their obligation according to international law to readmit their own nationals. A multitude of concerns define such reticence.

First, as [research has shown](#), forced returnees with interrupted migration cycles are an *additional burden for countries of origin* that may already be facing economic problems and challenges due to, for example, a growing population coupled with increased youth unemployment. The affected population can be potentially quite significant considering that migration is part of a household strategy. Hence, there might be high internal political, social and economic costs for country of origin governments when they cooperate on return.

Secondly, returnees may in certain cases pose a security risk, especially when those with no prospects of successful social and economic reintegration are at risk of joining anti-government armed (terrorist) groups (e.g. Taliban in Afghanistan or Al Shabaab in Somalia). Moreover, as we saw in the aftermath of last year's terrorist attack in Germany, perpetrated by an irregular migrant, such situations can create additional [internal resistance](#) within countries of origin to accepting returnees.

Thirdly, the dependency of certain countries of origin on *remittances* may play an important role as it can be argued that the return becomes a double burden for the government. As remittances often outweigh development assistance received from the countries of destination, it is not surprising that certain countries use it as an argument (rightly or just as a negotiation strategy) to say that they would rather not receive such assistance than accept it with conditionality linked to returns.

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<sup>7</sup> Annex II, para. 8(s).

<sup>8</sup> The UN Secretary-General's former Special Representative on Migration, Peter Sutherland, paid a special attention to this trend in his [Report on Migration](#), stating that: "making unrelated areas of cooperation, such as trade and development aid, contingent on a country's cooperation in the return and readmission of migrants is short-sighted and wrong, and may actually strengthen some of the underlying drivers of irregular migration."

The *local context* is also important: countries who are already hosting a 6-digit refugee population are less likely to be willing to accept their own national returning without any prospect of reintegration.

Finally, confirming the actual citizenship of returnees poses another major challenge for the return of irregular migrants. The reasons for this can be purely technical, such as lacking elaborate *civil registry systems* necessary for proper identification of potential returnees, but it can also be related to the mere size of the country, the nature of its borders or the complexity of the individual migrant's personal history. For instance, a considerable number of rejected Afghan asylum seekers in Europe were born in Iran or Pakistan but kept the nationality of their parents who moved as refugees or irregular migrants themselves.

Concerning **transit countries** that are often hosting a large number of stranded migrants and thereby become **de facto countries of destination**, they also lack the resources and ability to return irregular migrants in a dignified manner. As a result, migrants are either kept in an indefinite state of legal limbo or pushed back in an informal and uncontrolled manner.

Finally, it must be mentioned that the discourse on cooperation often overlooks the importance of the individual migrant's agency in the overall scheme. Most of the abovementioned difficulties and tensions would not exist if migrants were willing to return of their own accord. The reasons for their unwillingness to return are well known and mainly concern the persistence of the initial drivers of migration (lack of personal development opportunities, jobs, etc.) and the fear to lose face in front of their family and friends. Cost-benefit calculations related to the large financial investment into the migration project, often with the help of family and friends, are also a key factor.

### **3. *Blueprint for cooperation on return***

The challenge which the drafters of the Global Compact for Migration face is how to reconcile these diverging interests, concerns and priorities.

#### **3.1 Horizontal issues**

The logical point of departure should be better communication and honest dialogue among the countries concerned. Reference should be made in this respect to Peter Sutherland's [Report on Migration](#), in which the UNSG's former Special Representative underlined the need for

“more open and frequent communication between countries in order to foster understanding of States' differing interests and arrive at compromises that can be respected by all sides.”<sup>9</sup>

**Migration dialogues** could in this case be used as a suitable horizontal platform,<sup>10</sup> also because many countries of origin participating in the dialogues are at the same time countries of destination interested in improving return procedures and learning from each other. As the previous years' thematic meetings on return – organised within the [Rabat](#), [Khartoum](#), [Budapest](#)

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<sup>9</sup> Para. 39 of the Sutherland Report.

<sup>10</sup> See also para, 37 of the Sutherland Report.

and [Prague](#) processes – proved, a frank exchange on this sensitive topic among the countries of origin, destination and transit can in the long run lead to shaping a balanced approach which integrates the corresponding needs and interests of relevant stakeholders, without compromising on international human rights obligations. In fact, many of the recommendations listed below under each topic are congruent with the consensual conclusions adopted at those meetings by the respective chairs. These platforms can moreover be used for sharing good practices and seeking common solutions, as also illustrated by the Prague Process' relevant works leading to development of return-related [handbooks and guidelines](#).

Further modes of dialogue and horizontal cooperation in the field of return can be the deployment of **liaison officers** as well as the creation (probably also within the framework of existing dialogues) of further bi- and/or multilateral thematic platforms in the form of **Task Forces** or **Working Groups on return** involving multiple stakeholders. Such platforms can facilitate regular exchange with a view of identifying existing challenges, finding specific solutions as well as providing political support to specific initiatives (pilot projects, etc.).

### **3.2 Ensuring proper identification and the provision of relevant travel documents**

Given the lack of elaborate identification systems in many countries of origin, often as a result of dysfunctional civil registry systems, it is crucial to develop cooperation in this area in the form of **capacity building** and **provision of technological know-how**. This is all the more important for countries of origin since civil registry systems are used for multiple other complimentary purposes.

**Implementation of innovative hi-tech solutions** enabling, for instance, direct access of origin countries' consular posts to their national civil registry systems or conducting **identification interviews through videoconferencing** can greatly facilitate the identification process and reduce financial and time-expenditure.

**Conclusion of readmission agreements**, which usually aim to formalise specific steps of cooperation on identification and issuing travel documents, can substantially ease the process of proper identification and the provision of relevant travel documents. Therefore, it is important to find ways (including by dropping certain clauses which are not in the interest of the countries of origin as they might lead to additional burdens to their migration systems) to make them more acceptable for the countries of origin.

It should be stressed here that the recent proliferation of informal soft-law arrangements, often taking the form of memoranda of understanding, which is to some extent also a reaction to the unwillingness of the countries of origin to conclude legally binding Readmission Agreements, might pose a problem in terms of specific procedures and human rights guarantees, not to mention the challenges for their implementation.

### **3.3 Full implementation of existing readmission agreements**

To say that existing readmission agreements must be fully implemented is stating the obvious since they are international treaties, their parties are bound to implement (***pacta sunt servanda***) and interpret them in **good faith** as provided for in Arts. 26 and 31 of the Vienna Convention on the Law of Treaties. The question is rather how to make their implementation easier.

Institutionalised dialogue, capacity building and the use of modern technological means can provide some of the answers to this question.

As regards the institutionalised dialogue on their implementation, the EU readmission agreements, foreseeing the establishment of **Joint Readmission Committees**, provide a good example of how this dialogue could be shaped (as mentioned above, such structures are also important for the overall dialogue in the field of return).

**Capacity building of the institutions** of countries of origin involved in handling readmission cases is also very important, not only due to the complexity of the issue but also from the perspective of coordination (i.e. the whole-of-government approach) since a myriad of stakeholders are involved in the entire process.

Finally, IT solutions such as **readmission case management systems** allowing a speedy online communication between the relevant stakeholders (covering for instance submission of the readmission application, the planning of interviews, reply to the application, the request of travel documents, etc.) can make a substantial contribution to the time- and cost-efficient implementation of the existing agreements.

### **3.4 Assisted Return and Reintegration**

Due to the above mentioned reasons, the existing AVR(R) programmes, which provide the financial support that is often much less than the money invested in the migration project or which sometimes only offer the prospect of being advised in the countries of origin to find a job (without the probability that this will indeed happen), cannot always persuade migrants to return.<sup>11</sup> In addition to the fact that the countries of origin are also hesitant to readmit irregular migrants who do not have any long-term reintegration perspective, the challenge is how to act on both the migrant's agency and that of the country of origin in order to find win-win solutions. Special attention needs to be paid to the fact that without sustainable return and long-term reintegration there is a high risk (and propensity) of re-migration which jeopardises the effectiveness of any return policy.

One of such win-win solutions can be bringing on board the **private sector** of the countries of destination as future investors willing to enter promising markets of some countries of origin with adequately trained personnel and political support of both destination and origin countries. To provide necessary (including political) backing to such projects involving potential returnees, it would be needed to create **structural frameworks for Private-Public Partnership and multi-stakeholder** (high ranking officials from different resorts both in countries of origin and destination) **dialogue**, which could build on the abovementioned platforms. By enlarging the scope of cooperation, such initiatives can not only contribute to de-demonising of the field of return. They can also prepare the ground for more inclusive and genuine migration partnerships.

Other innovative solutions such as **involving origin countries' stakeholders in the pre-return counselling** or setting up **local return offices** (including by pooled resources of countries of destination -- this is especially relevant in the European context) could also help to advance the

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<sup>11</sup> See further discussions on reintegration and post-arrival assistance in: Pluim & Hofmann, Rethinking Post-Arrival Assistance: The Road Towards a European Return System, ICMPD Working Paper, June 2016.

cooperation among countries of destination, origin and even transit. More specifically, by setting up local return offices, destination countries, being present on the ground would be able to not only better monitor and coordinate reintegration assistance ([also by linking pre-return counselling with post-return reintegration](#)) in a given country but also strengthen origin countries' capacity to support their returning nationals' reintegration. It needs to be mentioned here that in order to make such cooperation work, certain destination countries' policy of punishing forced returnees by not providing any assistance will need to be reconsidered.

Against the background of emerging discourse on how to devise **development-sensitive return policies**,<sup>12</sup> it is important to take into consideration that return and reintegration policies will fail to produce intended effects if they do not go hand-in-hand with the needs of each receiving community and if they neglect the drivers of irregular migration.

Finally, countries of destination and origin need to cooperate on presently almost non-existent **monitoring and evaluation of reintegration programmes** to build an appropriate knowledge base with a view to not only measuring the impact of existing programmes but also for the sake of devising better programmes in the future.

### **3.5 Compliance with human rights obligations**

As for the specific actions for cooperation on the human rights aspects of return, wide deployment of **forced-return**<sup>13</sup> and **post-return**<sup>14</sup> **human rights monitoring mechanisms**, ideally involving relevant stakeholders from countries of destination and origin, would not only greatly contribute to transparency and legitimacy (and thus better acceptance) of the return procedures. It would also give the possibility to countries of destination to act timely in order to prevent the breach of their most important human rights obligations (for instance, if a returnee is at risk of chain expulsions in violation of the principle of non-refoulement).

**Capacity building** initiatives aimed, for instance, at building up reception systems for returning unaccompanied minors and other vulnerable groups as well building properly functioning asylum systems in transit countries (however not mala-fide with a hidden agenda of transforming them into safe third countries, which can certainly damage the trust) can further enhance the human rights protection of returnees and signal the burden-sharing with the countries of return.

As regards the general human rights safeguards in the process of return and the corresponding concerted actions, the wheel does not need to be invented twice. The UN International Law Commission spent [almost 10 years](#) codifying relevant substantial and procedural rights and obligations in its [Draft Articles on the Expulsion of Aliens](#), which seems to have passed unnoticed in the present discussions. The current positive momentum should be used to reflect those standards (especially on detention, mass- and other prohibited expulsions, vulnerable persons, procedural safeguards) in the Global Compact for Migration.

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<sup>12</sup> See also Sutherland Report, para. 40. ICMPD had an opportunity to provide input to the Sutherland Report as well as to the GFMD roundtable on return and development, contributing in both cases to shaping such discourse.

<sup>13</sup> I.e. during the forced return operations. On ICMPD's experience in this field, currently implementing FReM II project see: <http://www.icmpd.org/our-work/capacity-building/irregular-migration-return/ongoing-projects/>

<sup>14</sup> See among others the pre-New York Declaration [Report of the Special Rapporteur on the human rights of migrants](#), para. 103.

#### **4. Concluding remarks**

While the Global Compact for Migration will be a non-binding instrument similar to many other declarations or compacts negotiated at the UN level, its importance should not be underestimated. Provided that its negotiators are open to new approaches, it offers a unique opportunity to shape global political consensus around such sensitive and inherently complex issues as the return, readmission and reintegration of irregular migrants. Development of specific guidelines can both instruct the states in their relevant cooperation and pave the way for more ambitious endeavours. We have a good example of it in Europe, where the political consensus reached in 2005 within the Council of Europe on the [Twenty Guidelines on Forced Return](#) was [instrumental in negotiating the EU's Return Directive](#) that is considered as one of the most progressive return-related legal instruments worldwide. The opportunity must not be missed, keeping in mind that if there is one topic which might not only ruin the final outcome of the GCM, but also severely damage the relations between groups of states, it is return.