



READMISSION

Building upon the New York Declaration for Refugees and Migrants adopted on 19 September 2016, the Global Compact on Safe, Orderly and Regular Migration (GCM) will set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions. The GCM should make an important contribution to global governance and enhance coordination on international migration. For the consideration of Member States, the “Thematic Papers” developed by IOM, outline core topics and suggestions to inform actors involved in the 2017 consultation process that will lead to the inter-governmental negotiations and final adoption of the GCM.

INTRODUCTION

The return of persons irregularly residing in countries of destination has figured prominently in the media, in particular in recent years. While “return migration” is a very broad issue, this paper will focus on the readmission of irregular migrants and failed asylum seekers and inter-State cooperation on this matter. A stark recent example of this issue – but by no means the only one – is the increase in numbers of irregular arrivals in the European Union (EU), particularly those travelling across the Mediterranean Sea or overland through Southeast Europe, which has placed pressure on governments to address what is perceived to be a “migration crisis”.

The removal of irregular migrants and failed asylum seekers is an important aspect in guarding the integrity and credibility of both refugee and migrant policies. Effective return, readmission and reintegration policies, in full respect of international law and standards, are central aspects of good migration management that address irregular migration in a way that helps to discourage people from risking their lives. Readmission agreements are often also key components of broader international cooperation.

As in all dimensions of migration management, States are obliged to comply with international law when it comes to return and readmission. This includes the protection of migrants’ rights under applicable international law, and in particular the principle of *non-refoulement* in the case of asylum-seekers and refugees. States are also required by international law to accept the return of their own nationals.

Equally, States of destination have a legitimate interest in returning irregular migrants and failed asylum seekers who do not (or no longer) fulfill the requirements to remain in the territory of the State, and to secure the readmission of these migrants by their countries of origin. While States of destination are justified in undertaking such returns, voluntary return with a focus on reintegration is always preferable, both because it is much easier for sending and receiving states to manage, and because it reflects greater respect for the dignity of the individuals being returned.



Terminology

Readmission agreements are binding bilateral or multilateral agreements between States that establish and facilitate the bases, procedures and modalities for one State to promptly and in an orderly manner return non-nationals who do not or no longer fulfil the conditions for entry or stay on its territory. This is principally to the individual's State of origin but may also be - albeit less often - to a State through which non-nationals have transited. Such agreements are thus administrative tools used to articulate jointly agreed-upon procedures for the return of irregular migrants, failed asylum seekers and those no longer in need of international protection. Readmission agreements can manifest themselves in different forms which can include standard readmission agreements, police cooperation agreements, memoranda of understanding, exchanges of letters, and the like.

The 2016 New York Declaration for Refugees and Migrants

The New York Declaration for Refugees and Migrants (The New York Declaration)¹ requests States to cooperate closely to ensure safe, orderly and regular migration, including return and readmission, taking into account national legislation. The Declaration also calls for cooperation among countries (countries of origin or nationality, countries of transit and countries of destination) to ensure that migrants who do not have permission to stay in the country of destination can return to their country of origin in a safe, orderly and dignified manner, preferably on a voluntary basis. Recommendation 7 of the Sutherland Report also suggests developing "...global principles on return, readmission and reintegration".

Cooperation on return and readmission is an important part of broader international cooperation on migration, with the need to ensure the proper identification and provision of travel documents and compliance with international human rights law and the principle of *non-refoulement*. It should also respect other rules of international law and be conducted in keeping with due process and the best interests of children.

The New York Declaration recommends cooperation to facilitate and guarantee safe and orderly return and readmission, and improving cooperation in this regard between countries of origin and destination. It notes that existing readmission agreements should be fully implemented. States have also declared that they support enhanced reception and reintegration assistance for those who are returned, and that particular attention should be paid to the needs of migrants in vulnerable situations who return, such as children, older persons, persons with disabilities and victims of trafficking.

EXISTING PRINCIPLES

Normative Framework

Readmission agreements are principally used to facilitate the return of a State's own nationals. Under international law, migrants have a right to return to their country of origin.² There are numerous declarations and statements of governments committing or re-committing themselves to cooperation on returns in various ways. In some international treaties, such as the Cotonou Agreement³ for example, it is obligatory for signatory parties to readmit their own nationals. The Khartoum Declaration, which envisions cooperation between the EU and Khartoum process countries, commits signatories to help



improve national capacity in all components of migration management and to address irregular migration, including through cooperation on return, in particular voluntary return, and readmission.⁴ Many regional consultative processes on migration, such as the Budapest⁵ and Bali⁶ Processes, have readmission as a standing item on their agenda. Government policy for managing return is also an integral component of migration management in the consensus document “International Agenda for Migration Management” (Berne Initiative, 2004).

However, the obligation to readmit can often be frustrated in practice, mostly due to the reluctance of States to readmit their own nationals. Matters are even more complex in the readmission of individuals to countries other than their home countries, often to countries they have transited through – i.e. of third country nationals. Readmission agreements are therefore crucial to confirm obligations regarding a State’s own nationals, providing important details for implementation whilst establishing a legal basis for a State’s obligation to readmit third-country nationals in specified circumstances.

Sustainable Development Goals

The Sustainable Development Goals (SDGs) recognize that well-managed migration plays an integral role in and makes an immense contribution to sustainable development. Several SDG targets either mention or are relevant to migration, but the centerpiece for migration⁷ is target 10.7: “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.”

ISSUES

The Declaration of the High-level Dialogue on International Migration and Development held in October 2013 highlighted the need for concrete measures to enhance coherence and cooperation at all levels.⁸ It reiterated the international community’s commitment to cooperate closely to facilitate and ensure safe, orderly and regular migration, including return and readmission, taking into account national legislation.

The Report of the Secretary-General released in April 2016 (*In safety and dignity: addressing large movements of refugees and migrants*) also emphasized that return is an important component of ensuring the integrity of asylum and migration systems and that all governments are required to accept the return of their own nationals. While highlighting the need to promote voluntary return over forced return, the report also recognized that any return should be in line with international standards, respect the principle of *non-refoulement*, the best interests of the child and due process of law.⁹

Despite the global commitment of States to cooperate on readmission and their obligation to readmit their own-nationals, a number of countries (in particular countries of origin and transit) do not yet have dedicated policies, legislation or institutional frameworks to enable the negotiation and implementation of readmission agreements. It therefore makes sense to enshrine concrete responses to readmission within bilateral or multilateral agreements.

Countries fail to comply with their international obligations if they refuse to readmit their own nationals. Where countries of origin are not presented with adequate incentives to enter into readmission agreements, a full range of policies and instruments such as visa facilitation/visa free regimes, access to labour migration, trade, and other forms of technical or financial incentives could be considered to



achieve this objective and contribute to reciprocity. Positive incentives should be integrated into the policies of the country of destination, to encourage countries of origin or other relevant countries to cooperate effectively on migration management and readmission.

Where readmission agreements are implemented without respect for international human rights and the principle of *non-refoulement*, States equally fail to comply with their international obligations towards the persons they return, and such readmission agreements will continue to be regarded by origin and transit states as unilateral enforcement tools and will have a negative effect on the perception and operational effect of any such agreement. Where opportunities to migrate safely and regularly are not provided as part of a holistic response to readmission, a vicious circle of irregular migration followed by forced return may only increase.

The September 2016 New York Declaration for Refugees and Migrants states that returns of those migrants who do not meet required international or national legal standards to remain in their host country must be conducted in safety, dignity and respect for human rights, on the basis of: (i) the primacy of voluntary returns; (ii) cooperation between States of origin and reception; and (iii) enhanced reception and reintegration assistance to those who are returned.¹⁰

Readmission agreements are inextricably linked to return and reintegration, broader migration management and international cooperation. These related and interconnected issues mean that addressing readmission in a holistic way requires a comprehensive approach from a range of actors including coordination between state and non-state actors. A comprehensive approach to readmission, articulated in the Global Compact on Migration, is necessary to enable readmission agreements to be implemented in line with international standards. Cooperation on readmission is required by various entities at the national level (intra and inter-agency) and international level - between countries of origin, transit and destination. Cooperation should be framed within the broader context of migration governance and management and not only as a means to address irregular migration flows through return and readmission.

Several challenges have been identified as impediments to readmission: (a) inadequate understanding and implementation of existing readmission agreements; (b) lack of data and research; (c) lack of legislation, structures and institutions to effectively negotiate and implement readmission agreements; (d) reluctance of countries to readmit and enter into readmission agreements; (f) inadequate protection of the rights of irregular migrants, failed asylum seekers and other persons subject to readmission; and (g) limited international cooperation and incentives for countries to enter into readmission agreements.



SUGGESTED ACTION

The following measures have been identified as necessary to readmission:

- 1) increase dialogue between countries and strengthen readmission incentives;
- 2) conclude (standard) cooperation agreements in line with international standards, particularly the principle of *non-refoulement* and due process as well as the best interest of the child;
- 3) establish legal and institutional structures as well as capacity and resources to effect readmission arrangements;
- 4) address technical requirements of readmission including identity management and case management guidance;
- 5) establish mechanisms and procedures which ensure that forced return is undertaken in safety and dignity and respect of applicable rights of the returned person;
- 6) effect returns – with a clear priority on voluntary return;
- 7) where indicated, include adequate reintegration assistance for individuals returning within readmission agreements.

Complementary actions to reinforce these measures may also include: research and analysis of the return context, undertaking gap and needs analysis; review of legislative and institutional practices and recommendations for subsequent revision; capacity building and training for governments and non-governmental actors on readmission and return; strengthening dialogue and exchange of good practice; and monitoring and evaluation.

¹ United Nations General Assembly, *New York Declaration for Refugee and Migrants*, A/RES/71/1, (New York, 2016).

² International Covenant on Civil and Political Rights (ICCPR), Art. 12 (4).

³ The agreement between the EU and African Caribbean and Pacific (ACP) commits parties to facilitate the return of illegal migrants and entered into force in April 2003. It is revised periodically.

⁴ Declaration of the Ministerial Conference of the Khartoum Process (EU-Horn of Africa Migration Route Initiative), Rome, 28th November 2014.

⁵ The Budapest Process was initiated in 1993 as a consultative forum aiming at developing comprehensive and sustainable systems for orderly migration.

⁶ The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime was initiated in 2002 as a strategy to engage international cooperation among regional law enforcement agencies to deter and combat migrant smuggling and trafficking in persons networks.

⁷ United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, (New York, 2015).

⁸ United Nations General Assembly, High-level Dialogue on International Migration and Development, *Making Migration Work*, 3-4 October 2013. Available from www.un.org/en/ga/68/meetings/migration/resources.shtml.

⁹ United Nations General Assembly, Report of the Secretary-General, *In safety and dignity: addressing large movements of refugees and migrants*, A/70/59, (New York, 2016). Available from www.un.org/ga/search/view_doc.asp?symbol=A/70/59.

¹⁰ United Nations General Assembly, *New York Declaration for Refugee and Migrants*, A/RES/71/1, (New York, 2016), para 58.