



International Organization for Migration (IOM)
The UN Migration Agency

IOM'S POLICY ON THE FULL SPECTRUM OF RETURN, READMISSION AND REINTEGRATION

I. Introduction and scope

The return and readmission of migrants to their countries of origin, or third countries, and their reintegration into the societies and communities that receive them, are natural features of international mobility. More than ever, migration today is not a linear phenomenon starting with emigration and ending with permanent settlement in a new country. Rather, migration is increasingly multidirectional, frequently involving return to countries of origin for short or long periods of stay, often followed by back-and-forth movement between two or more countries, or migration onward to new destinations.

Return migration takes place in a multitude of situations and for a variety of reasons. Many migrants return spontaneously, without the support of governmental or other actors, for example for family or other private reasons, after having completed their education or work contract or having achieved another migration objective. Others return because conditions in their country of origin have improved, or, conversely, because conditions in their host country have deteriorated, economically, socially, politically or environmentally. In some cases, governments in countries of origin actively solicit the return of their nationals/diaspora members from abroad, particularly those who are highly skilled, for temporary, permanent or even virtual return, to contribute their human and financial capital to the development of their home country.

The situations of return that often garner the greatest public attention – and political controversy – involve migrants who are not or no longer authorized to stay in the host country pursuant to its national migration laws and regulations, as well as those for whom remaining in the host country risks posing a threat to their safety. It is this area of return and IOM's involvement in it that is the focus of this policy.

Beyond the many reasons for and situations under which migrants return, the impact of return on individual migrants, their families, and the communities and societies to which they return also differ significantly. Individual migrant characteristics and vulnerabilities, including those related to age, gender, health, disability, work experience and qualifications, family and professional networks or others, mean that returns from the same and to the same country impact different individuals differently and can have profound impacts on their reintegration and human development outcomes. Returns, particularly when they occur on a large scale and to fragile societies, can pose significant challenges not only for the returning migrants but also potentially for the stability and development prospects of the community of return, including in the sphere of public health. These potential negative effects can be exacerbated when the returns are not planned or well managed, straining social welfare systems and infrastructure.

Returns also have significant implications for the countries from which migrants return, particularly in circumstances where the migrant is not or is no longer authorized to stay. The integrity and credibility of a government's migration management system – including its ability to maintain public support for legal migration – depends in no small measure on its ability to demonstrate that migrants who have entered without authorization, or who have

overstayed or violated the conditions of their legal entry and have no other legal ground for remaining, return to their country of origin or move onwards to a third country. To this end, States are also increasingly discussing the administrative return process of their nationals through readmission negotiations.

Moreover, with the growing internationalization of migration and development in many parts of the world, countries that were historically countries of emigration are now increasingly also countries of transit or destination. This means that return, readmission and reintegration is no longer the concern of only a limited number of countries or regions and has become a policy priority for the migration governance and development strategies of many governments worldwide. Furthermore, the Global Compact for Safe, Orderly and Regular Migration recognizes return, readmission and reintegration as integral components of migration governance and provides important guidance to the international community on these matters.

In addition to the above considerations, IOM, as the world's leading international organization on migration and Coordinator and secretariat of the United Nations Network on Migration, is uniquely positioned and mandated¹ to respond to the increasing calls from governments and other actors for comprehensive support on the full spectrum of return, with a view to improving outcomes for migrants as well as for the governance of human mobility and migration and its impacts. This Policy, therefore, presents IOM's integrated approach to the full spectrum of return, readmission and reintegration of international migrants. It is grounded in a rights-based approach and focuses on the well-being of individual returnees throughout the entire return, readmission and reintegration process, placing individuals and the protection of their rights at the centre of all efforts, while recognizing that States have a sovereign prerogative to determine their national migration policies and to govern migration within their jurisdiction, in conformity with international law commitments. Within this, States may distinguish between regular and irregular migration status and associated entitlements, taking into account different national realities, policies, priorities and requirements for entry, residence and work, in accordance with international and international human rights law, including the obligation to accept the return of their own nationals.

This Policy is intended to articulate and communicate to all stakeholders IOM's vision of a comprehensive, rights-based, sustainable development-oriented and coherent approach to well-managed return, readmission and sustainable reintegration, taking into account the health and well-being of individuals and communities. Although this Policy chiefly relates to how IOM operates in this realm, it is also intended to provide principled guidance to other actors in this space, including governments, other United Nations entities and non-governmental organizations. It therefore also aims to help IOM to support governments in the development and implementations of laws and policies governing return migration in a manner consistent with international standards and good practice, and serves as an overarching framework that IOM uses to guide its support to, and engagement with, partners and migrants on activities related to the entire spectrum of return migration, including through direct assistance, capacity development and advisory support. In this way, IOM intends to promote a holistic approach to facilitating safe and dignified return and reintegration, in particular by ensuring that returnees' needs are addressed and their skills are

¹ The preamble and article one of IOM's Constitution provide IOM with its legal mandate to support governments in the management of return migration. IOM's mandate is further underpinned by various decisions and documents of the IOM Council, including IOM Return Policy and Programmes: Policies and Practices with Respect to Rejected Asylum Seekers, (MC/INF/222 (1992)); IOM Policy Concerning its Assistance to Unsuccessful Asylum Seekers and Irregular Migrants Returning to their Country of Origin, (MC/EX/INF/51 (1996)); IOM Return Policy and Programmes - A Contribution to Combating Irregular Migration, MC/INF/236 (1997; IOM Strategy (MC/INF/287 (2007)); Review of the IOM Strategy (MC/INF/302 (2010)) and IOM's AVRR Framework. IOM's work on the spectrum of return and reintegration is also prominently referenced in IOM's Strategic Vision for 2019-2023, which was presented to IOM Member States at the 25th session of the IOM Standing Committee on Programmes and Finance in 2019 and presented in final form at the IOM Council in 2019.

harnessed in pursuit of broader development in alignment with both the 2030 Agenda for Sustainable Development and the Global Compact, particularly objective 21 of the latter.²

II. Purpose of the Policy

- (a) To guide IOM's work on return migration through a holistic, rights-based and sustainable development-oriented approach that facilitates safe and dignified return, readmission and sustainable reintegration, and ensures the protection of migrants' rights throughout the entire spectrum.
- (b) To better enable the Organization to support its partners through the provision of capacity development and advice on return, readmission and sustainable reintegration as integral components of migration governance, ensuring that migrant protection needs are identified and addressed.
- (c) To advocate the implementation of international legal and other internationally agreed standards and effective practices relevant for return, readmission and sustainable reintegration.

III. IOM's mandate regarding the return, readmission and reintegration spectrum

The IOM Constitution and numerous Council documents provide a basis for a rights-based approach for all the Organization's activities and programming, including across the entire return, readmission and reintegration spectrum. The preamble and Article 1, subparagraphs 1(c) and (d) of its Constitution mandate IOM to provide voluntary return and reintegration migration services. Article 1, subparagraph 1(c) also provides the possibility for IOM to offer a broad range of non-movement related migration and advisory services, while Article 1, subparagraph 1(e) broadly mandates IOM to serve as a "forum to States as well as international and other organizations for the exchange of views and experiences, and the promotion of cooperation and coordination of efforts on international migration issues, including studies on such issues in order to develop practical solutions." These paragraphs therefore provide the mandate for IOM's capacity-building work with governments to strengthen their operational capacities and adherence with international law on the full spectrum of return, including readmission, through the facilitation of inter-State return and readmission cooperation and provision of policy advice and technical solutions for return management.

As an intergovernmental organization, IOM cannot carry out forced returns of migrants for, or on behalf of, governments. Forced returns are an enforcement measure exercised solely by governments and their agents. However, this does not prohibit IOM from providing non-movement services prior to or after a forced return movement, such as pre-departure counselling or post-arrival assistance, as long as they are provided with the informed consent of the migrant and contribute to protecting their rights and well-being, nor from providing policy and technical support to governments to enhance their capacities in this space, in compliance with applicable international law.

IV. Strategic objectives of IOM's work on return, readmission and sustainable reintegration

² In Objective 21 of the Global Compact, States committed to facilitate and cooperate for safe and dignified return and to guarantee due process, individual assessment and effective remedy, upholding the prohibition of collective expulsion and of returning migrants when there is a real and foreseeable risk of death, torture and other cruel, inhuman and degrading treatment or punishment, or other irreparable harm, in accordance with international human rights law. States further committed to ensuring that their nationals are duly received and readmitted, in full respect of the human right to return to one's own country and the obligations of States to readmit their nationals. Finally, States committed to creating conducive conditions for personal safety, economic empowerment, inclusion and social cohesion in communities, in order to ensure that reintegration of migrants upon return to their countries of origin is sustainable.

1. Ensure that return and readmission occur in a safe and dignified manner and that migrants are able to make an informed decision and freely change it at a later stage, after having been provided with all viable and legal options available to them, including return opportunities, and can take ownership of their choice(s).
2. Support returnees, communities and authorities through holistic approaches to sustainable reintegration at the individual, community and structural levels, seeking to enhance opportunities for human development
3. Act as an honest broker to provide advice and support to, and foster cooperation with and capacity development of governments, as well as other stakeholders, on developing rights-based return, readmission and reintegration policies and processes that comply with international law and frameworks and national laws.
4. Ensure accountability and evidence-based programming throughout the return, readmission and reintegration spectrum, aligning relevant activities with national development priorities and United Nations Sustainable Development Cooperation Frameworks.

V. Guiding principles

The following guiding principles underpin IOM's approach to the full spectrum of return, readmission and sustainable reintegration and apply equally to all activities IOM undertakes in this area. Translated into practice both in policy and operations, they guide and ensure that IOM engagement in policy and capacity development and the Organization's programmatic work take a holistic and integrated approach to protecting the rights and well-being of migrants and are implemented consistently with international standards and good practices.

1. Rights-based approaches through active protection and upholding of migrant rights

All of IOM's actions along the full spectrum of return, readmission and reintegration are underpinned by a rights-based approach that seeks to empower migrants to claim and avail themselves of their rights as enshrined in relevant bodies of international law, while also strengthening the capacity of governments as duty bearers in their obligations to respect, protect and fulfil those rights,³ thereby also contributing to more sustainable reintegration and better human development outcomes. Crucially, taking a rights-based approach means placing the concerned individual(s) and their well-being at the centre of every decision or process related to their return, readmission and reintegration, and seeking to uphold the protection of their rights. Each individual migrant must have the opportunity to have his/her case assessed by competent entities to have any identified protection needs considered and addressed, and to receive timely and transparent information on the migration pathways available to them. This is particularly important for migrants in situations of vulnerability who may have been subject to violence, exploitation or abuse or who may require specialized assistance through institutional safeguards due to specific health, psychosocial or protection needs.

IOM proactively protects migrants' rights in the context of return processes and practices undertaken through IOM's activities by maintaining their safety and fostering their well-being in accordance with relevant bodies of

³ Including in the context of forced returns carried out by governments.

international law,⁴ including through measures that contribute to preventing or ending any rights violations or abuses, providing recourse to remedies for victims and creating an enabling environment that fosters the protection of rights. IOM strongly advocates these same protective measures and adherence to rights-based principles for all stakeholders involved in return, readmission and reintegration processes.

2. Gender-responsive, child- and vulnerability-sensitive perspectives

IOM is committed to promoting gender equality and the empowerment of all migrants, in particular marginalized and more vulnerable groups, to ensure their needs and perspectives are properly understood and addressed, and for them to be empowered as agents of their own lives. In this regard, the human rights of all migrants, regardless of their sex, sexual orientation, gender, age, race, ethnicity, indigenous status and disability, must be respected at all stages of the return, readmission and reintegration process.

It is particularly important to safeguard the rights of children, including unaccompanied and separated children. IOM respects existing international legal obligations in relation to the rights of the child and upholds the principle of the best interests of the child and the right of children to express their views and opinions as a primary consideration in all situations concerning children in the context of return, readmission and reintegration.⁵

3. Do no harm

The process of return, readmission and reintegration for migrants can be culturally, psychologically, socially and economically complex. Returnees may face hostility or rejection from family members that invested in them to migrate in the first place, or perceptions of “failure”, mistrust or stigmatization from the community to which they return. Furthermore, on the basis of increased mobility and/or working and living conditions, migrants may be put in danger through exposure to public health crises, during which migration management must be carried out in accordance with the International Health Regulations (2005).⁶ It is therefore important that the provision of assistance to returning migrants, both at the pre and post-return stages of the process, and irrespective of whether the assistance comes from IOM or other actors, does not contribute to exacerbating these tensions further. For example, the provision of assistance to returnees may contribute to perceptions of preferential treatment from the broader community, particularly in vulnerable contexts. Furthermore, to the extent possible, the provision of return assistance by IOM or other actors should not lead to an increased use by governments of measures that harm migrants or negatively impact their physical or mental health, such as detention. In crisis, transition and fragile contexts, the “do no harm” approach also provides the basis for conflict-sensitive programming, requiring that interventions are undertaken based on an evaluation of potential risks, as well as the elaboration of mitigating measures to ensure that assistance does not adversely impact reintegration. Such measures will differ between contexts and are focused on protecting and addressing the needs of both the individual migrant and the community to which they return in a mutually beneficial way.

⁴ Including in particular the nine core human rights conventions, as well as the Palermo Protocols against the Smuggling of Migrants by Land, Sea and Air and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, both supplementing the United Nations Convention against Transnational Organized Crime.

⁵ In line with the Convention on the rights of the child, arts 3, 9,10 and 12.

⁶ The International Health Regulations (IHR, 2005) is a binding instrument of international law entered into force on 15 June 2007 “to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.” <https://www.who.int/ihr/publications/9789241596664/en/>

4. Migrant agency

IOM strongly advocates that migrants be empowered to exercise their agency and that returns are voluntary whenever possible, while recognizing the sovereign right of States to forcibly return migrants who no longer have a right to remain, in full compliance with their obligations under international human rights law. Voluntary returns are always preferable because they take into account the migrant's agency to make informed decisions, leading to consent; allow returnees to prepare for their return as owners of the process; and contribute to reducing the stigma and potential negative repercussions of forced returns, which can hinder successful reintegration and thereby their opportunities for human development.

IOM recognizes that options available to migrants faced with the prospect of return may be limited and that they may not accord with the full wishes of the individual, such as when migrants are called to choose between irregular stay and forced return (in some cases preceded by detention). There is clearly a difference between migrants who seek out return options and choose to return voluntarily, and those who opt to do so by, for example, enrolling in a programme providing return assistance in the face of constrained options. Nonetheless, empowering migrants to make informed decisions, even in the face of constrained options, is preferable to no choice at all, and is a necessary precondition to safe and dignified return.

Within what may be a limited range of available options, IOM seeks to empower migrants to make informed decisions and exercise their agency by offering its support to enable a safe and dignified return to those who are unwilling or unable to remain, including from situations of crisis as a life-saving humanitarian measure. Respect for migrants' free, prior and informed consent to the specific return modality or option available is an underlying prerequisite for any operational support related to return and reintegration offered by IOM. This requires, among other things: the absence of physical or psychological coercion, intimidation or manipulation; the provision of timely, unbiased and reliable information communicated in a language and format that is accessible and understood; sufficient time to consider other available options and to ready oneself for the return; and the possibility of withdrawing or reconsidering one's consent if the proposed activities, circumstances, or available information change. In some cases, an assessment may be needed by qualified professionals to determine the extent to which a person is capable to take such a free and informed decision, and, should the person lack such capacity, to identify who could legally take the decision on his/her behalf.

Where there are legitimate questions surrounding the feasibility or safety of return into complex environments, such as those recovering from crisis or facing fragility, should they wish to do so, individuals need to be empowered to express and act upon their preferences, within the constraints of legally available options. Several factors may influence an individual migrant's decision to return, including the improved security situation or natural environment in the home country or community, the desire to reclaim land or property or to rejoin family. Migrants may also deem the challenges or dangers they face where they are residing to be greater than the risks of returning to their country of origin. However, notwithstanding the wish of migrants to return, IOM reserves the right to withhold the provision of return assistance, *inter alia*, when it deems that the environment in the country of return is too dangerous for an individual or a group of individuals to return to and/or if it poses a threat to IOM staff involved in the provision of return and reintegration assistance.

5. Accountability

IOM is committed to ensuring the accountability of its staff to beneficiaries as an essential component in any activity in the context of return, readmission and reintegration. To this end, IOM works – including through collaboration

with its partners – to ensure that potential rights violations during return, readmission and reintegration processes are reported through appropriate channels and to determine when mitigating measures or suspension of return and reintegration programmes is required. IOM will continue to strengthen accountability systems by promoting rights-based monitoring and by providing access to internal feedback and complaint mechanisms, and encourages other actors to do the same.

6. Confidentiality

The rights of migrants to privacy must be respected by putting in place strict safeguards for the handling of personal data of returnees, taking all reasonable and necessary precautions to preserve the confidentiality of personal data and the privacy of individuals. All personal data must be collected, processed, used, transferred and stored in accordance with international data protection standards. This includes, among others, the principle of lawful and fair collection of data, having a specified and legitimate purpose, the principles of consent, confidentiality, access and transparency and data security. The collection of personal data should be limited to the strict minimum required for the implementation of the given activity. Data protection needs to be in place by design and by default, meaning that safeguards need to be put in place to ensure the protection of personal data throughout the project implementation cycle.

IOM protects the privacy of its beneficiaries' data through adherence to its mandatory Data Protection Principles and Manual, while acknowledging the 2018 UN Principles on Personal Data Protection and Privacy. IOM's mandatory data protection framework requires the Organization to always seek the informed consent of beneficiaries to IOM processing their personal data, and to provide them with clear explanations of, inter alia, which personal data are being collected, the exact purpose of collecting the data and whether any of these data will be shared with third parties and why. Beneficiaries must be able to contact IOM to exercise their rights with respect to their personal data, for example, by requesting access to or rectification of personal data, or lodging complaints about mishandling of their personal data by IOM.

7. Safe environments for return

It is important for environments in countries of origin to be conducive to a returnee's personal safety. Information regarding the general situation in the country and community of origin should be gathered and shared with returning migrants, so that informed and rights-based decisions can be taken as to whether return to a country – or an area of a country – can take place without undue risk. Informed decisions to return should be based on whether or not a generalized situation of instability, violence, or widespread or systematic violation of human rights persists. It is equally important that a migrant's individual vulnerabilities are taken into account and addressed, including through relevant safeguards during the entire return process.

While IOM respects and strives to empower migrants to make informed decisions about their return, and cannot deny any migrant the right to return, IOM may withhold or suspend the provision of return assistance owing either to a firm idea of the specific risk of irreparable harm or other grave human rights violations to an individual, or an adverse general situation in the country of origin, in particular if a United Nations entity recommends against return to specific country or area thereof.

8. Sustainability of reintegration

Reintegration can be considered sustainable when returnees have reached levels of economic self-sufficiency, social stability within their communities and psychosocial well-being that allow them to cope with (re)migration drivers. Having achieved sustainable reintegration, returnees are able to make further migration decisions as a matter of choice, rather than necessity.

Sustainable reintegration requires holistic and multidimensional approaches that address a range of economic, social, psychosocial and environmental factors and enhance synergies between different interventions in the areas of humanitarian assistance, community stabilization, sustainable development, migration management, broader policy coherence and development cooperation.⁷ They involve simultaneous and coordinated interventions at the individual, community and structural levels:

- (a) Individual assistance addresses returning migrants' specific needs, taking into account their migratory experiences, socioeconomic characteristics, vulnerability factors and circumstances of return. It also builds upon positive experiences and resources generated through migration, for example, by harnessing the skills, knowledge and transnational networks acquired by migrants during their migration journey. Individual reintegration assistance supports individuals to exercise their own agency by allowing for flexibility and encouraging them to take responsibility for the reintegration process.
- (b) Community-based reintegration assistance recognizes that sustainable reintegration hinges both on the capacity of individuals to reintegrate and the capacities of communities to embrace additional members and continue providing services and economic opportunities to a larger population. To this end, community-based reintegration support must address the needs, vulnerabilities and concerns of communities to which migrants return, and be sensitive to characteristics such as the presence of migrant families, other migrant groups and the broader non-migrant population, among others. Community-based reintegration applies area-based approaches, harnessing the benefits migrants can bring to receiving communities, while at the same time addressing social, economic, infrastructural and environmental vulnerabilities and risks. The approach focuses, in particular, on strengthening social cohesion across communities and establishing positive, mutually beneficial relations with returning migrants.

IOM advocates, and will give special consideration to, community-based approaches to reintegration, including in contexts highly affected by conflict or fragility or with large numbers of returnees, where the capacity to absorb and reintegrate additional members into the society is an important factor influencing the mutually beneficial outcome and the sustainability of reintegration overall.

- (c) Structural interventions aim to strengthen national capacities to provide essential services for returnees and receiving communities alike and to promote overall good migration governance, in line with broader integrated service provision. They include the analysis, revision or upgrade of return-friendly policy framework; the inclusion of reintegration in local and/or national migration and development strategies; the development of standard operating procedures and protocols; and the facilitation of cross-sectoral coordination, referral mechanisms and capacity development activities. Interventions at the structural level recognize that return and sustainable reintegration offer development opportunities for migrants and

⁷ IOM, Reintegration Handbook - Practical Guidance on the design, implementation and monitoring of reintegration assistance (2019)

communities and can achieve broader development impact if brought together with other interventions that share similar goals, such as local development planning.

IOM is committed to promoting and working towards the sustainability of reintegration because it offers a roadmap to enhancing migrants' and broader communities' opportunities for sustainable development. Sustainable reintegration enables migrants to contribute to the sustainable development of their communities, while also addressing adverse drivers that compel individuals to migrate out of necessity - both regularly and irregularly. IOM will work to create conducive conditions for personal safety, environmentally sensitive economic empowerment, inclusion and social cohesion in communities and support governments and other partners to develop and implement policies and mechanisms that are conducive to sustainable reintegration, including by tapping into knowledge, skills and resources that returnees acquired during their time abroad.

9. Whole-of-government approach and government ownership

Return, readmission and reintegration are complex issues that cannot be addressed by one ministry or a single government policy sector alone. No single entity has the capacity, reach or mandate to address on its own the profound implications that return and reintegration have on a wide range of stakeholders.

For this reason, it is necessary to promote synergies between the different programmatic interventions and funding instruments used to address return management and those that promote humanitarian assistance, community stabilization and development cooperation. Enhancing cooperation across different sectors and between relevant ministries and levels of government with different mandates and priorities is required to ensure effectiveness.

IOM works closely with its partners to promote whole-of-government approaches to return, readmission and reintegration that seek to ensure horizontal and vertical policy coherence across all sectors and levels of government and alignment with development plans.

10. Partnership and cooperation

IOM recognizes that return, readmission and sustainable reintegration are integral elements of migration governance and are beyond the capacity of one single actor's engagement; the issue therefore depends on the combined efforts of all stakeholders. Partnerships and cooperation between a variety of actors – governmental and non-governmental – at the international, regional, national and subnational levels are required to enhance the range and quality of return, readmission and reintegration assistance available to migrants, avoid duplication of efforts and foster the sustainability of reintegration processes. IOM advocates, and is well placed to facilitate, the engagement of a variety of actors – governmental and non-governmental, public and private, local and international – with different mandates and areas of expertise.

VI. Relevant international legal frameworks

In all its activities and programming on return, readmission and reintegration, IOM operates within the bounds of international standards and its mandate and supports States to meet their obligations under international law. As

an emanation of States, IOM must respect international migration law, including human rights law,⁸ and must respect generally the rule of law.⁹ Furthermore, as a related organization of the United Nations system, it is incumbent upon IOM to promote and respect the spirit of the Charter of the United Nations.¹⁰ The relevant provisions for the legal safeguards surrounding return and readmission and the responsibilities and limitations on States in their sovereign regulation of access to their territory are provided by several binding international and regional instruments, and apply to all persons, irrespective of their migration status.¹¹ Moreover, while not legally binding, the Global Compact provides additional guidance and calls on States to cooperate on safe and dignified returns, and where possible voluntary returns, in line with their obligations under international law.

Some obligations under international law, such as the principle of non-refoulement, the best interests of the child, prohibition of collective expulsion, and respect for the private life of the person concerned, are particularly salient when States adopt and execute return decisions.¹² These important international rules must also be respected by IOM at all times in its involvement with returns, as set out above.¹³ Applying to all migrants, irrespective of legal status, the principle of non-refoulement extends to situations where return would endanger the life of the returnee, or expose him or her to irreparable harm, including the risk of being subjected to torture or other cruel, inhuman and degrading treatment or punishment, or enforced disappearance.¹⁴ Complying with the principle of non-refoulement obliges States to grant migrants the right to appeal a return decision and to have the decision suspended in case there is a real risk of refoulement.¹⁵ International law also prohibits “indirect refoulement” in cases in which the real risk of ill-treatment would not materialize in the State to which the person is returned in the first place, but in any other country to which the person would risk being subsequently returned by this State.

⁸ Andrew Clapham, “Human Rights Obligations of Non-State Actors”, pp. 68-69 (1st ed. 2006), at para. 80 : “if international law is to be effective in protecting human rights, everyone should be prohibited from assisting governments in violating those principles, or indeed prohibited from violating such principles themselves.”; See also, paras 83, 127 and 316; Indeed, International Organizations “are bound by any obligations incumbent upon them under general rules of international law, under their constitutions, customary institutions or under international agreements to which they are parties.”; see also George Kent, “The Human Rights Obligations of Intergovernmental Organizations”, UN Chronicle, N° 3, 2005, pp. 32-33: “The intergovernmental agencies do not ratify treaties directly, but the view taken is that as agents of the States that are parties to these agreements they are nevertheless subject to international human rights law”.

⁹ See the Human Rights of Migrants MC/INF/298 IOM Policy and Activities, 12 November 2009; The Council document entitled “The human rights of migrants – IOM policy and activities” (MC/INF/298 of 12 November 2009) reaffirmed IOM’s commitment to the principle that orderly and humane migration benefits migrants and society. The document states that the Organization acts to, inter alia, work towards the effective respect for the human rights and well-being of migrants. It also sets out that: “Many ... international actors [other than States], including IOM, have key supporting roles to play in achieving the effective respect of the human rights of migrants”;

¹⁰ The Charter of the United Nations affirms “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. It states that the purposes of the UN are, among other things: “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...[and] to achieve international co-operation...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

¹¹ International Covenant on Economic, Social, and Cultural Rights (1966); International Covenant on Civil and Political Rights (1966); International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990); International Convention for the Protection of All Persons from Enforced Disappearance (2006); and Convention of the Rights of Persons with Disabilities (2006).

¹² The principle of non-refoulement was initially stipulated in Article 33 of the 1951 Refugee Convention, which provides that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. However, since then, the principle has been explicitly included in other international conventions, whose scope extends beyond refugee law, and is considered implicit in the right to life and prohibition of torture and inhuman and degrading treatment, among other rights.

¹³ See fn 6, 7, 8.

¹⁴ The Human Rights Committee also recognised that the principle of non-refoulement could apply in cases of a real risk of irreparable harm to other rights protected by the ICCPR (Human Rights Committee, General Comment No. 31: The Nature of General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004) UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 12).

¹⁵ Ibid.

Returning States must also respect procedural safeguards, including individual assessments of each case, the right of due process, access to justice and the possibility to seek a stay of the return decision, and the right of returnees to ask to be returned to a State other than that of his or her origin.¹⁶ International law also sets out the conditions for forced return and the parameters limiting the use of force to what is strictly necessary and ensuring that return is fully respectful of migrants' safety and dignity.¹⁷ Additionally, the returnee must be provided with a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

If used by the State in the context of return, any restriction of the right to liberty, including detention, must have a legal basis and the law should establish the permissible, necessary and proportional grounds for detention based on individual assessments and define them "with sufficient precision to avoid overly broad or arbitrary interpretation or application."¹⁸ The principles of necessity and proportionality entail that detention should only be used as a measure of last resort. If not deemed necessary and proportionate, alternatives to detention must instead be considered. Specific provisions should be considered for at-risk persons or migrants in a situation of vulnerability, and children and families with children should never be placed in detention, nor should children be separated from their parents or primary caregiver.

Several international instruments provide for the right of migrants to return to their country of origin and compel States to readmit their own nationals, including in instances where the return is taking place as a result of a migrant not having the right to be admitted to, or remain in, the territory of the returning State.¹⁹ It is important to underline that this is a right the individual can avail him/herself of, and which the State has an obligation to respect. It can never be understood as an obligation on the individual to return to his or her country of origin.

International law also provides additional protections for migrants in situations of vulnerability throughout the return, reception, and reintegration spectrum, in order to reduce the risk of return perpetuating or worsening the risks associated with their vulnerabilities. Victims of trafficking are particularly vulnerable and are afforded specific protections relevant to their potential vulnerabilities.²⁰ In the case of returns of children, the Convention on the Rights of the Child provides the standards applicable to any decision involving a child, including the principle of the best interests of the child and the right to participation, as well as the principle of non-discrimination.²¹

¹⁶ Article 22 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families - ICRMW.

¹⁷ See, for example, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Deportation of foreign nationals by air, Extract from the 13th General Report of the CPT (2003) CPT/Inf(2003)35-part. Additional regional instruments may also apply, such as the European Convention on Human Rights (1950), the American Convention on Human Rights (1969), the African Charter on Human and People's Rights (1981), the Arab Charter on Human Rights (2004) and the Charter of fundamental rights of the European Union (2012).

¹⁸ CCPR, General Comment No. 35, para. 22.

¹⁹ Article 13(2) of the Universal Declaration of Human Rights provides that "everyone has the right to leave any country, including his own, and to return to his country", while Article 12(4) of the International Covenant on Civil and Political Rights (CCPR) provides that "no one shall be arbitrarily deprived of the right to enter his own territory". According to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, the obligation to readmit a State's own nationals who were subject to smuggling entails the duty to issue travel documents or other authorization for readmission (Article 18.4). All States involved must cooperate, among themselves and with relevant international organizations, to "carry out the return in an orderly manner and with due regard for the safety and dignity of the person" (Article 18.5 and 6).

²⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime

²¹ See articles 3, 12, and 2 of the CRC. IOM has developed tools such as "The IOM Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse" and the "GMG Principles and Guidelines, supported by practical guidance on the human rights protection of migrants in vulnerable situations" - both aimed at giving guidance on implementation of the existing international legal framework.

VII. Conclusion

This policy articulates IOM's approach to its work on the full spectrum of return, readmission and reintegration. At its heart are commitments by IOM to put migrants and their well-being first, to empower them to make informed decisions about their return, and to help governments protect their human rights. These commitments stem from the IOM Constitution and the Purposes and Principles of the Charter of the United Nations, in accordance with which IOM has undertaken to conduct its activities.

Across the breadth and depth of its work on return, readmission and reintegration, IOM has for a long time aspired to uphold the guiding principles that have been brought together in this policy. In this regard, the policy represents a shift towards a more comprehensive and aspirational approach to return migration that has been ongoing for some time. Nevertheless, full implementation of the policy will take some time, not least because the facilitation of safe and dignified return and reintegration of migrants is dependent on collaboration between a range of actors across the return migration spectrum. It is for this reason that the policy seeks to be inclusive of our partners and stakeholders. IOM hopes that the policy can serve as a catalyst for greater cooperation and sharing of good practices and experiences on return, readmission and reintegration among the international community, and that its guiding principles also serve as a model for others to follow.

