IMRF Round table two
Background Note
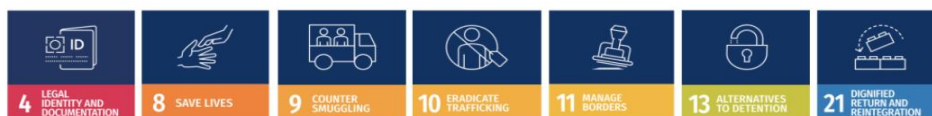
1. INTRODUCTION

The second of the round tables of the International Migration Review Forum (IMRF) will offer space for discussion of progress made in the implementation of objectives 4, 8, 9, 10, 11, 13 and 21 of the Global Compact for Safe, Orderly and Regular Migration (GCM). This background note integrates the ten cross-cutting and interdependent guiding principles of the GCM. The objective of this note is to set out the progress made towards these objectives by the international community.

Round table two seeks to discuss rights-based practical and action-oriented approaches to: saving lives and establishing coordinated action on missing migrants; ensuring access to proof of legal identity for all migrants; promoting alternatives to migration detention; managing borders in an integrated manner; coordinating responses to forms of transnational crime and related violence, abuse and exploitation; and; promoting safe and dignified return, readmission and sustainable reintegration of migrants.

COVID-19 has exacerbated migrants' precarious situation in many countries of transit and destination. Drivers of migration already present before the pandemic have not only persisted but have, in some instances, increased. Borders have been closed and pathways for regular migration have been reduced, pushing many migrants to resort to the services of smugglers. Due to increased border controls, smugglers and traffickers have resorted to new, less explored and riskier routes, often putting migrants' lives at greater risk. Lastly, migrants working in the informal sector have experienced increased risk of job loss and related vulnerability, including to various forms of trafficking in persons.

2. OVERVIEW OF PROGRESS

Objective 4: Ensure that all migrants have proof of legal identity and adequate documentation

Access to proof of legal identity, such as birth and marriage certificates, is fundamental to reduce vulnerabilities and to protect migrants' rights before travel, in transit and upon arrival. It is equally important to access pathways for regular migration, and to prevent and reduce irregular migration and statelessness. Legal identity is also central to migrants' ability to fully participate in society, to protect their rights, provide them with access to services (such as health, education, and justice) and to empower them to contribute to the communities they live in. To facilitate access to legal identity, several Member States, including Albania and the United Kingdom, issue migrants with identification documents[1].

Proof of legal identity is a prerequisite for people to be able to access personal and travel documentation, such as passports and visas, to migrate regularly accessing regular pathways for admission and stay, as well as opportunities for safe and dignified return. The first step to ensure migrants have proof of nationality and adequate documentation is the establishment of accessible and non-discriminatory civil registration systems. However, many Member States lack robust and inclusive civil registration systems or the capacity to issue identity and travel documents, as well as the capacity to access records of these for migrants abroad through well-managed and rights-compliant national identity management systems, that also safeguard the right to privacy and the protection of personal data. Linked to this are the lack of consular services to register life events and issue documentation for nationals abroad.

Adequate civil registration systems, the capacity of consular representations, enhanced access to streamlined and non-discriminatory processes for all, and cooperation between Member States remain some of the key challenges to the provision of adequate documentation to all migrants, regardless of their status. Stakeholders note that attention should be given to harmful practices such as seizing of personal identity documents, particularly for migrant workers in regular and irregular situations, and victims of trafficking.

Objective 8: Save lives and establish coordinated international efforts on missing migrants

At least 47,000 people have died during their migration journey since 2014[2]. However, the regional reviews of the GCM indicate limited progress towards Objective 8, as highlighted in the Secretary-General's biennial report on the GCM. For example, only 17 percent of Member States who submitted voluntary GCM reviews reported on Objective 8, and most focused

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[1] https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/unece_-_regional_review_of_the_gcm_-_summary_report_final_updated.pdf

[2] IOM, Missing Migrants Project: https://missingmigrants.iom.int/

on efforts related to border management or missing nationals abroad.

In the GCM, Member States commit to prevent the loss of life, including by prioritizing better search and rescue operations at sea and in hostile environments on land. They also commit to review migration policies to ensure they do not put lives at risk, including via deterrence-based approaches and criminalization of humanitarian assistance to migrants and their families. When migrants disappear or die, an additional set of challenges arise. Member States and stakeholders emphasize the need for transnational coordination channels and information sharing mechanisms to search for missing migrants across countries of origin, transit, and destination while comprehensive and quality management of migrant remains, including robust and internationally comparable data collection, is needed to identify those who have died to ensure traceability. Despite limited progress on Objective 8, some practices have emerged. For example, guidance has been developed to assist Member States and other stakeholders in the implementation of Objective 8, including the creation of transnational search mechanisms.[3] In addition, the EU has recently created the European Contact Group on Search and Rescue to promote cross-border operational cooperation and timely information sharing.

Objective 9: Strengthen the transnational response to smuggling of migrants

Limited availability of official data on smuggling trends, on the modus operandi of criminal networks and on the impact of counter-smuggling measures, seriously hampers the implementation of this objective. Progress has nonetheless been made through the establishment of migration and smuggling observatories[4] supporting national and supra-national efforts to curb the incidence of migrant smuggling and respond to new and emerging trends, facilitating enhanced information sharing. Among others, Sierra Leone signed bilateral agreements with Guinea and Liberia to share information and intelligence, inter alia on smuggling routes and financial transactions of smuggling networks, as well as on situations of vulnerability faced by smuggled migrants along journeys, to inform enhanced joint responses. Increasing reported incidents of aggravated forms of migrant smuggling, involving endangerment of lives, violence, abuse and exploitation and the related challenges to effectively protect migrants, are further prompting enhanced cooperation along migration routes. In the Western Balkan region, for example, representatives of judiciary, law enforcement and NGOs from the region, as well as Austria, France, Germany, Greece and Italy met during a regional workshop in 2021. Such efforts aim to improve the capacity of Member States to identify migrant smuggling ventures and their organizers, and address the needs of the persons who are smuggled, to appropriately refer and protect them. Particular attention is given to the needs of women and children, and of those who are victims of crimes along the migration cycle.

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[3] https://shop.icrc.org/guidelines-on-coordination-and-information-exchange-mechanisms-for-the-search-for-missing-migrants-pdf-en.html

[4] UNODC established in 2021 an Observatory on Migrant Smuggling: https://www.unodc.org/res/som/index.html, while the African Union inaugurated its African Migration Observatory in 2020 and the African Centre for the Study and Research on Migration in 2021

An increasing number of countries, among them Bangladesh, mention the need to ensure non-criminalization of migrants for being smuggled, in line with article 5 of the Protocol against the Smuggling of Migrants, to focus on redoubling efforts to ensure access to pathways for regular migration and to provide holistic and human rights-based assistance to migrants in need. On the other hand, the humanitarian assistance provided to migrants in situations of life or safety danger is still often criminalized as facilitation of irregular entry, despite the absence of the essential element of material and/or financial gain, as per Art. 6 of the Smuggling of Migrants Protocol.

The EU recently adopted a new action plan against migrant smuggling,[5] setting up operational partnerships with non-EU countries, including with a view to better protecting the rights of migrants, strengthening EU's capacity to track and sanction smugglers, and addressing new and emerging challenges.

Objective 10: Prevent, combat and eradicate trafficking in persons in the context of international migration

The 2020 UN Global Report on Trafficking in Persons[6] shows that in 2018 about 50,000 human trafficking victims were detected and officially reported by 148 countries worldwide, and closely tied to this almost 25 million people were in forced labour, many of them migrant workers.[7] The crime is still heavily underreported, with related limitations in administrative records as well as prevalence estimates, all of which pose challenges to the prioritization and impact of anti-trafficking responses.

In reporting on the implementation of this objective during the GCM regional reviews, Member States highlighted as a priority the need to cooperate more closely to break the cycle of migrants' vulnerability to trafficking in persons at any point of their journey, to ensure the non-criminalization of migrants for having been victims of trafficking, to expand access to pathways for regular migration to prevent the risk of trafficking in persons, and to more systematically involve the private sector in preventing the crime and responding to the needs of the victims. Through the adoption of ethical and transparent practices in their procurement and supply chains, private companies can ensure the accountability of all actors including intermediaries, who might purchase or benefit from the labour of trafficking victims. Addressing abusive recruitment practices including the charging of fees, through initiatives such as the Fair Recruitment Initiative[8], and ratifying international labour standards, were highlighted as critical in combatting human trafficking and forced labour. It is often reported, particularly by NGOs in Asia/Pacific, that youth may fall victim to sham educational offers that hide exploitative practices in foreign countries. The adoption of Standard Operating Procedures for the identification, referral, and support of migrant victims of trafficking, not conditional upon cooperation with

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[5] https://ec.europa.eu/home-affairs/document/download/27e7733c-a80b-47c4-9ec1-d6221e389471_en

[6] https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf

[7] Forced labour, modern slavery and human trafficking (Forced labour, modern slavery and human trafficking) (ilo.org)

[8] https://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm

the authorities, is a recognized practice mentioned, among others, by Ethiopia, Namibia and Serbia. Efforts are also made worldwide to foster cross border collaboration for the effective investigation and prosecution of traffickers, with a notable example being the related Memorandum of Understanding signed between the Philippines and the United Arab Emirates in 2019.

Latin American Member States are increasingly focusing efforts on sharing relevant information with the migrant population, including through the creation of platforms and websites. Information provided refers to applicable legislation, procedures, and services available for migrants, returnees, and

potential migrants among others. It also raises awareness on the risks of trafficking in persons and smuggling of migrants. Ethiopia is prioritizing interventions aimed at providing vocational training or other support schemes to foster access to employment for returnees, particularly victims of trafficking. Germany and Kazakhstan are further enabling compensation for trafficking victims, including through the establishment of dedicated funds, also to reduce the risk of their re-victimization. Wider availability of residence permits for migrant victims of trafficking is further extensively acknowledged as a way to foster their effective integration into societies.

Objective 11: Manage borders in an integrated, secure, and coordinated manner

Integrated, secure and coordinated border management helps facilitate the safe and regular cross-border movement of people, while ensuring security. This requires human rights-compliant, gender responsive, child sensitive and non-discriminatory procedures at borders, whether land, sea or air, as well as effective information sharing, to identify and respond to the needs of migrants in situations of vulnerability, manage mobility and combat transnational crime such as trafficking and smuggling.

Armenia has reported efforts to modernize its border crossing points – simplifying procedures, upgrading infrastructure and equipment, and capacity building.[9] Further enhancing due process, strengthening human rights-based approaches, training border personnel, streamlining procedures and ensuring individual

assessments at international borders are key to fully implement Objective 11. This is central to ensure migrants in vulnerable situations receive adequate support and protection at the border. Mexico has implemented coordination mechanisms with Central America, to facilitate the exchange of information and assistance provided to migrants in vulnerable situations.

Member States noted that developing inter-agency and intergovernmental cooperation mechanisms between all authorities involved at points of entry, including immigration, border, health, child protection, and customs is key to manage borders in an integrated and secure manner. In the context of COVID-19, further integrated border management is crucial to facilitate cross-border mobility and enhance predictability. Reviews of how policies and practices can prevent human rights abuses during efforts to manage borders would link advancement of Objective 11 with other GCM objectives.

[9] https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/unece_-_regional_review_of_the_gcm_-_summary_report_final_updated.pdf

Objective 13: Use migration detention only as a measure of last resort and work towards alternatives

The fundamental rights to liberty and freedom of movement are established by international human rights law. Stakeholders emphasized that community-based and non-custodial alternatives to immigration detention (ATDs) must be prioritized to uphold the human rights of migrants, in particular their right to liberty and security of person. There have been some practices with respect to Objective 13, for example, releases from immigration detention and steps to end its use, including by implementing community based, non-custodial ATDs in the context of COVID-19. Progress has also been made in some countries to end child immigration detention in line with international standards. Other practices observed include mechanisms and procedures for regularization, policy changes that scale-up non-custodial alternatives and reduce or eliminate immigration detention, emphasizing protection of migrants in vulnerable situations.

Additional practices have included the collection and sharing of data on ATDs, engagement with national human rights institutions, partnerships between civil society, government and local authorities and case management based ATD pilot projects. United Nations organizations, civil society and others have also developed tools and resources to support Member States to implement ATDs[10]. There have been concerted efforts in the form of global, regional and national peer learning exchanges between Member States and other stakeholders to foster implementation of Objective 13.

Immigration detention, however, continues to be used beyond the very limited circumstances in which it is permitted under international law, and child immigration detention is still practiced in contravention of international standards. Some challenges related to ATD implementation stem from weak regulatory frameworks and resourcing, and lack of political will. Moreover, in some Member States, COVID-19 has resulted in prolonged detention of more migrants using public health concerns to justify detention without due process and procedural safeguards, such as access to legal assistance, access to information, and the ability to challenge the legality of the detention, among others. When non-custodial alternatives to detention have been exhausted, any detention of migrants as a measure of last resort must be human rights compliant. The detention of children in the context of international migration is never in a child's best interest and should never take place, as it is not in line with international standards.

Objective 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration

Return, readmission, and reintegration are complex issues involving varying and sometimes conflicting interests and priorities in national policies, public opinion and international cooperation. Member States and stakeholders in every region reported on efforts to cooperate for safe and dignified return, readmission and sustainable reintegration, as well as remaining challenges in this regard. Return,

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[10] https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention

readmission and reintegration are fundamental elements of the migration governance and development strategies of many States worldwide. Returns migration, including forced returns must take place in a way that respects the human rights of all migrants throughout the return process, including the prohibitions of collective expulsion and non-refoulement. Sustainable reintegration efforts are vital to ensuring that returning migrants are able 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 to, in full respect of their rights. Sustainable reintegration can also contribute to sustainable development, helping to reduce the inequalities exacerbated by the COVID-19 pandemic and support socio-economic recovery.[11]

In response to the challenges posed by the COVID-19 pandemic, some Member States adapted the provision of assistance (including reintegration) to returning migrants. For example, the Government of Bangladesh introduced care support and skilling and up-skilling programmes for returning migrant workers. Others have temporarily suspended forced returns and provided visa and work permit extensions, temporary residence or other forms of regular status, as well as releasing people from immigration detention and finding safe, non-

custodial alternative accommodations for them in the community rather than seeking their deportation.[12]

At the same time, however, return and sustainable reintegration processes often continue to be de-linked. Sustainable reintegration support varies greatly from country to country, and is in certain cases unavailable or insufficient to address the specific needs of migrants and their communities.

How returns take place, and how reintegration support is provided, adapted to individual and community specificities and needs will determine whether reintegration is sustainable - including child returnees and forced returns. The lack of agreed minimum standards, including how to measure the sustainability of reintegration, and other factors such as lack of proof of legal identity only add to these challenges. Similarly, persistent gaps in international cooperation on readmission pose a risk for safe and dignified return, can increase migrant vulnerability and further challenge Member States. Highlighted efforts to improve return, readmission and reintegration included an EU Emergency Trust Fund for Africa funded programme, the Joint Initiative for Migrant Protection and Reintegration, as well as ongoing actions by the African Union to develop guidelines on return, readmission and reintegration.

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[11] A UN common position and related tools provide recommendations to ensure that returns are safe and dignified and reintegration is sustainable, in line with international legal frameworks and standards.
[12] https://www.iom.int/sites/g/files/tmzbdl486/files/our_work/DMM/MPA/migrant_protection_during_covid-%2019_dec_2020.pdf

3. GUIDING QUESTIONS

Objective 4

- What key operational and technical capacities are necessary to improve access to civil registry systems and legal identity documents for all migrants regardless of their status, both nationally and for consular representatives abroad, while ensuring safeguards for privacy and data protection?

Objective 8

- What steps can be taken to prevent migrant deaths and injuries, to advance the identification of those who have died or gone missing, and to facilitate communication with affected families?
- What are the bottlenecks to the provision of life-saving humanitarian assistance to migrants? How can these be addressed?

Objective 9

- What effective practices have Member States implemented to prevent and counter the smuggling of migrants, in a way that safeguards the rights of migrants and ensures they are not prosecuted for being smuggled?
- What progress has been made with respect to challenges related to the referral of persons who have been smuggled, according to their needs and to providing justice to those who have become victims of crimes?

Objective 10

- What actions have been taken to enhance the identification, protection and assistance of migrants who have become victims of trafficking and to ensure the prosecution of traffickers?
- What actions have been taken to effectively provide victims of trafficking with access to safe reporting, appropriate protection pathways and access to justice? What other measures have been taken to prevent and combat trafficking in persons?

Objective 11

- How could Member States further develop inter-agency and inter-governmental cooperation to strengthen human rights-based, gender responsive and child sensitive border management procedures?
- What are some key practices to ensure stronger coordination amongst all authorities involved, including border, immigration, customs, child protection and health?
- What are some of the challenges for this at the national level?

Objective 13

- What steps, measures and mechanisms have Member States developed to end or reduce the use of immigration detention and what non-custodial community-based alternatives have been developed in the context of migration?
- What steps has your Member State taken to end the detention of children, and families with children?
- What support could assist your State to overcome barriers to reducing the use of immigration detention and work towards ending its use for children, and what pledges can States make towards achieving these aims?

Objective 21

- What challenges do Member States face in supporting safe and dignified return and readmission in ways that respect returnees' rights, and are gender-responsive and child-sensitive?
- For cases involving children, what steps are being taken to ensure return is a sustainable solution found to be in their best interests through an individual and participative process with the central involvement of child protection authorities?
- What pledges can States make to promote return, readmission and sustainable reintegration that respect returnees' rights, and ensure that procedures are gender-responsive and child-sensitive?
- What steps are being taken to ensure sustainable reintegration of returning migrants into community life, including by providing them equal access to social protection and services and to promote their contributions to sustainable development in the country of origin upon return?