



ICRC

## Global compact for safe, orderly and regular migration

### Introduction

- Thank you for inviting us to participate to this timely discussion.
- Working closely with Red Cross and Crescent National Societies, the ICRC has first-hand understanding of the experience of migrants because of its humanitarian work with migrants in over 60 countries.
- We welcome the commitment taken by States in the New York Declaration for Refugees and Migrants to develop two global compacts to improve the international response to large-scale movements.
- We urge States to duly consider the humanitarian dimension of movements of migrants and refugees in this process and to ensure respect of international law. This is essential to reduce human suffering, protect vulnerable groups and to weigh the humanitarian impact of migration policies.

In the next few minutes, I would like to share some of our concerns in relation to the management of migration, in particular the use of force, the principle of *non-refoulement* and detention in relation to border management. I will conclude with a few remarks on the role of states in preventing family separations and supporting the search for missing migrants.

### Balancing States concerns and humanitarian considerations

States have legitimate concerns about the impact of migration on their security, economy and social cohesion, and have the sovereign right to regulate migration. But this right is not absolute. State normative frameworks, policies and practice must always uphold migrants' rights and reflect international law.

- **Recent years have witnessed a hardening of borders.** Many States have adopted measures designed to prevent and deter foreign nationals from arriving on their territory, including through the adoption of restrictive admission measures that are often enforced at borders.
- Policies and practices that seek to override certain legal obligations have been presented as a legitimate way to address difficulties in managing large-scale migration or security concerns.

## 1. Use of force

The need for international cooperation is nowhere starker than at borders. When facing arrival of large numbers of migrants, without cooperation, policies developed in isolation result in tensions that are all too often addressed through excessive use of force, notably to prevent people from entering their territory.

This creates unnecessary suffering and may not respect people's rights, including in denying access to basic services.

- Authorities should avoid using force simply to prevent migrants from reaching borders or to deter them from seeking access to international protection. Force may only be used as a last resort, when other means remain ineffective or without any promise of achieving the intended result.
- Any use of force must comply with relevant human rights norms and standards (principles and requirements of legality, necessity, proportionality, precaution and accountability. In all circumstances, mediation and de-escalation should be encouraged.
- Authorities and security forces have to take into account migrants' needs and specific vulnerability. As we know, many have gone through enormous suffering including the effect of armed conflicts and other situations of violence or have been abused during their journey. Other possible vulnerabilities (children, PwD,...) – authorities need to rapidly identify and respond to these specific needs.

## 2. Principle of *non-refoulement*

Procedures at borders must also respect the principle of *non-refoulement*. It is within the sovereign prerogative of States to regulate the presence of foreigners in their country and to decide on the criteria for admission of non-nationals. That prerogative is not absolute and international law contains a number of limits to it, recognizing that no one should be sent back to a place where his or her life would be at risk.

This recognition underpins the principle of *non-refoulement*.

- Under conventional and customary international human rights law, this principle extends to all individuals, irrespective of their legal status.
- The prohibition of *refoulement* does not mean that a State must allow everyone on their territory. It entails that before refusing admission to a migrant or returning an individual, States must conduct an individual review assessing carefully and in good faith whether there are substantial grounds to believe that the person would be in danger of being subjected to violations of certain fundamental rights in the country of return.

### **3. Detention**

A number of countries systematically detain irregular migrants upon arrival, regardless of their personal circumstances, sometimes for prolonged periods.

This is in contradiction with the right to liberty and security of person. In addition, while detaining migrants does not do much to curb migration, the ICRC witnesses daily that it has dramatic humanitarian consequences - including family separation and seriously affects people's mental health and well-being.

- Detention should not be used for the management of migration. It should be a measure of last resort, with liberty and alternatives to detention always considered first.
- A decision to detain should only be taken on the basis of an individual assessment and detention must be necessary, reasonable and proportionate to a legitimate purpose; it must not be based on a mandatory rule for a broad category of persons.

### **4. Family separation and missing persons**

Families are sometimes separated along the migration routes including when they cross borders. States should take all feasible measures to prevent this from happening and refrain from provoking such separations themselves. Deterring people from reaching a States' territory by using force sometimes leads to family separations. Thousands of migrants also go missing every year on the migratory routes. Many die along migratory routes and their remains, if any, are never identified – they are buried in

anonymous graves in countries of transit and destination. Their families are left waiting for answers.

Through our work to reestablish family links and search for missing migrants, we witness the lasting scars left by separation and disappearance.

- Our experience shows that minimizing the risk that migrants go missing, treating those who perished with dignity, and supporting families to clarify the fate and whereabouts of their loved ones are all actions within reach. They require political will from States and international cooperation among States and relevant organizations.
- States in countries of origin, transit and destination must review their border management policies, with the view to preventing family separation, reducing the risk that migrants' lives are endangered, lose their lives or go unaccounted for as a result of these policies.”
- States can take concrete measures by setting up transregional coordination channels and communicating information about missing people to their families. They can also improve coordination between forensic services to identify migrants who have died along the way. The above must be in compliance with accepted international best practice standards in data protection and privacy and forensic science.

ICRC will soon be publishing a Policy Paper on Missing Migrants – to help States understand the scope of the problem and chart avenues of work to deal with it, in particular through cooperation at international and regional levels.

## **Conclusion**

In short, we call on States to carefully and regularly assess the potential humanitarian impact of new and existing practices and policies at their borders including the risk that people go missing. These should be driven by humanity, focusing on the suffering, dignity, and safety of migrants at every stage of their journey, alongside other legitimate concerns and they must always be in line with internal obligations.

International cooperation is imperative, in order to avoid the pursuit of national policies that just try to push the problem to some other states, creating additional hardship and suffering.