

Protecting the human rights of migrants in vulnerable situations

OHCHR-PICUM multi-stakeholder meeting, in collaboration with the Special Rapporteur on the Human Rights of Migrants
1 June 2016



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Structure

- Defining a ‘migrant’
- Vulnerabilities in ‘large movements’
- The legal framework of human rights protection for all migrants
- Drafting Principles and Practical Guidance on the human rights protection of migrants in [irregular and] vulnerable situations and in [mixed and] large movements



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MIGRANT?

Forced?

Voluntary?

Refugee

Stateless person

Smuggled migrant

Separated child

Trafficked person

Irregular migrant

Asylum seeker

Unaccompanied child

Migrant worker



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Who is a migrant?

In the absence of a universal, legal definition of an international migrant:

“Any person who is outside a State of which he or she is a citizen or national (temporarily or permanently, regularly or irregularly)”

OHCHR Recommended Principles and Guidelines on Human Rights at International Borders, 2014



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Vulnerabilities in “large” (mixed) movements

- Within the context of many migration movements, a diverse group of people move together, and often share the same risks of human rights violations.
- Many people on the move today fall outside established legal categories (or fall in and out of categories), but are nonetheless in need of specific protection interventions.
- People compelled to move in large-scale, irregular and precarious movements are particularly at risk of harm.



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Migrants in vulnerable situations

- Migrants can be at risk of human rights violations due to the conditions they face in countries of origin, which compel them to move, and to which they may not be returned.



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Why do people move?



War
Conflict



Climate
Change,
Natural
disasters



Persecution



Family
reunification

Livelihood –
economic
opportunity



Poverty



Violence,
exploitation

Food, water
insecurity



To access
healthcare,
education



Discrimi-
nation,
stigma,
prejudice



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Migrants in vulnerable situations (contd)

- Migrants can be at risk of human rights violations as a result of circumstances that they face en route.
- Structural contexts are diverse, and inherent vulnerabilities can lead to intersectional risk (e.g. children).
- Journeys are long, dangerous and often multi-directional. Some may never reach their intended destination
- Risks faced at destination.



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OHCHR study to the Human Rights Council on the situation of migrants in transit (March 2016, A/HRC/31/35)

Migrants who move out of necessity rather than free choice are often unable to formulate exit strategies when migration doesn't go to plan

Barriers to migration and lack of safe pathways

- Punitive border control measures
- Dangerous interception practices
- Criminalisation of irregular migration
- Mandatory detention policies
- Unsustainable return policies
- Violence and exploitation



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International Legal Protection Framework includes ...



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Core International Human Rights Instruments

ICCPR

International Covenant on Civil and Political Rights (1966)

ICESCR

International Covenant on Economic, Social and Cultural Rights (1966)

CERD

The Convention on the Elimination of All Forms of Racial Discrimination (1965)

CEDAW

Convention on the Elimination of All Forms of Discrimination against Women (1979)

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

CRC

Convention on the Rights of the Child (1989)

ICRMW

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

CRPD

Convention on the Rights of Persons with Disabilities (2006)

CED

Convention on the Protection of all Persons from Enforced Disappearance (2006)



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Universal Declaration of Human Rights (1948)

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family (Preamble)

All human beings are born free and equal in dignity and rights (Article 1)

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind (Article 2)

All
human
beings

Everyone



The case for principles and practical guidance

- An international legal framework exists that specifically protects the rights of all migrants.
- However, more precise understanding of the human rights standards for migrants (in large movements), as well as of how States (and other stakeholders) can operationalize these standards in practice, is lacking.
- Need for particular understanding of the protection gaps experienced by migrants who will not benefit from refugee protection, but nonetheless are not moving voluntarily and/or in a protected manner.



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Principles and practical guidance on the human rights protection of migrants in vulnerable situations

- ✓ Without prejudice to the specific rights of refugees as defined in the 1951 Convention/1967 Protocol and those of other specific groups of non-nationals.
- ✓ Anchored in, and derived directly from, international human rights law and standards, and related bodies of law.
- ✓ Designed to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect migrants in vulnerable situations.



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Principles and practical guidance on the human rights protection of migrants in vulnerable situations

- An effort of the Global Migration Group working group on human rights and gender equality.
- Draft set of 15 principles that are derived from international human rights law and related standards.
- Each principle is followed by a set of related practical interventions to give effect to the legal obligations inherent in the principle and thereby address protection gaps.
- Also to be included in the framework is reference to existing tools that have been developed by the members of the GMG working group.

15 Principles (tbc!)

1. Non-discrimination
2. Access to justice
3. Protection of life and safety
4. Governance of international borders, including non refoulement
5. Lawful returns
6. Children in the context of migration
7. Protection from violence, abuse, exploitation
8. Human rights of all migrant women
9. Right to health
10. Decent work
11. Right to liberty
12. Adequate standard of living
13. Right to education
14. Disaggregated data
15. Partnerships and cooperation

For example

Principle :

Protect the lives and safety of all migrants in transit and ensure rescue and immediate assistance to all migrants in distress.

Practical guidance:

- a) Establish, operate and maintain adequate, effective and disability, age- and gender-responsive rescue services at all international borders, including search and rescue at sea services in coastal States;
- b) Provide assistance without discrimination and in a culturally appropriate manner to all migrants in large movements, including medical care, adequate food and water, blankets, clothing, sanitary items and opportunity to rest.
- c) Implement agreements with national protection bodies and other relevant actors to ensure timely and effective referrals for migrants in particular situations of vulnerability.
- d) Put in place measures to respond to the special needs of children, whether they are traveling alone or with family/guardians.

For example

Principle:

Uphold the right of all migrants to liberty through making targeted efforts to end immigration detention of migrants. Never detain migrant children on account of their migration status or that of their parents’.

Practical guidance:

- Establish a presumption against immigration detention in law.
- Ensure that administrative detention is only ordered, as a measure of last resort, and that the reasons for this detention are clearly defined in law, of limited scope and duration, necessary and proportionate, and that the reasons for such detention are clearly explained to migrants.
- Enforce the principle of non-detention for immigration purposes of all children, regardless of their status or the status of their parents.
- Develop national plans to end immigration detention and to implement human rights-compliant, non-custodial, community-based alternatives to detention.
- Provide guidance on best practices for temporary reception facilities in order to uphold the right to liberty and avoid unnecessary detention.

For example

Principle :

Guarantee the human rights of all children in the context of migration, and ensure that they are treated as children first and foremost.

Practical guidance:

- Provide guidance based on international law and best practice on the operationalization of the principle of the best interests of the child for migrant children.
- Establish or strengthen qualified and independent guardianship mechanisms for all unaccompanied and separated children.
- Develop measures to ensure the non-separation of migrant families with children, in accordance with the best interest of the child.
- Ensure the effective provision of birth registration for all children in the context of migration.

“In these precarious flows, movement is rarely ‘voluntary’ in the true sense of that term. Refugees fleeing persecution and conflict journey together with migrants fleeing poverty, discrimination and despair. They are not two different kinds of people; ‘deserving’ and ‘undeserving’. They are all human beings.”

High Commissioner for Human Rights Zeid Ra’ad Al Hussein



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Consultative process

- SG's report recognises the need to develop such principles and improve the protection of migrants in vulnerable situations.
- Consultations on-going and further planned on the development of these principles with expert stakeholders; Member States, civil society, others, in collaboration with the Special Rapporteur on the Human Rights of Migrants
- Aim for recognition within the outcome document of the GA high-level meeting



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Questions

- Scope of the Principles; who, what, where?
- Scope of the Practical Guidance; targeted and concise yet also innovative and useful?



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