



United Nations General Assembly
2013 High-level Dialogue on International Migration and Development

Roundtable 2 Background Paper:

Measures to ensure respect for and protection of the human rights of all migrants, with particular reference to women and children, as well to prevent and combat smuggling of migrants and trafficking in persons, and to ensure regular, orderly, and safe migration.

Panel 1: Human rights of all migrants, with specific attention to migrant women and children

International migration has grown exponentially in recent decades. Today, over 232 million migrants live outside their country of birth, and women and girls make up nearly half of all migrants around the world. Children and youth represent around 15 per cent of the total migrant population (35 million migrants are under the age of 20). Migration influences every country in the world and presents opportunities and challenges that must be addressed in a spirit of cooperation and with respect for human rights. Human rights are universal and inherent in the human person. All States - from origin, to transit and destination - have the obligation to respect and protect the human rights of all migrants in the process of migration, regardless of their migration status.

Greater emphasis is needed in the development and management of migration policies and practices on the promotion and protection of the human rights and fundamental freedoms of all migrants. This includes ensuring that such policies and practices are grounded in due process, non-discrimination and equal protection of law consistent with States' international obligations. In this regard particular attention needs to be paid to the situation of marginalized and disadvantaged groups. Migrants whose rights are protected are able to live in dignity and security and, in turn, are better able to contribute to society both economically and socially than those who are exploited, marginalized and excluded.

Migrants around the world are often in a situation of particular vulnerability in light of their status as non-nationals in the country in which they reside or during their often dangerous journeys. While all migrants can be vulnerable to human rights violations, those who are in an irregular situation can be particularly vulnerable to discrimination, exclusion, exploitation and abuse at all stages of the migration process.

Core international human rights instruments, to the extent that they apply to migration, constitute a set of guidelines for migration policy-makers. A number of examples of good practices in different regions of the world demonstrate how national and local governments can fulfill their obligations under human rights law. However, gaps remain between the broad international framework and its effective implementation.

Better knowledge and implementation of human rights obligations as they apply to migration, at all governmental levels, are important tools for protecting the human rights of migrants, countering anti-immigrant sentiments, xenophobia and discrimination, as well as raising awareness of the positive contribution of migrants to the countries of origin and destination. Knowledge and action at all levels for such purposes are at the core of robust and principled migration policies.

States should also recognize that key elements for a comprehensive approach to migration management that can better protect the human rights of migrants are, among others, facilitating access to justice for migrants; reinforcing labor rights; combating human trafficking and migrant smuggling, and promoting a strong role for civil society organizations.

The availability of reliable data on migration is central for policy planning that is sensitive to human rights and gender issues, and governments should increase efforts to collect, analyze and disseminate relevant data which has been disaggregated according to sex, age, sector of work and, where possible, migration status.

a. Migrant women and girls

Origin, transit and destination countries must bring a gender-based perspective in all policies related to migration. Women migrant workers are active contributors to development in countries of origin and destination. Nevertheless, women are often prevented from enjoying their human rights and often face exploitation, abuse, violence and discrimination. Violence against migrant women can be experienced within the domestic sphere, at the place of work and in the public sphere. Sectors with predominantly female work forces tend to be characterized by poor working conditions, low pay, insecurity and potential for workers to be exposed to violence, including sexual violence. Migrant women in an irregular situation are often unable or unwilling to report domestic violence for fear of detection and deportation.

Although women's remittances make up for a large part of some countries' revenues, the total amount may be smaller than it could be because women often earn less than men. Migrant women are often an important driving force in the well-being of their families and communities, both in their countries of origin and of destination. Socio-economic conditions in countries of origin and destination should empower women so that they can assume these roles.

In light of the above, there is a need to adopt gender-sensitive migration legislation and policies that protect women migrants and promote their access to decent work. To address the issue of violence against women migrants and human trafficking, governments should apply a comprehensive and multi-sectoral approach to develop and implement protective legislation and policies as well as provide services and direct assistance to the survivors of violence. It is also important to collect and analyze data disaggregated by age and sex and consider the role of gender in research and analysis.

b. Migrant children

Children and adolescents migrate for diverse reasons and in a variety of ways, and are affected by migration on multiple levels: when they are left behind by one or both migrating parents, in migrating with (or born abroad to) migrant parents, or when they migrate alone or with peers.

The impacts of migration on children are diverse and highly context-specific. While migration can be an empowering experience for them and an opportunity to enhance their human development, children are also vulnerable to discrimination, xenophobia, social exclusion, lack of access to social services, as well as violence, exploitation, abuse, and other human rights violations at all stages of the migration process. Children who are unaccompanied or separated from their parents and children in an irregular situation are particularly vulnerable. A major challenge is that some governments do not distinguish between adult and child migrants, failing to recognize the specific vulnerability of children. Also, children born to foreign-born are often classified as native-born, even though they might face the same problems as foreign-born children, but not be recognized for their vulnerabilities. Better knowledge about the rights of these children, and obligations related to these rights, is paramount.

Ensuring effective protection and respect of the human rights of children in countries of origin, transit and destination, regardless of their or their parents' immigration status, in accordance with applicable international human rights obligations, at every stage of the migration process and in all migration management procedures are key to a humane migration policy. Children should always be treated as children first and foremost, and the principle of the best interest of the child should always factor in to all decisions regarding children, whatever their migratory status and circumstances. In this context the Convention on the Rights of the Child (CRC) can be a powerful tool for advancing the rights of children affected by migration. Countries should ensure that their laws, policies and practices are consistent with their obligations under the CRC and other relevant instruments.

Migrant children, who are crossing borders in greater numbers, face serious risks at every stage of the migration process. Children, especially those unaccompanied and without documentation, are highly vulnerable to exploitation and abuse. Undocumented child migrants often have difficulty accessing educational and basic social services, and may live in fear of arrest and repatriation. States should favor family unity over the separation of children from their parents.

Questions for consideration Panel 1

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| <ol style="list-style-type: none">1. What are some examples of successful gender-sensitive migration policies? What are the main challenges ahead for governments and different stakeholders for the design and implementation of gender-sensitive migration policies that effectively address the vulnerabilities of migrant women?2. How can governments and civil society interpret international human rights standards in concrete actions for the protection of migrants in the most vulnerable conditions, in particular migrant children? |
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Panel 2: Protection of the human rights of migrants in the context of preventing and combating trafficking in persons and smuggling of migrants and addressing situations of crisis.

a. Preventing and combating trafficking in persons and smuggling of migrants

Migrants are particularly vulnerable to becoming victims of trafficking in persons and exploitation in different forms, which thus seriously affects their human rights. Migrants – sometimes including smuggled migrants – may be trafficked at various stages of the migration process by a variety of agents, including by recruiters, smugglers, employers, acquaintances or relatives who may all participate in the trafficking process. Women and children are especially vulnerable to become victims of human trafficking. The status of international migrants as foreigners enhances their vulnerability to being exploited, and compounds protection concerns, raising serious challenges for governments and civil society. Just as there are a variety of illicit actors who play a role in subjecting migrants to situations of violence and exploitation, including human trafficking, there are also a number of agents available to assist them effectively.

The underlying force, fraud or coercion as a means used to subject persons to sexual or labor trafficking can occur at several points in the migration process. In the recruitment phase, migrants may be induced to travel abroad with fraudulent promises of work or marriage. Labor migrants, including for domestic work, for instance, may be deceived as to their pay or work conditions when recruited or charged recruitment fees that could ultimately be used to propel them into debt bondage – and forcibly prevented from leaving an exploitative workplace – or forced

prostitution. Women may be tricked by matchmakers or suitors with false promises of marriage abroad, or may willingly choose to migrate for what they believe to be a legitimate marriage, only to be coerced into prostitution or bonded labor when they arrive in the foreign country.

Additionally, migrants who cross borders willingly may subsequently become subject to human trafficking in the destination country. Some may have willingly chosen to be smuggled to another country, but could later be held in debt bondage by smugglers demanding additional “payment” in the form of forced labor or prostitution. Employers may hire willing workers, but subsequently withhold their passports and wages; threaten them with deportation or arrest; or physically, sexually, or verbally abuse them in order to compel them to work unwillingly. Undocumented migrants are particularly vulnerable as their lack of legal status can be used to threaten or coerce them into situations of exploitation.

As foreigners in an unfamiliar country, migrants may find it especially difficult to understand their rights and access assistance. Local service providers, due to xenophobia, discrimination, other bias or mere ignorance of their situation, may be unwilling or unable to provide migrants who become victims of trafficking or other crimes such as assault or rape with the assistance they need.

Governments and civil society play an integral role in preventing and detecting trafficking in persons and responding to the needs of those migrants who are trafficked and thereby vulnerable to human rights violations. While anti-trafficking responses are often viewed through the broad lens of the prevention, protection, prosecution and partnership model, the key question is what specific measures these actors can take to address the particular vulnerabilities of migrants to human trafficking.

Countries should explore joint efforts to develop mechanisms and prevention strategies that seek to share information and leverage resources to prevent, stop and slow trafficking.

b. Protection in special situations - crisis situations

States and international organizations have become increasingly concerned with the need to protect the human rights of migrants as they move in mixed flows of persons, particularly in large-scale crises and emergencies (including migrants in search of work and family reunification, refugees and asylum seekers, and victims of human trafficking and other highly vulnerable migrants).

These persons may travel with or alongside each other, using the same routes and means of transport, but with different motivations and objectives. Such movements may involve irregular or clandestine travel, exposing people to exploitation and abuse by smugglers or traffickers, and sometimes placing their lives at risk. While vulnerable migrants in such situations may not necessarily be refugees under international law, they may nevertheless be in need of assistance and protection. A number of policy responses have been advanced to respond to these mixed movements of people. For example, UNHCR introduced a “10-Point Plan of Action” on mixed movements, and UNHCR and IOM have coordinated well in many situations to ensure that potentially vulnerable persons are properly screened for protection concerns, with cross-referrals (e.g., asylum seekers to UNHCR; trafficking victims to IOM) as appropriate. The challenges, however, are enormous and the need to properly understand such mixed flows and possible responses is evident.

The international community is also increasingly concerned by the plight of migrants trapped outside their countries of origin, individually or in groups, facing serious risks to their lives and dignity. Such threats might arise from natural disasters or from conflicts in countries of destination and/or transit. Comprehensive humanitarian responses are often lacking, especially in acute-onset crises in which migrants face immediate hardship and danger.

In protecting and assisting affected persons, states should respect their human rights and take appropriate steps to prevent those rights from being threatened by private actors or others. Communication and coordination is essential for maximizing timely and effective provision of protection and assistance. States experiencing a humanitarian crisis should facilitate consular access to all foreign nationals and expedite the passage of humanitarian assistance to all in need of it.

All persons, whether citizens or non-citizens, have the right to leave any country at any time, including prior to, during, and following a humanitarian crisis. States experiencing a humanitarian crisis should facilitate the exit of non-citizens wishing to leave the country, including by ensuring that non-citizens are not subject to bureaucratic, logistical or other barriers that inhibit their freedom to leave. Further, all non-citizens have the right to enter their own country. States of origin should facilitate the re-entry and repatriation of their nationals.

States should, to the best of their abilities, provide needed information and assistance to their nationals prior to migrating, while transiting and once they settle in host countries. Therefore, countries of origin should stay in close contact with their nationals abroad, including through consulates responsive to the special needs of labor migrants in crisis. In many circumstances, assistance may need to take the form of evacuation, repatriation or other measures – coordinating their actions with assistance provided by the international community as necessary. Migrants may also need emergency travel documents and when possible, labor migrants should be familiarized with their rights and with emergency procedures as part of pre-departure training programs. In all such operations, the principle of non-refoulement – which protects any person from return to a situation in which they are at risk of persecution, torture or other serious human rights violations – should be scrupulously respected.

During humanitarian crises, protection and assistance should be prioritized on the basis of need, and not on the basis of legal status. Particularly in life threatening situations, evacuation from danger zones, emergency shelter and humanitarian aid should be available to citizens and non-citizens alike.

The international community (states and other appropriate actors) should offer assistance to states experiencing a humanitarian crisis. The recent activities and experiences of international organizations, including UNHCR and IOM, in responding to humanitarian crises may offer valuable guidance. There is clearly a need to address situations of humanitarian crises and the roles of states and relevant international organizations in providing adequate responses. In addition to effective inter-agency coordination (including in the framework of the Global Migration Group), relevant responses may include, among others, the IOM’s Migration Crisis Operational Framework and the Migration Emergency Funding Mechanism (MEFM).

Questions for consideration Panel 2

3. How can/should countries of origin, host governments, civil society actors in both origin and destination countries, and relevant international organizations reduce the particular vulnerabilities of migrants that are smuggled or trafficked, adequately protect and assist them, and (re)integrate those who have been trafficked?
4. What are the roles and responsibilities of state actors, international organizations, the international community, civil society and the private sector in protecting the human rights of migrants in mixed flows, especially those migrants trapped by acute-onset crisis, and what are some concrete measures that can be implemented in this regard? Have recent crises and actions by Member States, civil society and international organizations provided good examples of how migrants in acute-onset crises can be protected?