



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

‘Migrants in vulnerable situations’ UNHCR’s perspective

In the New York Declaration for Refugees and Migrants (New York Declaration), all 193 United Nations Member States commit to consider developing non-binding principles and voluntary guidelines on the treatment of migrants in vulnerable situations, though a State-led process.¹ They further commit to launching a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration ‘which could include elements ... to ensure effective protection ... of migrants in vulnerable situations.’² The New York Declaration also provides for UNHCR’s participation in the development of both.

This note offers UNHCR’s perspective on ‘migrants in vulnerable situations’, starting from UNHCR’s firm commitment to the development of guidelines for the treatment of migrants in vulnerable situations, while ensuring that these do not inadvertently undermine international protection.

Introduction

While acknowledging the challenges posed to host States and communities, generally speaking, migration is positive and enriching, both for migrants themselves and for the countries and communities that receive them. However, as the New York Declaration recognizes, migrants may find themselves in vulnerable situations requiring protection and assistance at various points during their journey: in transit, upon arrival at their destination, or as they make a life for themselves in a new country.³

Migrants in vulnerable situations often have specific needs, which must be met in accordance with international law and, in particular, international human rights law.⁴ The New York Declaration calls on Member States to:

- consider developing principles and guidelines on the treatment of migrants in vulnerable situations, which would complement national efforts to protect and assist migrants;⁵ and
- consider including in the global compact for safe, orderly and regular migration elements for ‘effective protection of the human rights and fundamental freedoms of migrants including women and children, regardless of their migratory status, and the specific needs of migrants in vulnerable situations.’⁶

¹ *New York Declaration for Refugees and Migrants*, 3 October 2016, A/RES/71/1, paragraph 52, www.refworld.org/docid/57ceb74a4.html.

² Annex II, 8

³ The Special Rapporteur on the human rights of migrants has recently recalled that ‘[a]lthough some migrants, such as children, older persons, women travelling alone and migrants with disabilities, are vulnerable, the majority are not intrinsically vulnerable. On the contrary, they are most often incredibly resilient and courageous, making life-altering decisions on a regular basis.’ A/71/285, 4 August 2016, paragraph 59.

⁴ These include, alongside core human rights instruments (including ICERD, ICCPR, ICESCR, CRC, CEDAW, CAT), a range of other instruments such as the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the 1954 Convention relating to the Status of Stateless Persons; or the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁵ NYD, paragraph 52.

⁶ NYD, Annex II, paragraph 8(i).

The Declaration includes a further commitment to address the special needs of ‘all people in vulnerable situations travelling within large movements of refugees and migrants.’⁷ This commitment, unlike those above, applies both to refugees and to migrants, and is accordingly relevant to both the global compact on migration, and the global compact on refugees. It is important to distinguish between:

- The specific needs which migrants (or other people on the move) may have because they are in a vulnerable situation; and
- The need for international protection, which concerns all those outside their own country and who are unable to return home because of a serious threat to their life, physical integrity, or freedom as a result of persecution, armed conflict, violence, or serious public disorder, against which their country is unwilling or unable to protect them. Persons in need of international protection are typically entitled to protection against *refoulement*.

1. Migrants in vulnerable situations

Migrants may find themselves in vulnerable situations for a wide range of reasons, which often overlap. Broadly speaking, there are two categories. One is ‘situational’: arising from the conditions in which movement takes place, or from conditions in a country of migration. The other is more ‘individual’: relating to particular individual characteristics or circumstances.⁸

The first, ‘**situational vulnerability**’, refers to circumstances *en-route* or in countries of destination that render migrants at risk. This is frequently the case when migration is through irregular routes, resulting in people being exposed to exploitation and abuse by smugglers, traffickers, recruiters, and corrupt officials; as well as risk of death aboard unseaworthy boats or during hazardous desert and other land crossings. Risks can be exacerbated by lack of legal documentation, the absence of family or community support, limited knowledge of the local language, or discrimination. Migrants who find themselves in a country other than their own, which is beset by conflict, disaster, or other humanitarian crisis, would also fall within this category.

The second, ‘**individual vulnerability**’, relates to individual characteristics or circumstances which place a person at particular risk such as that experienced by: children, particularly those who are unaccompanied or have been separated from family; older people; those with mobility, sensory, intellectual, or other disabilities; those with chronic illnesses or other medical needs; victims or survivors of trafficking who do not fall within the scope of the refugee definition;⁹ or survivors of torture or trauma *en route*.

Some commentators suggest a third category: vulnerable situations linked to conditions in a migrant’s country of origin that precede their departure (e.g. socio-economic deprivation or lack of access to fundamental human rights). It is important to note, however, that such conditions in a country of origin could give rise to an international protection claim under refugee law, which must be the first line of enquiry.

2. Protecting migrants in vulnerable situations

The human rights of migrants in vulnerable situations need to be respected and their immediate and specific needs met, including through rescue; appropriate reception arrangements; family reunification; access to medical assistance, including psychosocial

⁷ NYD, paragraph 23.

⁸ This common-sense grouping of factors creating ‘vulnerable situations’ into ‘situational’ and individual forms of vulnerability (as well as a proposed third category, discussed below) is suggested, for instance, in UN Human Rights Council, *Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations: Report of the United Nations High Commissioner for Human Rights*, 24 February 2017, A/HRC/34/31, www.refworld.org/docid/58b010f34.html, p 5.

⁹ Please see *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, available at: <http://www.refworld.org/docid/443679fa4.html>

services; and help in availing themselves of national or consular services.¹⁰ UNHCR's recently updated *10-Point Plan in Action*¹¹ on refugee protection and mixed migration brings together a range of tools and practices for timely and effective responses.

Migrants in vulnerable situations who have arrived or are present in a State's territory without authorization may, in some circumstances, be granted permission to remain for compassionate or practical reasons.¹² For example, permission to remain has been accorded to: unaccompanied children; students, for the remainder of their academic year; victims of trafficking who do not fall within the scope of the refugee definition; migrants with serious medical needs that can best be addressed in the host country; and survivors of abuse or trauma for the duration of treatment pending recovery.¹³

Migrants in a country other than their own, which is itself affected by conflict, disaster, or other humanitarian crisis, may need particular assistance both to meet their security and humanitarian needs, and to return home or, in certain cases, to relocate or evacuate to transit or other States, especially if they do not enjoy effective consular protection.¹⁴

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¹⁰ Refugees with specific needs likewise require appropriate support. However, unlike migrants, they have no possibility of access to national protection (including consular assistance).

¹¹ UNHCR, *The 10-Point Plan in Action: 2016 Update*, December 2016, www.refworld.org/10pointplaninaction2016update.html.

¹² ExCom Conclusion No. 103 (LVI) 2005, para (j). See also UNHCR, *Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime*, 9 June 2000, EC/50/SC/CRP.18, www.refworld.org/docid/47fdb491a.html.

¹³ Permit to stay in these circumstances are not related to international protection needs.

¹⁴ The State-led *Migrants in Countries in Crisis (MICIC) Initiative*, which UNHCR supports, aims to respond to a particular type of 'vulnerable situation'. It has led to non-binding *Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster* (June 2016), available at <https://micicinitiative.iom.int>.