

Protecting the human rights of migrants in vulnerable situations

International Dialogue on Migration 2017

Dr. Pia Oberoi
Advisor on Migration and Human Rights



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Overview

- I. Migration and human rights: protection frameworks
- II. Understanding vulnerability in the migration context
- III. Principles and guidelines on the human rights protection of migrants in vulnerable situations
- IV. Way forward



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

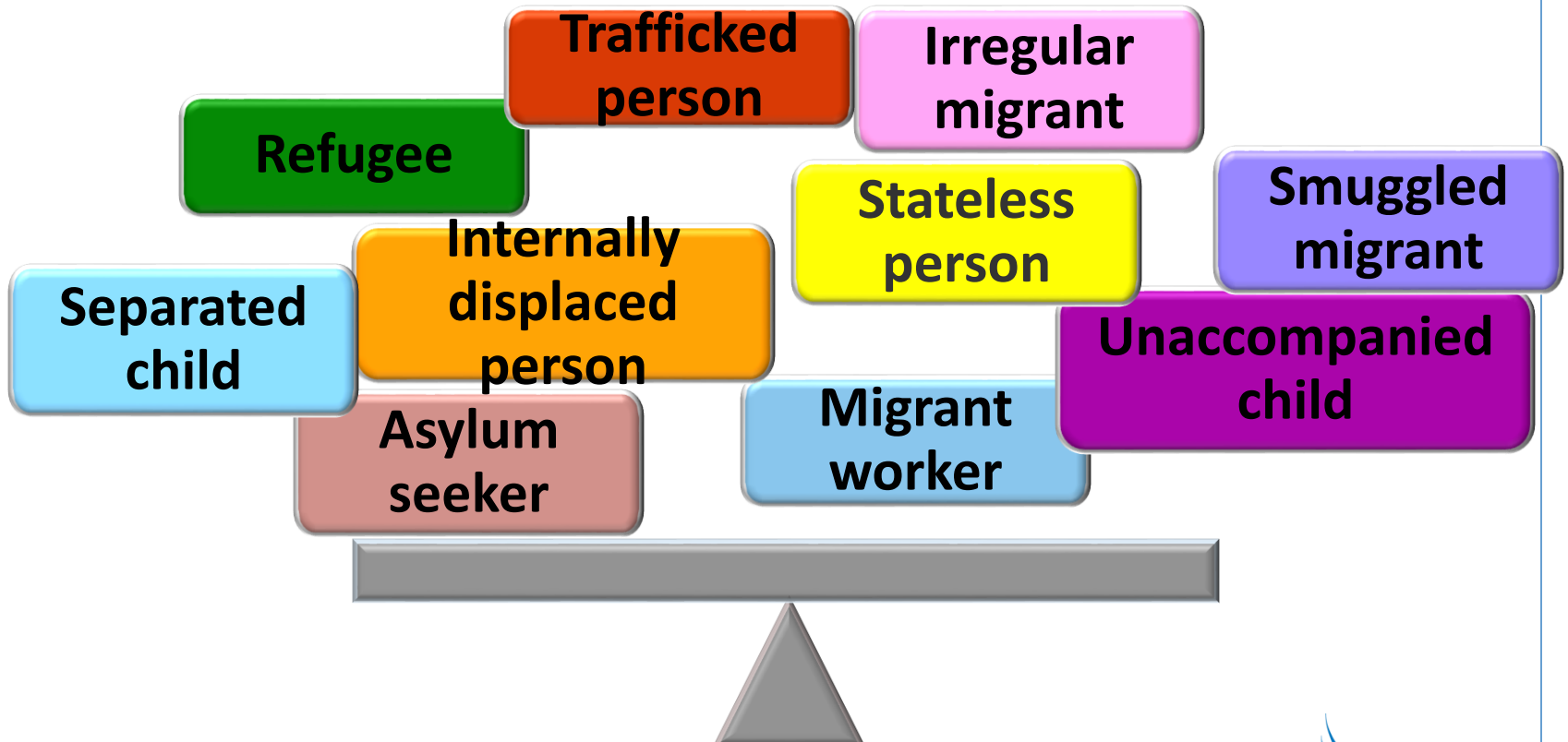
Migration and Human Rights

- Promote and protect the human rights of **all** (mandate of the UN High Commissioner for Human Rights)
- **All** migrants, regardless of their status, are human rights-holders (*see also New York Declaration, para 5*)



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

MIGRANT



International legal protection framework



Understanding **vulnerability** in the migration context

- Focus on situation of the individual migrant
- Gaps in human rights protection
- Need for specific protection interventions

*This should not be understood as an absence of **agency** on the part of migrants.*

Migrants in vulnerable situations

=

individuals not able to fully exercise their human rights

Identity
or
circum-
stance

age or gender, sexual
orientation and gender
identity, health, migratory
or disability status

Vulnerability

Situation
country of
origin

Situation en
route

climate, disaster and
environmental
factors, endemic
poverty, food
insecurity,
discrimination in
access to health,
education,
housing or decent
work

in transit, at
borders and at
reception /
destination



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

The case for attention to the human rights of migrants in vulnerable situations

- An international legal framework **exists** that protects the rights of all migrants.
- Migrants in vulnerable situations are entitled to a **heightened duty of care** by the State.
- However, understanding of the human rights standards for such migrants, as well as of how States (and other stakeholders) can **operationalize** these standards in practice, is often lacking.
- Therefore there is a need for **practical guidance** on addressing protection gaps experienced by migrants who will not benefit from refugee protection, but who nonetheless are not moving voluntarily and/or in a protected manner.



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

- OHCHR has led an effort of the Global Migration Group working group on human rights and gender equality through an open, consultative and multi-stakeholder process.
- The General Assembly recognized this endeavour in para 51 of the New York Declaration.
- A progress report was presented by the High Commissioner to the Human Rights Council in March (A/HRC/34/31).



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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

- ✓ Without prejudice to the specific rights of groups with precise entitlements under international law (e.g. refugees, trafficked persons, migrant workers).
- ✓ Anchored in, and the principles are derived directly from, international human rights law and standards, and related bodies of law. Supported by practical guidance (examples of promising practice from all regions).
- ✓ Designed to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect migrants in vulnerable situations.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

20 Principles, associated guidelines and promising practice : Issues covered

1. Human rights primacy
2. Non-discrimination
3. Access to justice
4. Rescue
5. Border governance
6. Returns
7. Violence
8. Detention
9. Family unity
10. Children
11. Women and girls
12. Health
13. Standard of living
14. Decent work
15. Education
16. Information
17. Monitoring
18. HRDs
19. Data collection
20. Cooperation



Principle 6

Ensure that all returns fully respect the human rights of migrants and comply with international law.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Principle 6 – Selected guidelines

- Ensure that no **arbitrary or collective expulsions** occur, for example by tow-backs or push-backs, in any area over which the State exercises jurisdiction or effective control.
- Any migrant who is asked to **consent** to a voluntary return process must be fully and meaningfully informed of the choice he or she makes. Consent must be given free of any coercion. This means, inter alia, that the migrant must not be subject to violence or ill-treatment intended to force compliance, to an actual or implied threat of indefinite or arbitrary detention, or to detention in inadequate conditions.
- Children should only be returned when it has been determined that is in the **best interest of the child**. Considerations such as those relating to general migration control, cannot override best interests considerations.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Principle 7

Protect migrants from all forms of violence and exploitation, whether inflicted by State institutions, officials, private bodies or individuals.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Principle 7 – Selected principles and guidelines

- Establish **accessible and confidential services** for migrants who are victims of violence and exploitation. These should include healthcare, counselling, reporting and complaints mechanisms, and effective referral arrangements.
- Take measures to encourage migrants to **report crimes** committed against them. To facilitate this, establish explicit and effective firewalls enabling migrants to report crimes, participate in criminal justice proceedings, and receive related assistance and support without fear that they will be arrested, detained or expelled because of their migration status.
- All immigration facilities should adhere to **standards for preventing and responding to violence**, including sexual and gender-based violence.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Principle 12

Ensure that all migrants enjoy the highest attainable standard of physical and mental health.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Principle 12 – Selected principles and guidelines

- **Timely and accurate information** on health and health rights should be made available to migrants at all stages of their journey, along migratory routes, at reception points, and in communities where migrants live and work.
- Provide access to comprehensive rights-based **sexual and reproductive health** information and services.
- Recognize that migrants may experience severe emotional distress and may have particular and often urgent **mental health needs**. Ensure they have access to adequate mental health care, including at reception, and can be referred to appropriate secondary services.
- Establish binding and effective **firewalls** between public health service providers on one hand and immigration enforcement authorities and other security actors on the other, and make sure that firewalls are respected.



Going forward

- In June 2017 the Human Rights Council requested the High Commissioner to submit the principles and guidelines at its thirty--seventh session (March 2018)
- Further work remains to ensure that the principles and guidelines are disseminated and implemented
- How could synergies be explored between this tool and the global compact process, and the latter's focus on 'principles, commitments and understandings'?



Thank you for your attention

More information at www.ohchr.org >
Issues > Migration and Human Rights

<http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>