

About migration and human rights



OHCHR and migration

An estimated 281 million people, approximately 3.6% of the world's population, currently live outside their country of origin, many of whose migration is characterized by varying degrees of compulsion. Notwithstanding that many migrants choose to leave their countries of origin each year, an increasing number of migrants are forced to leave their homes for a complex combination of reasons, including poverty, lack of access to healthcare, education, water, food, housing, and the consequences of environmental degradation and climate change, as well as the more 'traditional' drivers of forced displacement such as persecution and conflict.



While migration is a positive and empowering experience for many, it is increasingly clear that a lack of human rights-based **human rights-based migration governance** at the global and national levels is leading to the routine violation of migrants' rights in transit, at international borders, and in the countries they migrate to.

While migrants are not inherently vulnerable, they can be vulnerable to human rights violations. Migrants in an irregular situation tend to be disproportionately vulnerable to discrimination, exploitation and marginalization, often living and working in the shadows, afraid to complain, and denied their human rights and fundamental freedoms.

Human rights violations against migrants can include a denial of civil and political rights such as arbitrary detention, torture, or a lack of due process, as well as economic, social and cultural rights such as the rights to health, housing or education. The denial of migrants' rights is often closely linked to discriminatory laws and to deep-seated attitudes of prejudice or xenophobia .

In this context, OHCHR works to promote, protect and fulfil the human rights of all migrants, regardless of their status, with a particular focus on those migrants in vulnerable situations who are most marginalized and at risk of human rights violations. OHCHR promotes a human rights-based approach to migration, which places the migrant at the centre of migration policies and governance, and seeks to ensure that migrants are included in all relevant national action plans and strategies, such as plans on the provision of public housing or national strategies to combat racism and xenophobia.



Introduction

Existing legal instruments provide a comprehensive legal framework for the governance of international migration. Well-defined rules address the treatment of a range of migrants including, among others: migrant women, men, children, refugees, stateless persons, migrant workers, and migrant victims of trafficking.

The bodies of international law which provide the basis for national migration laws, policies and practice include: international human rights law, international labour law and standards, international refugee law, international

criminal law, international humanitarian law, international consular law, and international maritime law.

International human rights law

International human rights law (IHRL) lays down obligations which States are bound to respect. Unlike other bodies of law, which may only apply to specific groups or situations, international human rights law applies to all people at all times. This includes not only a State's own citizens, but everyone within the State's jurisdiction or effective control. This means that all migrants, regardless of their status, are entitled to the same

international human rights as everyone else.



As with all rights-holders, States have an obligation to migrants to respect, protect, and fulfill their human rights.

- Respecting human rights means refraining from human rights violations, and in the migration context includes refraining from arbitrary detention, torture, or collective expulsion of migrants.
- The obligation to protect human rights requires States to prevent human rights violations by other actors. With regard to migrants, this means that States should, for example, regulate recruitment agencies, sanction abusive employers, protect migrants from violence and abuse by smugglers, and take action against xenophobia and hatred.
- Fulfilling human rights requires taking positive measures to ensure the realization of those rights, such as, for migrants, introducing

alternatives to detention, and guaranteeing access to healthcare, education, and other social services.

Realizing human rights in migration policy also means incorporating certain cross-cutting human rights principles, including:

- **Equality and non-discrimination:** The principle of non-discrimination prohibits distinction, exclusion, restriction or preference on the basis of a list of non-exhaustive grounds such as race, colour, descent, ethnic origin, sex, age, gender, sexual orientation, gender identity, disability, religion or belief, nationality, migration or residence status or other status. States should address direct and indirect discrimination against and unequal treatment of people in laws, policies and practices, including by paying particular attention to the needs of migrants in vulnerable situations.
- **Participation and inclusion:** Everyone is entitled to active, free and meaningful participation in decisions that affect the enjoyment of their rights. All people have the right to access information, in a language and format accessible to them, regarding the decision-making processes that affect their lives and well-being. This means that migrants should be consulted and included in the development of relevant public policy.
- **Accountability and rule of law:** Everyone is entitled to claim and exercise their rights. States should ensure transparency in the design and implementation of their policies and must ensure that rights-holders have access to mechanisms of redress and to enjoy effective remedies when human rights breaches occur. The system governing migration should allow migrants full access to justice, including redress and remedies if they experience human rights violations.

Through its support to States and to the various human rights mechanisms, OHCHR helps to identify good practices and policies that ensure human rights-based governance of international migration.



Global Compact for Safe, Orderly and Regular Migration (GCM)

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The Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), is the first intergovernmental agreement, prepared under the auspices of the United Nations, to cover all dimensions of international migration in a holistic and comprehensive manner. It was adopted at an intergovernmental conference on migration in Marrakesh, Morocco on 10 December 2018. Member States agreed to review the



progress made at the local, national, regional and global levels in implementing the Global Compact at an International Migration Review Forum (IMRF) through a State-led approach and with the participation of all relevant stakeholders at the UN General Assembly, with the first IMRF to take place at the United Nations headquarters in New York on 17-20 May 2022. Visit our IMRF link for further information on the UN Human Rights activities. OHCHR has welcomed the Global Compact as an important framework for improved migration governance that puts migrants and their human rights at the centre and that provides a significant opportunity to strengthen human rights protection for all migrants, regardless of status.

The Global Compact is grounded in international human rights law and reaffirms States' commitment to respecting, protecting, and fulfilling all human rights for all migrants. The Global Compact rests on the **Universal Declaration of Human Rights** and each of the nine **core international human rights law instruments**, and contains a Guiding Principle on human rights:

“The Global Compact is based on international human rights law and upholds the principles of non-regression and non-discrimination. By implementing the Global Compact, we ensure effective respect for and protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle. We also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance, against migrants and their families;”

The Global Compact enumerates 23 objectives for State action, bolstered by specific commitments, that seek to address challenges related to today's migration. The GCM commitments and actions can be seen as a guide for States to meet their human rights obligations when designing migration governance measures to reduce the risks and vulnerabilities migrants face at different stages of migration and to create conducive

conditions that empower all migrants to become active members of society. Key commitments include:

- Strengthening evidence-based and human rights-based policy-making and public discourse on migration;
- Minimizing the adverse drivers of migration, including combatting poverty and discrimination and addressing climate and disaster-related displacement;
- Ensuring migrants' rights to information and to a legal identity;
- Expanding and diversifying availability of pathways for safe, orderly and regular migration, taking into account the particular needs of migrants in situations of vulnerability;
- Protecting the right to decent work and other labour rights for migrants;
- Addressing and reducing vulnerabilities and human rights violations in the context of migration;
- Protecting the right to life in the context of migration;
- Combatting smuggling and trafficking while protecting the human rights of those who have been smuggled or trafficked;
- Respecting human rights at borders and conducting human rights-based and individualized screening, assessment and referral of migrants;
- Protecting the right to liberty and freedom from arbitrary detention, including by prioritizing alternatives to immigration detention;
- Ensuring migrants' rights to access basic services, including health, education, and social support, without discrimination;
- Eliminating discrimination and combatting hate speech and xenophobia;
- Upholding the prohibitions of collective expulsion and *refoulement* for



all migrants, ensuring that returns are safe and dignified and reintegration is sustainable.

At the UN level, implementation of the Global Compact is supported by the United Nations Network on Migration. The Network was established by the

UN Secretary-General to ensure coordinated UN system-wide support to States in implementing the GCM, while prioritizing the rights and well-being of migrants and their communities. It is comprised of 38 entities of the UN system working collectively to support states in addressing their migration priorities, including as regards upholding the rights and wellbeing of migrants and their communities. The Network is led by an Executive

Committee of 9 UN entities giving overall guidance and setting priorities for the Network.

Migrants in vulnerable situations

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Many people on the move today fall outside legal protection categories but are nonetheless in need of specific human rights protection interventions. The



vulnerable situations that migrants face can arise from a range of situational and personal factors that may intersect or coexist simultaneously, influencing and exacerbating each other and also evolving or changing over time as circumstances change. Migrants may find themselves in vulnerable situations as a result of the situations compelling them to leave their country of origin, the circumstances in which they travel or the conditions they face on arrival, or because of personal characteristics such as their age, gender identity, race, disability or health status.

Migrants are not inherently vulnerable, nor do they lack resilience and agency. Rather, vulnerability to human rights violations is the result of multiple and intersecting forms of discrimination, inequality and structural and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights. As a matter of principle, and in order to ensure that every migrant is able to access appropriate protection of their rights, the situation of each person must be assessed individually.

OHCHR, working with other UN partners, has led the development of a set of **Principles and guidelines on the human rights protection of migrants in vulnerable situations**.

These principles and guidelines focus on the human rights situation of those migrants who may not qualify as refugees, yet who are in vulnerable situations and thus in need of the protection of the international human rights framework. They provide advice to States and other stakeholders on how they should implement their obligations to respect, protect and fulfil the human rights of migrants who are in vulnerable situations.

Economic, social and cultural rights of migrants and access to services

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The human rights protections contained in the **Universal Declaration of Human Rights** and the **core international human rights instruments** apply to all human beings, without discrimination, including all migrants, regardless of their migration status. Yet, many migrants tend to live and work in the shadows, afraid to complain, denied rights and freedoms that we take for granted, and disproportionately vulnerable to discrimination and marginalization.

In law, policy and in practice, many migrants, particularly those in an irregular situation, are often denied access to such fundamental human rights as the right to health, to education, to an adequate standard of living, to social security, and to just and favourable conditions of work. Some of the legal and practical obstacles that prevent migrants from effectively enjoying their rights, include lack of identification or proof of residence, financial barriers, lack of information, linguistic difficulties and fear to be reported to immigration enforcement bodies which can result in detention or deportation.

OHCHR's publication on the economic, social, and cultural rights of migrants in an irregular situation provides an understanding of the scope and content of relevant international and regional human rights law; describes the various legal, policy and practical barriers that irregular

migrants face in having their human rights protected and fulfilled; and offers examples of promising practice.

OHCHR continuously monitors the human rights situations of migrants, and provides technical advice to States and other stakeholders seeking to implement human rights-based migration policies that respect, protect, and fulfil migrants' economic, social and cultural rights through ensuring safe access to services. OHCHR has also contributed to the development of policy guidance and indicators for implementing and measuring progress towards the realization of migration.

Human rights in transit and at international borders

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Many migrants in transit are in a precarious — even perilous — human rights situation. Even as technological advances have made travel faster and safer, for many migrants compelled to move the journey is often long, dangerous and even multi-directional. Some never reach their intended destination.



Migrants in transit risk a range of human rights violations, including because they have become destitute or “stranded” in the transit country and because they lack legal protection and are unable or unwilling to seek the protection of the country of transit. Migrant women in transit often face specific gendered forms of discrimination and abuse, and children can be particularly at risk, whether they are travelling on their own or with their families or caregivers. States have obligations under international law to address the dangers and risks faced by migrants in transit, but lack of

regular migration pathways, coupled with harsh, security-driven migration policies and xenophobic rhetoric often operate to aggravate these risks rather than mitigating them.

Arrival at an international border does not put an end to the human rights risks that migrants face. At land, sea and air borders around the world, migrants experience human rights protection gaps, including unlawful profiling, torture and ill-treatment, gender-based violence, dangerous interception practices, and prolonged or arbitrary detention.

International borders are not zones of exclusion or exception for human rights obligations. States have the prerogative to govern migration within their jurisdiction, but they must do so in conformity with their human rights obligations. This means that the human rights of all migrants, regardless of their nationality, migration status, how they arrive at the border, where they come from or what they look like, are entitled to enjoy their human rights. Specifically, it means that on arrival, every individual regardless of status has the right to an individual assessment of protection needs, and the prohibitions of collective expulsions and refoulement must be scrupulously upheld for everyone. It also means that no one should be subjected to arbitrary detention, discriminatory decision-making, and that specific attention must be paid to migrants in vulnerable situations.

OHCHR has developed Recommended principles and guidelines on human rights at international borders. These are intended to translate the international human rights framework into practical border governance measures. Underpinning this guidance, is the belief that respecting the human rights of all migrants, facilitates effective border governance.

OHCHR continuously monitors the human rights situations of migrants at borders and in transit, and provides technical advice to States and other seeking to implement human rights-based migration and border governance policies..



Reframing narratives on migration

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Instead of repeating harmful narratives of fear and exclusion,

it's time to welcome people into our communities, to reimagine our collective future



Michelle Bachelet, UN High Commissioner for Human Rights

How we perceive and speak about migrants and migration – the narrative – plays a fundamental role in guaranteeing equality and the human rights of migrants. OHCHR is thus actively engaged in challenging and reframing harmful narratives on migration through its **#StandUp4Migrants campaign** and **toolbox**, and its engagement with a range of partners and migrants themselves.

Why narratives matter

Harmful and dehumanising narratives on migration have increasingly permeated political movements, media and other forms of public discourse in many countries. Such narratives have used migrants as scapegoats for deep-rooted societal problems and fears, often for political or financial gain.

When migrants are criminalized and even dehumanized by policies and rhetoric, the result is often that they are left without human rights, without

a place in society. The effects of such divisive narratives are also wide-reaching within our societies.

While narratives are part of the problem, they can also represent a powerful tool for change. OHCHR therefore seeks to shift narratives of fear, hate and division to those that uphold everyone's human dignity and focus on what we have in common.

Get Inspired: UN Human Rights Vision for the World



How to reframe narratives on migration

Together with partners from different regions of the world, OHCHR developed a seven-step guide, based on OHCHR's Seven key elements on building human rights-based narratives on migrants and migration. The

interactive online toolbox offers ideas, downloadable activities and inspiration for organisations and anyone who wants to play a role in shifting narratives on migration.

The toolbox is accompanied by #StandUp4Migrants a campaign, which helps illustrate the toolbox in action. It focuses on humanising migrants through the voices of migrants themselves and the people who welcome them. By emphasising what we have in common, the warm welcome of communities and how human connection and understanding starts with a conversation, the campaign showcases how our vision for the future already exists and can be expanded for others to experience the positive impact as well.

Research findings and experiences were gathered through expert meetings, partnerships with business, advertisers and influencers, as well as platforms for migrants and migrant rights defenders to share their stories, including through a series of animated video stories to amplify the voices of migrants, the communities that welcome them and the conversations they have along the way.



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