



International Organization for Migration (IOM)

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Understanding migrant vulnerabilities and capacities

Background Paper

I. Introduction

Migration is a megatrend in today's international system, with an unprecedented level of human mobility. Although most migration is voluntary and has a largely positive impact on individuals and societies, migration, particularly irregular migration, can increase vulnerability to violence, abuse, exploitation, and/or rights violations. Despite the growing prevalence and impact of migration, migration governance frameworks have not kept pace, and many migrants face significant protection risks during the migration process and after having reached their final destination. There is limited data available on the proportion of the world's 244 million international migrants who could be considered vulnerable, but the fact that there were 21.3 million refugees and 3.2 million asylum seekers at the end of 2015, an estimated 9.1 million migrants who are victims of forced labour, and an estimated 50 million irregular migrants worldwide in 2010, gives some indication of the scale of the issue.

Protection frameworks for migrants, which to date have focused on upholding the human rights of migrants or on the protection of specific categories of migrants, have not shown themselves to be sufficient for meeting the needs of all vulnerable migrants in today's world. Further, there is a lack of clarity on what, exactly, is meant by the term "vulnerable migrant," and what protection and assistance might be afforded to such migrants. There is a need for clarity around this term and agreement on the best way forward in meeting the significant operational challenges of providing protection and assistance to significant numbers of migrants in need of such services.

II. Existing frameworks

In the 2013 Declaration of the High-level Dialogue on International Migration and Development, representatives of States and governments reiterated their "commitment to prevent and combat trafficking in persons, protect victims of trafficking, prevent and combat migrant smuggling, and protect migrants from exploitation and other abuses" and called for the development of an effective and inclusive agenda on international migration that respects human rights.

Paragraph 29 of the 2030 Agenda for Sustainable Development specifically recognizes the positive contribution of migrant to inclusive growth and sustainable development, as well as the

fact that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit, and destination, which requires coherent and comprehensive responses. It further pledges that States will cooperate internationally to ensure safe, orderly, and regular migration with full respect for human rights and the humane treatment of migrants regardless of migration status. The agenda also pledges that “no one will be left behind”, a commitment that would be meaningless if the world’s 244 million international migrants were not included in efforts to achieve the Agenda’s goals.

The New York Declaration, adopted by the United Nations General Assembly following the 19 September 2016 Summit for Refugees and Migrants, also refers to the vulnerabilities of migrants to exploitation and abuse, and notes State’s commitment to “protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times.”

Currently, the international system has four main bodies of law that relate to the protection and assistance of migrants: international human rights and humanitarian law; international refugee law; international criminal law; and international labour law. International human rights law details the basic civil, political, economic, social and cultural rights that all human beings should enjoy, while international humanitarian law seeks to limit the effects of conflict and protect those who are not participating in hostilities. Both bodies of law apply to all persons, including all migrants. International refugee law defines the term refugee, and establishes the legal rights and protections to which they are entitled, such as non-*refoulement*. This body of law applies only to refugees. International criminal law contains elements relevant to migration, specifically the United Nations Convention against Transnational Organized Crime, its Protocol against Smuggling of Migrants by Land, Sea and Air, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The smuggling protocol aims to prevent and combat smuggling of migrants and to promote cooperation amongst State Parties, while also protecting the rights of smuggled migrants. The trafficking protocol aims to prevent and combat trafficking in persons, to protect and assist the victims of trafficking with full respect for their human rights, and to promote cooperation amongst State Parties. Finally, international labour law contains provisions related to international labour migration and the rights of migrant workers. This body of law pertains specifically to migrant workers and their families.

II. Protection gaps

While international human rights law is applicable in all circumstances and for all persons, including migrants, it is rarely fully implemented in states’ responses to irregular migration.¹ Migrants, and the practitioners that assist them, are rarely equipped to pursue formal redress for human rights or other rights violations. Further, many of the migrants vulnerable to violence, exploitation, and abuse fall outside of the existing definitions of migrants entitled to protections, specifically refugees and trafficked persons, or are not migrant workers. While many vulnerable migrants are indeed smuggled migrants, and the smuggling protocol sets out specific protections for smuggled migrants in addition to calling for the protection of their rights, most state responses to migrant smuggling have focused on border control and law enforcement efforts

¹ Alexander Betts, *Soft Law and the Protection of Vulnerable Migrants*, Georgetown Immigration Law Journal, Vol. 24 pages 533-552 (2010)

and, in general, paid much less attention to the rights and protections elements of the smuggling protocol than they have in the trafficking protocol.²

There is therefore a need to better understand what is meant by the term “vulnerable migrant” or a “migrant in a situation of vulnerability.” In general, discussions of vulnerability tend to focus exclusively on those with legal definitions and specified protections (e.g., refugees, trafficked persons), or on an individuals’ membership in groups (e.g., women, children, disabled). This approach can obscure the fact that within these groups, vulnerabilities vary significantly. Further, classifying an individual as vulnerable due to their membership in a particular group does not take into account the many factors that may protect an individual from exploitation or abuse, regardless of their membership in said group, and downplays the agency of individuals and their abilities to overcome vulnerability factors and achieve their migration goals. It also contributes to protection gaps, as protection actors may be blind to the needs of those who are not members of either a protected class of migrant or of a group deemed vulnerable. Finally, a narrow interpretation of vulnerability as a result of membership in a particular group compresses the broad range of factors, from the individual to the structural, that contribute to the vulnerabilities of particular groups and the individuals within them, and hinders development of comprehensive prevention and protection responses.

In order to address these protection gaps, IOM proposes a more comprehensive understanding of vulnerability: one that does not focus solely on protected categories of migrants, nor on a migrant’s membership in a particular group, but instead complements these approaches with a more complete understanding of the factors that contributed to the individual migrant’s or group of migrants’ vulnerability, the resources and capacities they themselves can mobilize to resist or recover from their vulnerability, and which would apply at any stage of the migration process and in any context. IOM is of the view that the wide adoption of such an approach would set the stage for more effective operational and programmatic responses, based in existing obligations, to current and future migration crises and would enable the international community to better meet the protection and assistance needs of vulnerable migrants.

III. Proposed model

IOM proposes that, within the migration context, vulnerability can be defined as the diminished capacity of an individual or group to resist, cope with, or recover from violence, exploitation, abuse, and/or violation(s) of their rights. It is determined by the presence, absence, and interaction of factors or circumstances that increase the risk of and exposure to, or protect against, violence, exploitation, abuse, and rights violations. This definition is applicable not only to individual migrants, but also to families, groups, and migration-affected communities. It requires a thorough assessment not only of the factors and circumstances that increase vulnerability, but also of the factors and circumstances that contribute to an individual or group of migrants’ ability to resist and overcome risks, allowing for a more complete understanding of their needs and capacities.

Understanding violence, exploitation, abuse, and violations of the rights of migrants

² International Council of Human Rights Policy, *Irregular migration, migrant smuggling and human rights: towards coherence*, 2010, page 71.

There are multiple forms of exploitation and abuse, and there are a number of factors that are generally understood to make individuals and groups more or less vulnerable to them. For example, being female or transgender increases an individual's risk of sexual exploitation and abuse, while being in an irregular migration status increases one's vulnerability to labour exploitation. There are also a number of factors that may contribute to individuals and groups being more or less vulnerable to violations of their rights, depending on specific circumstances. For example, in some contexts being a boy decreases one's risk of being denied the right to an education, and in some contexts being LGBTI may increase one's risk of being denied the right to family life.

When considering the vulnerability of an individual, family, community, or group, it is therefore essential to consider to what they are vulnerable. Key forms of violence, exploitation, abuse, and rights violations experienced by migrants, their families, and their communities include unlawful deprivations of liberty; infringements on rights to work and the enjoyment of just and favourable conditions of work; denial of rights to family life; arbitrary detention; torture; cruel, inhuman, or degrading treatment; *refoulement*; unlawful limitations to freedom of movement; deprivation of rights to nationality (statelessness); slavery; servitude; limitations or deprivations of the rights to education and health; sexual exploitation and abuse; and labour exploitation and abuse.

Determinants of vulnerability

IOM's migrant vulnerability model conceives of vulnerability as the inter-play of factors that either increase or decrease the vulnerability of individuals, households, communities, and groups to violence, exploitation, abuse, and rights violations. It analyses factors at the individual, household, community, and structural levels, and takes into account the situational circumstance that can lead to greater exposure to these risks.

Individual factors are those related to the migrant as an individual: their status in society; their histories and experiences; their beliefs and attitudes; their individual emotional, psychological, and cognitive characteristics; and their physical and mental well-being. Individual characteristics are a central element in assessing vulnerability as they contribute to an individual's vulnerability or resilience to risk factors, and mediate how individuals respond to their household, community, structural, and situational contexts.

Household factors are those related to the family circumstances of individuals, their role and position within the family, and family histories and experiences. Families are important in determining vulnerabilities as they are typically the option of first resort for individuals who require support, particularly for children and youth. Families offer both risk and protective factors against exploitation and abuse.

Individuals and their families are situated within a broader physical and social community context, and are affected by the community's economic, cultural, and social structure and their position within it. Communities with strong social support networks and sufficient resources can offer support and protection to individuals and families; whereas being located in communities without such networks and resources can create risk factors for individuals and families.

At the broadest level, structural factors are the historical, geographic, political, economic, social, and cultural conditions and institutions at the national, regional, and international level that influence the overall environment in which individuals, families, communities, and groups are situated and which shape their economic, educational, and migration decisions. Structural factors are typically relatively stable and have longer-term impacts.

Situational factors are circumstances or statuses at any level that have changed quickly and in unforeseen ways, for example as the result of the outbreak of conflict, a sudden and unexpected change to family situation or socio-economic status, a change in migration status, etc. Such changes can increase the exposure of individuals, families, and communities to violence, exploitation, abuse, and/or rights violations.

Interaction of factors

In this model, vulnerability or capacity to resist or overcome violence, exploitation, abuse and rights violations is conceptualized as the presence of and interaction between various factors, rather than as a result of membership of a vulnerable group. For example, an individual may have poor individual coping skills but a supportive family and community, resulting in an overall resilience to risks of exploitation and abuse.

The model also allows for the fact that migrants' circumstances change over time, and they are not vulnerable *per se*, but as a result of the constellation of factors affecting them at a particular time and in a particular place. An individual who has experienced trafficking for labour exploitation may escape the situation, recover, and become an empowered advocate for the rights of trafficked persons. A family that has experienced a period of vulnerability can develop and implement strategies to improve their situation and reduce vulnerabilities over time. Communities that were once prosperous, with strong social networks, can become more vulnerable over time due to changes to overall economic conditions or the proliferation of organized crime.

Assessing or predicting the vulnerability of individuals, households, or groups therefore requires a holistic evaluation of the risk and protective factors at play, of their circumstances at a particular point in time, and of the resources at their disposal.

Applying the framework to the different stages of the migration process

International migration is often described as a process involving a country of origin, one or more countries of transit, and a destination country. Domestic migration typically follows a similar process, although the process involves communities of origin, transit, and destination, rather than countries.

There are a number of vulnerabilities that may arise as a result of factors, conditions, or experiences at each specific stage of the migration process. Vulnerabilities may arise from the reasons for leaving countries of origin. As noted in the *Principles and Guidelines, supported by*

*practical guidance, on the human rights protection of migrants in vulnerable situations*³ these vulnerabilities “can include poverty, discrimination, lack of access to fundamental human rights, including education, health, food and water, and decent work, as well as xenophobia, violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family.”

Vulnerabilities may also arise due to circumstances associated with being in transit. This can include threats to their physical safety as a result of the difficult transit conditions, such as unsafe means of transportation, as well as threats of exploitation posed by human traffickers, migrant smugglers, and unscrupulous officials. Migrants in transit may be particularly vulnerable to rights violations and abuses, particularly when they are in an irregular situation. As noted in the Principles and Guidelines: “the inadequate and often harsh conditions in which they are received at borders can also violate rights and further exacerbate vulnerabilities. Responses, such as the arbitrary closure of borders, denial of access to asylum procedures, arbitrary push-backs, violence at borders committed by State authorities and other actors (including criminals and civilian militias), inhumane reception conditions, a lack of firewalls, and denial of humanitarian assistance, increase the risks to the health and safety of migrants, in violation of their human rights.”⁴

Once at their destination, migrants may face new vulnerabilities, such as language barriers, challenges in integration, and xenophobia. They may be targeted by unscrupulous employers and landlords who take advantage of their limited knowledge of local conditions and reduced bargaining power. Some migrants, particularly irregular migrants, are unwilling to access social services due to fear of detection, even if they are legally entitled to them. Those in an irregular situation may be subject to arrest, detention, and deportation and therefore vulnerable to manipulation and exploitation by those who threaten to report them.

Applying the framework before, during, and after the migration process

The determinants of vulnerability framework can be applied before a migration process begins, during a migration process, or after a migration process. However, the application of the model will likely be undertaken for different purposes, depending when it is undertaken.

If applied before a migration process begins, it will likely be for the purposes of preventing unsafe or risky migration, and/or preventing violence, exploitation, abuse, or rights violations from being perpetrated against actual or potential individual or groups of migrants. This would involve examination of factors at individual, household, community, structural, or situation levels with a view towards identifying push factors for migration, as well as identifying risk factors that might result in a migrant being more vulnerable to violations if he or she was to engage in a migration process.

If applied during a migration process, it will likely be for the purpose of identifying vulnerable migrants in order to take measures to prevent them from experiencing a violation during the

³ Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, draft February 2017.

⁴ Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, draft February 2017.

process, and/or to develop an appropriate protection and assistance plan if a violation has already occurred.

If applied after a migration process has been completed, it will likely be used in cases where the migrant experienced a violation during or after the migration process for the purposes of developing a protection and assistance plan focused on sustainable case resolution through return and reintegration, integration, or third country resettlement.

IV. Implications for policy and programming

Such an approach has clear implications for programming, as it demonstrates the need for holistic responses aimed at reducing the vulnerability of individual, families, communities, and/or groups to violence, exploitation, abuse, or rights violations through consideration of the risk and protective factors at each level and at any stage in the migration process.

A holistic approach for sustainable results

At the individual level, migrants who are vulnerable to or have experienced violence, exploitation, abuse, or right violations require responses that directly address their immediate needs, as well as those that address the particular constellation of risk factors that contribute(d) to their vulnerability. Suitable responses could include, *inter alia*, access to appropriate accommodation; physical and mental health care and treatment; documentation, legal, and consular assistance; education, skills development and training; and livelihood and income generation opportunities. Treatment of risk factors should be understood along a continuum, with some risk factors more amenable to immediate solutions (for example, a temporary lack of shelter), some to more medium term solution (e.g., improving educational attainment), while some may require longer-term or even lifetime efforts (e.g., treatment of mental health issues or addictions).

At the household level, a holistic response requires understanding the position of the individuals within the household, and addressing any household factors that contributed to their vulnerability. Responses could include family tracing and assessment; best interest determinations; family reunification; improving abilities to provide for children in a fair and equitable manner; improving abilities to provide for the care and maintenance of elderly and disabled household members; livelihoods and income-generating opportunities; family counselling services; and alternative care arrangements. Household level interventions may also require shorter or longer term approaches, depending on the particular risk factors being addressed.

Community level programming tends to require medium to longer term approaches, as addressing community risk factors typically require changes to broader social, economic, environmental, and cultural factors. Programmatic interventions could include efforts to ensure that community members view women and girls as full and equal participants in the cultural, social, economic and political life of the community; that community members and leaders encourage full and equal participation of boys and girls in education; that communities encourage and support safe migration processes; and that communities have the skills, knowledge, and resources necessary to adapt to, mitigate, and reduce the effects of climate change and environmental degradation.

At the structural level, programming aimed at reducing migration-related vulnerability could include efforts to reduce structural inequalities and discrimination; to improve the rule of law and the respect for human and migrant rights; and to ensure that appropriate migration governance frameworks, policies, and practices are in place and implemented. Such responses tend to be longer term, and require the leadership and participation of national governments and regional or international institutions.

Migrants' circumstances can quickly change in a number of ways. Appropriate programmatic responses to situational factors are varied and context-specific. Migrants' circumstances can quickly change in a number of ways. Appropriate programmatic responses to situational factors are varied and context-specific. One example of responses to situational factors is the counter trafficking in crisis approach. Anecdotal evidence indicates that counter trafficking responses need to be provided at the very onset of a crisis, even before victims have been identified, in order to prevent particularly vulnerable groups from being exposed to risks of trafficking, exploitation and abuse, by providing alternatives to negative coping strategies and by joining responders' efforts.

Improved coherence and capacity

The broad adoption of such an approach would complement existing, and significant, efforts to protect migrants while at the same time closing the gap between protections afforded to recognized categories of migrants and those who are experiencing violence, exploitation, abuse, and/or rights violations but are not within protected classes. This would more fully address the human rights of migrants, as it would enable the full protection of their rights regardless of their migratory or other statuses. Further, it would enable appropriate preventive measures, as this approach is designed not only to address protection risks once they have eventuated, but to better understand and treat vulnerabilities prior to their realization.

Over time, implementation of programmes based on this model would serve to enhance the evidence base on migrant vulnerability, as the collection and analysis of data on individual, household, community, structural, and situational variables would facilitate a better understanding of what factors are in fact associated with vulnerability, and how these factors may vary across regions and in different contexts. Such knowledge would empower the international community, national governments, and migrants themselves to take appropriate steps to ensure the well-being of migrants, their families, and their communities.

A general acceptance of this approach would allow humanitarian and development actors to best leverage their comparative advantages in protecting and assisting migrants. For example, organizations and agencies with social protection capacities could focus on programming aimed at addressing vulnerabilities related to individual and household factors, while agencies with development expertise could focus on interventions aimed at creating communities more resilient to migration related exploitation and abuse. Rights organizations could work to ensure that the rights of migrants are recognized and upheld, and humanitarian actors could ensure that the dynamics between man-made and natural disasters and migration crises are better understood and addressed.

Improved policy and international cooperation

States, regional bodies, and international bodies are all currently affected by and concerned with the challenges associated with today's large-scale migration flows. A shared, comprehensive, and coherent approach to understanding the root causes, the push and pull factors, and the rights-based, effective, and sustainable responses to migration would enable all actors to develop more effective policy and cooperation at national, regional, and international levels. This framework aims to provide policy makers, States, and regional and international fora with an appropriate framework for analysis, policy, and programmatic responses as well as, over time, an increasingly comprehensive evidence-base in which to embed such policy and cooperation efforts. In particular, this approach aims to inform the development of the Global Compact on Migration, in its efforts to ensure safe, orderly, and regular migration.

V. Conclusion

Coherent, whole-of-system approaches are needed to address today's migration challenges. There is a particularly acute need to face head on the fact that many migrants are suffering from violence, exploitation, abuse, and rights violations during their migration processes, and they need protection from further maltreatment and assistance in recovering from their experiences. IOM proposes an integrated and comprehensive approach to meet these challenges, and to improve the capacity of the international community as a whole to work towards the same goal: safe, regular, and orderly migration for the benefit of migrants and society.