GUIDELINES:

PROTECTION ASSISTANCE FOR VULNERABLE MIGRANTS IN ZAMBIA
ACKNOWLEDGEMENTS

These Guidelines have been developed to facilitate capacity building of first line officials to establish and/or implement ‘protection-sensitive processes, procedures and systems’, with the aim of effectively responding to the protection needs of vulnerable migrants in Zambia.

The Guidelines were developed as part of a Joint Programme that is being implemented by the International Organization for Migration, United Nations High Commission for Refugees (UNHCR) and the United Nations Children’s Fund (UNICEF), supporting the Government of the Republic of Zambia to build the capacity of national actors in responding to mixed migration. These Guidelines were developed in close collaboration with a Technical Working Group convened specifically for the purpose (see composition of Technical Working Group overleaf) and through consultations with migration experts in various government ministries and departments, as well as UNHCR, UNICEF and IOM, who were extensively consulted during the development process. The Guidelines were written by Ms. Chana Chelemu-Jere in close consultation with Ms. Annie Lane, Programme Officer IOM Zambia, and the IOM Zambia Migration Management Team, including: Mr. Most Mwamba, Ms. Bertha Nguvulu, Ms. Margaret Chirwa and Ms. Chibalani Katongo. IOM Zambia is also grateful to Mr. Yitna Getachew, Regional Thematic Specialist, IOM Pretoria for the provision of technical guidance during the drafting of the Guidelines.

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Guidelines for Protection Assistance to Vulnerable Migrants in Zambia

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ACRONYMS

BIA  Best Interests Assessment
BID  Best Interest Determination
COR  Commissioner for Refugees
CRC  Convention on the Rights of the Child
CSOs  Civil Society Organisations
DJOC  District Joint Operations Committee
GBV  Gender Based Violence
GRZ  Government of the Republic of Zambia
HRBA  Human Rights Based Approach
ILO  International Labour Organization
IOM  International Organization for Migration
ICRC  International Committee for the Red Cross and Red Crescent
NEC  National Eligibility Committee
NRM  National Referral Mechanism
PIs  Prohibited Immigrants
PJOC  Provincial Joint Operations Committee
UASC  Unaccompanied and Separated Children
UDHR  Universal Declaration of Human Rights
UNCTOC  United Nations Convention against Transnational Organized Crime
UNICEF  United Nations Children’s Fund
UNHCR  United Nations High Commissioner for Refugees
UNJPHT  United Nations Joint Programme on Human Trafficking
UPR  Universal Peer Review
SOP(s)  Standard Operating Procedure(s)
VoT(s)  Victim(s) of Trafficking
GLOSSARY: WORKING DEFINITIONS AND TERMINOLOGIES

The terms detailed in the Glossary are presented in alphabetical order and are intended to be used for the purpose of these Guidelines. Sources of the definitions provided are indicated in footnotes, with the exception of definitions contextually developed and/ or adapted by the Technical Working Group for the Zambia context. In a different context, the definitions may vary.

Asylum seeker: A person who is seeking protection from a foreign country and is still waiting to have his/her claim assessed.

Best Interests Assessment (BIA): Part of a continuous process in which the best interests of the child are pursued continuously as the overall goal of any interventions made on behalf of an unaccompanied or separated child throughout the displacement cycle.¹

Best Interest of the Child: Involves evaluating and finding the balance between all the necessary factors which must be taken into account when making a decision in a specific situation, for a particular child or group of children.

Best Interests Determination (BID): A formal process with specific procedural safeguards and documentation requirements that is conducted for certain children whereby a decision-maker is required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the CRC and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of children.²

Child: Defined as a person below 18 years old³.

Detention: For the purposes of these Guidelines, detention refers to the deprivation of liberty or confinement in a closed place in which a migrant is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed referral or holding centres or facilities.

First line officials: This term is used broadly to encompass immigration officials, police officers, social welfare officers, prison officials, other civil servants and civil society organisation personnel who have “first contact” and also follow up contact with irregular migrants in need of protection. The words “first line official” and “official” are used interchangeably in these Guidelines.

Gender mainstreaming: Considering the implications of an intervention on males and females, and addressing these implications with a view to supporting the achievement of gender equality, and ensuring the respective needs of males and females are addressed through an intervention.

Human Rights Based Approach (HRBA): A human rights based approach is an approach that directly seeks to empower target groups (both the rights holders and the duty bearers) to ensure the fundamental human rights of beneficiaries are met.

Irregular migration: Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending

¹ UNHCR Guidelines on Formal Determination of the Best Interests of the Child, 2006
² Ibid, UNHCR 2006
³ This definition should not limit protection rights, at the discretion of the service provider, irregular migrants aged 18 to 21 years may be considered
country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfill the administrative requirements for leaving the country.  

**Local integration:** A durable solution for refugees, asylum-seekers and victims of trafficking that involves their permanent settlement in a country in which they have been granted protection.

**Migration:** The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.

**Mixed Migration** (also referred to as mixed flows): Complex migratory population movements that include refugees, asylum-seekers, economic migrants and other migrants, as opposed to migratory population movements that consist entirely of one category of migrants.

**National Referral Mechanism (NRM):** A co-operative framework through which State actors fulfill their obligations to protect and promote the human rights of migrants in mixed flows, coordinating their efforts in a strategic partnership with civil society.

**Non-refoulement:** The principle of non-refoulement states that no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.

**Potential victim of trafficking:** Any person intercepted before exploitation occurs and is considered to be at risk of exploitation by traffickers should they reach their final destination.

**Presumed victim of trafficking:** Any person who may reasonably be presumed under the circumstances to be a victim of trafficking.

**Reception Centre:** A facility that receives and assists migrants upon arrival in a host country, prior to their return home, or upon return to their home countries following either a voluntary departure or deportation from their host countries.

**Refugee:** Any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country. The term "refugee" shall also apply to every person who, owing to external aggression,
Guidelines for Protection Assistance to Vulnerable Migrants in Zambia

occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.13

Rejected asylum seeker: An asylum seeker whose application for asylum was unsuccessful.

Risk Assessment: The process of identifying and assessing the risks associated with a given situation or event14

Separated children: Children, as defined in Article 1 of the Convention on the Rights of the Child, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.15

Stateless person: A person who is not considered as a national by any State under its law.16

Stranded migrant: The term ‘stranded migrant’ has no generally accepted definition. In practice, migrants become legally stranded where they are caught between removal from the state in which they are physically present, inability to return to their state of nationality or former residence, refusal by any other state to grant entry. They may also be stranded where there are practical or humanitarian reasons that prevent them from returning home. Many of those who become stranded – including rejected asylum seekers, migrant workers, or other economic migrants – entered a country irregularly, assisted by smugglers or transported at the hands of traffickers. Some are legally stateless.17

Trafficking in Persons: The recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.18

Unaccompanied children (also called unaccompanied minors): Children, as defined in Article 1 of the Convention on the Rights of the Child, who have been separated from one and/or both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.19

Victim centered approach: The systematic focus on the needs and concerns of a victim of migration-related crimes to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. In a victim centered approach, the victim’s wishes, safety and wellbeing take priority in all matters and procedures.20

Victim of trafficking/trafficked person: A person who has been exploited and has suffered loss of fundamental rights and psychological or physical harm as a result of being trafficked.21

13 1969 Organisation of African Unity Convention
16 Article 1 of the UN Convention relating to the status of stateless persons, 1954
18 Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Protocol)
1. INTRODUCTION TO GUIDELINES

These Guidelines are meant as an informational tool for the use of first line officials involved in the protection of vulnerable migrants in Zambia. They provide information on the context of mixed migration movements and use a rights based approach towards the protection of vulnerable migrants. The Guidelines provide procedures for effective identification, referral and service provision to such migrants. A key purpose of these Guidelines is therefore to establish ‘protection-sensitive processes, procedures and systems’, with the aim of effectively responding to the protection needs of vulnerable migrants in Zambia.

For the purposes of these Guidelines, the term “first officials” is used broadly to encompass immigration officials, police officers, social welfare officers, prison officials, health officials, other civil servants and civil society organisation personnel who have “first contact” with migrants in need of protection. The words “first line official” and “official” are used interchangeably in these Guidelines.

2. PURPOSE OF THE GUIDELINES

These Guidelines have been developed in line with international and national regulatory frameworks and aim to assist first line officials in Zambia to provide services that ensure that migrants’ protection needs are recognized and appropriately addressed in situations of mixed migration.

In light of the different functions and tasks performed by the targeted first line officials, as well as the different systems in place to protect vulnerable migrants in Zambia, these Guidelines do not aim to put forward “standard operating procedures” for the protection of vulnerable migrants in need of assistance, but are designed to achieve the following objectives:

- Strengthen first line officials’ awareness of the international, regional and national legal instruments for the protection of migrants, both regular and irregular, in need of protection assistance in the context of mixed migration;
- Foster reflection on the measures, including identification procedures, protection mechanisms and referral systems, required to secure the full enjoyment of rights reflected in international, regional and national legal frameworks;
- Ensure that first line officials are able and committed to implementing such measures in their day-to-day work.

3. BACKGROUND – MIXED MIGRATION

3.1 Introduction

Migration management is a major challenge for institutions providing protection assistance to vulnerable migrants globally. The identification of migrants who have specific protection needs is critical for their effective protection. However, in so doing, there is a need to safeguard national sovereignty and security. The overall objective of these Guidelines is to detail ‘protection-sensitive processes, procedures and systems’ for collaboration amongst actors in Zambia to ensure that the available expertise, capacities and potential of each actor are effectively employed to deliver the best possible protection and assistance for vulnerable migrants in mixed flows, as provided for in national policy and legislation. The Guidelines provide a framework for protection of vulnerable migrants and should be used together with other existing Standard Operating Procedures (SOPs) and other relevant existing Guidelines.22

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Box 1: Migrants of Concern

1. Rejected asylum seekers
2. Victims of trafficking (including ‘presumed’ trafficked persons and ‘potential’ trafficked persons)
3. Unaccompanied and Separated Children (UASC)
4. Stranded irregular migrants
5. Stateless migrants
6. Other vulnerable migrants in need of protection assistance

These Guidelines aim to promote fundamental human rights for migrants in need of protection. Box 1 above highlights the categories of migrants whose needs these Guidelines intend to address. Further, the Guidelines endeavour to promote a gender sensitive and victim centred approach, taking into consideration the best interest of child migrants. The Guidelines provide the minimum standard procedures for protection assistance for the aforementioned categories of migrants, with respect to their identification and protection, including provision of services, referral, return and reintegration.

This document is divided into nine sections and accompanying annexes:

- **Section One** – Provides background and contextual information for understanding mixed migration and international and national frameworks
- **Section Two** – Highlights the purpose of the Guidelines
- **Section Three** – Provides the guiding principles of cooperation amongst actors that play a role in the protection of irregular migrants
- **Section Four** – Provides guidance on the protection and assistance needs that should be taken into consideration during service provision
- **Section Five** – Highlights core principles for consideration during service delivery
- **Section Six** – Provides guidelines for identification of vulnerable migrants in mixed flows in need of protection assistance
- **Section Seven** – Details the mixed migration referral mechanisms specifically designed for Zambia
- **Section Eight** – Details the services to be provided in responding to the protection of vulnerable migrants.
- **Section Nine** – Provides the concluding remarks for the Guidelines

### 3.2 Categorising Mixed Migration and Migrants of Concern

The process of migration typically occurs in three stages as shown in Figure 1 below. The first stage is **pre-migration**, involving the decision and preparation to move. The second stage, **migration**, is the physical relocation of individuals from one place to another. The third stage, **post-migration**, is defined as the "absorption of the immigrant within the social and cultural framework of the new society".  

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23 See Glossary, p.6 of these Guidelines
Mixed migration is defined by IOM as the complex migratory population movements that include refugees, asylum seekers, economic migrants and other migrants, as opposed to migratory population movements that consist entirely of one category of migrants.\textsuperscript{25} For the purpose of these Guidelines, the population movements comprise refugees, asylum-seekers, victims of trafficking, unaccompanied and separated children (UASC), and other persons travelling internationally, often in an irregular manner. This group also includes those that fall into the categories of stranded migrants in need of protection assistance and stateless persons. In essence, mixed flows concern regular and irregular movements, frequently involving transit migration, where persons often move without the requisite documentation, crossing borders and arriving at their destination in an unauthorized manner, but many of whom have protection needs.\textsuperscript{26} For the purpose of these Guidelines, the vulnerable migrants in mixed flows requiring protection assistance within the Zambian context are shown in Box 1, Section 3.1 of this document.

Mixed movements usually represent a wide spectrum of nationalities, gender or age groups, as well as religious, social and political backgrounds and legal status. While migration routes vary, a recent study\textsuperscript{27} conducted by IOM revealed that for migrants from East and the Horn of Africa en route to South Africa, the cities of Lusaka and Ndola and the town of Nakonde are the main transit point in Zambia. The towns/provinces of Chipata, Chirundu, Kazungula and Muchinga are also part of the route, which is characterised by criss-crossing routes (between unmanned or unofficial border posts) between Malawi and Zambia for migrants making their way south. Many migrants also end up in detention facilities for immigration violations, which expose them to health risks and other vulnerabilities.

It is this variety of complex and mixed migration patterns that requires the development of a migration management system that deals with different situations and people in a different manner, including taking into consideration the human rights and needs of vulnerable migrants. It should be noted that Zambia exercises its sovereignty to differentiate between persons who have the required documentation to cross their borders and those who do not.

\textsuperscript{25} Ibid, IOM 2011.
\textsuperscript{27} IOM, Health Vulnerabilities Study of Mixed Migration Flows from the East and Horn of Africa and the Great Lakes Region to Southern Africa, 2013
3.3 Guiding Legal Framework and Standards

The response by key national actors to protection assistance for vulnerable migrants shall be guided by international and regional human rights laws, international and regional migration laws and national legislation, using a rights’ based approach. Zambia has in place legislation that aims to provide a framework for managing migration. This legislation includes the Constitution of the Republic of Zambia; the Refugee (Control) Act, 1970; the Anti-Human Trafficking Act No. 11 of 2008; and the Immigration and Deportation Act No. 18 of 2010. The Guidelines are further informed by and adopt selected standards from the operational guidelines highlighted in Annex 4.

3.4 Guiding Principles for Protection of Vulnerable Migrants in Mixed Flows

These Guidelines will facilitate coordination amongst different stakeholders, including government ministries, civil society organisations (CSOs) and international organisations to ensure clear divisions of responsibility and cooperation in responding to the needs of the categories of vulnerable migrants highlighted in Box 1. In order to achieve effective protection, all actors are encouraged to adhere to principles underpinning the response to the rights and needs of the identified migrants. Sections 2.1 - 2.4 below provide an overview of guiding principles to be followed when responding to the needs of these migrants. The principles are further explained and amplified under relevant sections within the Guidelines.

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**State sovereignty**

Migration Management, particularly the management of irregular migration, poses very real dilemmas for states, as well as exposing migrants themselves to insecurity and vulnerability. Many states have, experienced difficulties in managing and controlling irregular migration effectively or efficiently. What is therefore required is new, more effective and coherent approaches to address the issue of irregular migration, that recognize both the concerns of states in this respect and the need to protect the rights of migrants, both regular and irregular.\(^{29}\) Under international law, each State has the sovereign right to decide who may enter and remain on its territory. However, increasingly, international law also obligates States to accept their returning migrants and to safeguard certain fundamental rights and principles.

**Principles and rights to be safeguarded by countries of destination and transit\(^{30}\)**

Both countries of destination and transit have the responsibility to safeguard the following migrants’ rights and protection principles, whether the migrant’s status is regular or irregular:

- The right of migrants to protection of their human rights;
- The right to seek asylum;
- The right of migrants to return to their own country;
- The right of migrants not to be returned to a country where they would be persecuted, or tortured, or not have access to adequate protection;
- The right to health and access to social and health-care services;
- The rights of the child in accordance with international human rights norms, in particular the “best interests” principle, the right to education and special protection for UASC;
- Protection against arbitrary detention;
- The right to non-discriminatory treatment on grounds of race, religion and gender;
- The right not to be expelled from a country, except pursuant to a decision reached in accordance with the law (in cases where there are compelling reasons of national security); and to be allowed to submit reasons against expulsion and have the case reviewed by the competent authority.

**Principles of respect for migrants’ rights and State sovereignty in the return process\(^{31}\)**

The set of international principles, norms and rights listed in this section has practical implications for the governments concerned.

The governments of countries returning migrants (destination/transit countries) should ensure that the following principles are considered during the repatriation process:

- Facilitate and promote voluntary return measures and support;
- When voluntary return is not possible or viable, decisions on expulsion should be made and implemented in strict conformity with the norms laid down in international refugee and human rights laws;
- Detention and treatment during detention, should conform to the norms of international human rights law and should be used as a last resort (see Annex 2);
- Avoid the use of force to secure removal in order to reduce the risk of human rights violations; in cases where force is used, it must be proportional to the goals pursued and conform to the relevant norms of international law.

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\(^{29}\) Khalid Koser, Irregular migration, state security and human security, University College London (2005) p.2.

\(^{30}\) Information in this section is adapted from Khalid Koser, Irregular migration, state security and human security, University College London (2005)

\(^{31}\) Ibid
4. PROTECTION AND ASSISTANCE NEEDS OF VULNERABLE MIGRANTS

The reasons for cross-border movement are frequently complex and people on the move do not often fit into one category. These Guidelines will target vulnerable migrants with protection needs. Table 1 below highlights the applicable groups of migrants that may need protection in Zambia and provides defining determination criteria of each category of migrants as provided for in national legislation, international and national standards and norms. The table also shows the specific protection and assistance needs for each category of migrant and provides an indication of the types of services required to meet their needs.

Protection assistance requires a differentiated approach for each migrant and involves the identification and provision of individualized protection services/processes.

Table 1: Protection and Assistance Needs for Identified Vulnerable Migrants

<table>
<thead>
<tr>
<th>Migrant Category</th>
<th>Protection Needs</th>
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<tbody>
<tr>
<td>Rejected Asylum Seeker</td>
<td>Immediate Basic Needs:</td>
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<td></td>
<td>- Information on their status and assessment of their reasons for those not wanting to leave</td>
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<td></td>
<td>- Counseling on risks of being an irregular migrant</td>
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<td></td>
<td>- Shelter</td>
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<td></td>
<td>- Food, drink, clothing</td>
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<td></td>
<td>- Health Care: Emergency medical treatment</td>
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<td></td>
<td><strong>Long Term Needs</strong></td>
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<tr>
<td></td>
<td>- Sustainable/Durable Solution: Voluntary repatriation</td>
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<tr>
<td>Victims of Trafficking (including presumed trafficked persons and potential trafficked persons)</td>
<td>Immediate Basic Needs:</td>
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<tr>
<td></td>
<td>- Safety and Security</td>
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<td></td>
<td>- Shelter</td>
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<tr>
<td></td>
<td>- Food, drink, clothing</td>
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<tr>
<td></td>
<td>- Health Care: Emergency medical treatment</td>
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<td></td>
<td>- Legal Assistance: Regularization of stay</td>
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<td></td>
<td><strong>Medium Term Needs</strong></td>
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<td></td>
<td>- Health Care: ongoing medical care and psychological assistance</td>
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<td></td>
<td>- Skills building and recreation</td>
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<tr>
<td></td>
<td>- Family Tracing</td>
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<td>- Legal assistance</td>
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<td></td>
<td><strong>Long Term Needs</strong></td>
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<td></td>
<td>- Continuation of immediate and medium term needs</td>
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<td></td>
<td>- Economic stabilization and independence</td>
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<tr>
<td></td>
<td>- Sustainable/Durable Solutions: Voluntary repatriation, resettlement, or regularization of long-term stay or reintegration</td>
</tr>
<tr>
<td>Unaccompanied and Separated Children</td>
<td>Immediate Basic Needs:</td>
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<tr>
<td></td>
<td>- Care and accommodation arrangements</td>
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<tr>
<td></td>
<td>- Food, drink, clothing</td>
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<tr>
<td></td>
<td>- Health Care: Emergency medical treatment</td>
</tr>
<tr>
<td></td>
<td>- Legal Assistance: Regularization of Stay</td>
</tr>
<tr>
<td></td>
<td><strong>Medium Term Needs</strong></td>
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<tr>
<td></td>
<td>- Commitment of the child to Commissioner of Juvenile Welfare</td>
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<td>- Access to asylum procedures, where necessary, and treatment in accordance</td>
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### Guidelines for Protection Assistance to Vulnerable Migrants in Zambia

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<thead>
<tr>
<th>Stranded Migrants</th>
<th>Immediate Basic Needs:</th>
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<td></td>
<td>- Safety and Security</td>
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<td>- Shelter</td>
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<td></td>
<td>- Food, drink, clothing</td>
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<tr>
<td></td>
<td>- Health Care: Emergency medical treatment</td>
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<tr>
<th>Stateless Migrants</th>
<th>Immediate Basic Needs:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Protection from arrest and detention by provision of legal immigration status (temporary resident permit as provided for under Section 21 sub-section (4) of Immigration Act)</td>
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<tr>
<td></td>
<td>- Accommodation and financial support</td>
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<td></td>
<td>- Access to healthcare</td>
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<tr>
<th></th>
<th>Medium Term Needs:</th>
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<tr>
<td></td>
<td>- Access to asylum procedures, if necessary</td>
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<td></td>
<td>- Access to education</td>
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<td></td>
<td>- Provision of aliens national registration card upon legalization of stay</td>
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<th>Long Term Needs:</th>
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<tbody>
<tr>
<td></td>
<td>- Continuation of immediate and medium term needs</td>
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<td>- Access to justice</td>
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<td>- Access to employment and entrepreneurship opportunities for those that are lawfully in the country</td>
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<tr>
<td></td>
<td>- Assimilation and naturalization upon the states discretion</td>
</tr>
<tr>
<td></td>
<td>- Restoration of citizenship, where applicable(^{32})</td>
</tr>
</tbody>
</table>

\(^{32}\) Part V Section 21 of the Citizens Act states that "... a person who ceases to be a citizen and who satisfies the Board that at the time of the cesser of his citizenship of Zambia that he was unaware of such cesser may make application to the Board for his citizenship of Zambia to be restored."

*Identified asylum cases to be referred to COR regardless of any other category the case falls in to. Minors to be referred to the Department of Social Welfare.*

The human rights of all people on the move should be respected, protected and fulfilled irrespective of an individual’s reason for travelling and irrespective of their legal status. These rights are contained in the Universal Declaration of Human Rights and include the right to:

- Health Care: ongoing medical care and psychosocial counseling
- Birth registration where applicable
- National registration
- Access to education
- Skills building and recreation
- Family Tracing
- Legal assistance

### Long Term Needs:
- Continuation of immediate and medium term needs
- Family reunification
- Sustainable/Durable Solutions: Voluntary repatriation, reintegration

### Sustainable/Durable Solutions:
- Voluntary return

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32 Part V Section 21 of the Citizens Act states that “... a person who ceases to be a citizen and who satisfies the Board that at the time of the cesser of his citizenship of Zambia that he was unaware of such cesser may make application to the Board for his citizenship of Zambia to be restored.”
Life: Unreasonable force should not be used to prevent the entry of non-nationals into Zambia. The authorities must also endeavour to save those whose lives may be in danger in seeking to enter into Zambia; this includes refraining from sending them to a place where their lives may be in danger.

Prohibition against torture and inhuman or degrading treatment or punishment: First Line Officials and other actors must ensure that nobody is sent to a place where they could face torture or inhuman or degrading treatment or punishment. This includes the obligation to refrain from sending vulnerable migrants in need of protection assistance back to their home country if they could be subject to such acts. Additionally, the return process of vulnerable migrants in need of protection assistance should be carried out with full respect for the inherent dignity of returnees, taking into account, inter alia, their age, sex, state of health and disabilities. Force during expulsion should be kept to an absolute minimum.

Freedom from slavery and forced labour: Victims of trafficking should be protected in line with the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol (referred to as the “Palermo Protocol”). The Palermo Protocol provisions on freedom from slavery and forced labour have been domesticated in Part 1 and 2 of the Anti-Human Act No. 11 of 2008.

Non-discrimination on grounds of race or ethnicity in granting or refusing admission, in authorising a stay or an expulsion of an irregular migrant.

Freedom of movement (see Annex 2 – Guidelines for detention): Detention of vulnerable irregular migrants in need of protection assistance should be used only as a last resort and not for an excessive period of time. In this context:
- Where detention is necessary, vulnerable migrants in need of protection assistance should be held in special detention facilities and separate from convicted prisoners;
- Children should only be detained as a measure of last resort and then for the shortest possible period of time;
- Detention or the holding of other vulnerable persons (pregnant women, mothers with young children, older persons and persons with mental or physical disabilities) should, whenever possible, be avoided.

A fair hearing, with the assistance of an interpreter, to facilitate effective communication when entering a foreign country that uses a language the migrant does not understand.

An adequate standard of health care: Emergency health care should be available to vulnerable migrants in need of protection assistance taking into account, in particular, the situation of persons with specific needs, such as children, older persons, single parents, pregnant women, as well as persons with mental or physical disabilities and survivors of gender based violence (GBV).

Persons on the move, particularly those who enter a country irregularly, are often subject to abuse and violations of human rights, including violence (such as GBV) by smugglers and traffickers, labour and sexual exploitation, detention and denial of access to justice.\(^\text{33}\) It is important to note that most persons fleeing persecution are confronted with life-threatening situations of violence, which rarely give them the opportunity to gather the requisite documentation to be granted access into a country through legal channels and hence most asylum-seekers or refugees often find themselves forced to resorting to smuggling or trafficking networks in a desperate attempt to reach protection. It is for this reason that border control mechanisms need to be sensitive enough to recognize those who may need to seek protection, amongst those simply attempting to cross the border, often through irregular means, for economic or other purposes.

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5. **CORE PRINCIPLES FOR SERVICE DELIVERY**

The guiding principles for provision of protection services are explained below and provide guidance to first line officials on how to provide assistance that promotes human rights based approach from the point of first contact right up to the point when the migrant is offered a durable solution. The following “Guiding Principles” are a set of norms which frame all interviews, referrals and protection assistance.

- **Respects for Rights - Migrants in need of protection are** to be afforded respect of human rights, based on international and national laws and standards, at all times. Migrants in need of protection should not be held in detention facilities such as prisons and police cells, where alternative shelter services can be provided.

- **Security and Safety** - The security of the state, and the safety and protection of migrants and Service Providers is of paramount concern at all times. Where possible, shelters should ensure a safe and secure temporary living environment for vulnerable migrants in need of protection. Measures should be taken to ensure that the working environment for shelter staff is safe and secure.

- **Confidentiality** - Ensure confidentiality at all times. All information and documentation regarding migrants is confidential and should be treated as such. Migrants’ information, including files, should at all times remain stored in a secure place. Information should only be shared on a “need to know” basis. With the exception of instances where the safety of the migrant or another person is involved, Service Providers are not permitted to disclose information relating to the migrant without her/his consent, unless national legislation provides for legal obligation of disclosure.

- **Information** - Everyone has the right to information in a language they understand, including information on their rights, the services available, accessibility of services, the potential risks and consequences of accepting services and the repercussions of not accepting services, to be able to make informed decisions. For children, information should be provided in an understandable and child friendly manner.

- **Consent** - All services should be provided with the full and informed consent of the migrant, where possible. Migrants have the right to full participation on all stages of decision making related to their case. Participation in assistance programmes will be on a voluntary basis only, at the free and informed will of the migrant.

- **Non-Discrimination and Impartiality** – When responding to the needs of vulnerable migrants, service providers should ensure non-discrimination and impartiality in all interactions. Migrants are not to be discriminated against by Service Providers based on gender, race, nationality, ethnicity, age and religion, among others.

- **Migrant Centred Approach** – All the services rendered should take into consideration the needs and concerns of each migrant in need of protection assistance. This principle must be respected during all stages of service provision.

- **Best Interests of the Child** - For child migrants, the best interest of the child should be a primary consideration in all actions concerning children, including the search for short and long-term solutions (Article 3, CRC). Further, a best interest’s determination (BID - refer to Box 2 below) process must be conducted in preparation of any decision fundamentally impacting on an unaccompanied or separated child’s life (see also Box 4 below). This determination “requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.

- **Quality Assurance** - Service provision is to be carried out by trained and experienced professional Service Providers. For all parties, service provision is to be conducted in a collaborative, interdisciplinary manner to provide the best possible care for migrants.

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34 Adapted from the 2012 UNJPHT Minimum Standard Guidelines on Protection of Victims of Human Trafficking.
Box 2: Best Interest Determination for Child Asylum Seekers and Refugees

The BID for child asylum seekers and refugees is a means to ensure that specific protection and assistance is provided to children who are or may become deprived of the protection of their family. It is a necessary tool to ensure that all factors and rights under international law are taken into account when making a decision that has a fundamental impact on the child. The formal process enables actors to ensure that decisions are in line with the provisions and the spirit of the CRC and other relevant international instruments and are set within a human rights framework. It ensures that such decisions take due account of the fundamental right to life, survival and development of the child to the maximum extent possible. The BID also provides the means for the child’s participation in the process of the BID according to his or her maturity and capacity. In addition, through its individual child-focused approach, the BID may also identify protection gaps affecting individuals or groups of boys or girls, monitor the effectiveness of measures taken in the past to address gaps and enable follow-up actions, if needed. Many institutions providing support to vulnerable migrants conduct ad hoc BID processes. The above example may be used to formalise these processes.

Box 3: Guiding principles for assisting unaccompanied and separated children

Unaccompanied and separated children are entitled to international protection under international human rights law, international refugee law, international humanitarian law and various regional instruments, and it is essential that they are provided with effective protection and assistance in a systematic, comprehensive and integrated way. The following principles must be respected throughout the migration process of all children:

- Non-discrimination
- Best interests of the child
- Life, survival and development
- Evolving capacities of the child
- Family unity
- Non-refoulement
- Participation
- Confidentiality

Box 4: Gender dimensions of migration

In the past, the majority of women migrated as dependents, but women are now increasingly migrating as individuals for various reasons, be they economic, educational, cultural, or, in some cases, for their very survival. This feminization of migration flows needs State commitment to ensure that the particular needs of all migrant women are identified, taken into consideration and addressed by service providers. It is important that women and men are provided with equal access to services and opportunities. There is need to address the negative impacts of mobility that disproportionately affect women such as human trafficking, sexual and physical violence and exploitation. Though a VoT could be a person of any gender, research shows that the majority of trafficked victims, particularly those trafficked into commercial sexual exploitation, are females.

An inadequate response from a Service Provider to the trafficked person further exacerbates gender discrimination which already exists in society. Hence, gender sensitivity is an essential requirement in addressing human trafficking. The procedures and steps undertaken by those providing services to trafficked persons should always promote gender equity and equality (UNPHT Service Provider Manual: Training Toolkit Minimum Standard Guidelines on Protection of Victims of Human Trafficking, 2012).

Due to the trauma that these women may have suffered during the migration process, female migrants in need of protection assistance may wish to speak to female officers and whenever possible, they should be given the choice.

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36 Box developed with input from the Human Rights Commission of Zambia in consultation with UNICEF
6. IDENTIFICATION OF VULNERABLE MIGRANTS WITH PROTECTION NEEDS

The identification of vulnerable migrants in need of protection will be conducted at two levels. For the purpose of these Guidelines, the first level will be referred to as initial interview to be carried out by first line officials using the migrant profiling form (see Annex 1). Based on the information provided by the migrant, the initial interview will be used to assist the first line official in determining which category/categories the individual may fall into. Thereafter the migrant will be referred to the relevant actor for the second level of identification. For the purposes of these Guidelines, the second level identification is referred to as case-type determination. Case-type determination is the process of identifying and confirming the category that the migrant belong to, using key elements or criteria as provided for by the legal provisions. The mandated actor for such determination will be responsible for referring the migrant to other actors providing protective services. These actors, among others may include the COR, the Ministry responsible for social welfare, the Ministry responsible for health, the Ministry responsible for Home Affairs (including Department of Immigration, Office of the Commissioner for Refugees, Zambia Police, Home Affairs Research and Information Department, Prisons Service, National Registration Citizenship and Passport Office), UNHCR, IOM and UNICEF and relevant non-governmental organisations depending on the migrant’s category. Other actors may also be involved through further referrals for status determination, using the form provided in Annex 1.

6.1 Case Management

Case management is a step-by-step process entailing a series of interviews, decisions, counseling sessions and actions to provide a range of support services. Case management involves the ongoing care of each vulnerable migrant, including intake, follow-up and planning for departure from the Service Provider. An important feature of case management is a Care Plan, to be developed by the Case Manager and the migrant. The Care Plan should document the services needed by each migrant, how these services will be provided, and by whom. The Care Plan should be part of the migrant’s case file and should be regularly revisited to address changes in each migrant’s needs.

6.2 Initial interview

This process starts with an initial interview and registration of migrants by collecting of data, as well as identifying protection/assistance needs of vulnerable migrants. This process is the first step for the identification of vulnerabilities and it is at this stage that first line officials are able to recognize who needs assistance and possible referral options. If the initial interview provides no indication that another actor’s immediate involvement may be required, the initial actor proceeds to conduct the profiling interview using the irregular migrant profiling form attached as Annex 1.

The identification process is meant to determine if an individual fits into one or more of the following categories:

1. Rejected asylum seeker
2. Victim of trafficking (including presumed trafficked person and potential trafficked person)
3. Unaccompanied or Separated Child (UASC)
4. Stranded migrant
5. Stateless migrant
6. Other vulnerable migrant

The categories above may not be mutually exclusive and an individual may fall in more than one category. It is therefore important to offer differentiated processes on a case by case or individual basis to meet the particular protection needs of each vulnerable migrant. For example, a migrant may have immediate physical, medical and psychological needs that require urgent attention. This initial interview provides a basis for a protection process that upholds the human rights of migrants. Refer to Annex 5 for interviewing guidelines.
PROCEDURES:

1. **Focal Points** - It is important for each institution that is likely to come into contact with vulnerable migrants in mixed flows to appoint protection assistance focal points who are conversant with the Guidelines and associated procedures. In order to facilitate effective collaboration, the focal points can act as liaison officers between the organisation and other structures providing protection assistance to vulnerable migrants in Zambia.

2. **Appropriate Interview Environment** – Institutions interviewing vulnerable migrants in need of protection should create a friendly and safe environment where interviews can be conducted in a non-threatening, non-judgmental and respectful manner, with due consideration for each migrant’s situation. Further, migrants in need of protection should not be asked to recount traumatic events until adequate health and psycho-social services have been sought, with consideration for a reflection period;

3. **Language** - During any interview, the migrant has the right and should be given the opportunity to speak in her/his native language or provided with an interpreter that has been screened/vetted, wherever possible;

4. **Immediate Needs** - The initial interview should aim to assess the individual’s immediate needs, such as safety, security and shelter needs. Where there are immediate health concerns, the migrant should be rendered first aid as soon as possible and referred to health service providers for expedited full medical assessment and appropriate management of life-threatening conditions.

5. **Case Information** - It is important to obtain as much detail as possible of each vulnerable migrant that is identified, including the following:
   - their profile (bio-data, nationality, family composition and immigration status, including profiling of UASC);
   - their types of identity/travel documents;
   - any health conditions;
   - their language skills;
   - how they found themselves in the country (migration process);
   - their desire to return home;
   - the risks they may face if they are sent back to their country of origin.

6. **Provision of Information** - Comprehensive and accurate information should be provided to each individual, including, where relevant, information on the right to seek asylum, access to consular services, and on options for regularizing his/her status;

7. **Family Contact** - A migrant should have the opportunity to contact her/his relatives whom she/he trusts to inform them that she/he is safe, unless their safety or the safety of others is considered to be compromised through doing so;

8. **Referral for Case Determination** - Once the migrant has been profiled; the actor conducting the initial interview should document its findings and refer the case to a mandated actor with the technical capacity to undertake a case determination. In some cases, the initial interview may be conducive for an in-depth interview (see 5.2 below), including immediate identification of the migrant category.

9. **Consent to Refer** - The individual should be asked if she/he has any objection to being approached for a follow up interview by other actors or, where applicable and appropriate, relevant national authorities or NGOs. A section for informed consent is included in the Profiling Form, Annex 1.
Box 5: Procedures for Assistance to UASC

- Only specially trained authorities shall interview UASC.
- UASC shall be questioned by officers of the same sex, except when there is evidence that this would not be in the best interests of the child;
- An initial interview will be conducted in an age-appropriate and gender-sensitive manner, in a language understood by the child, by professionally qualified persons in order to ascertain the identity of the child, including the identity of both parents and siblings, as well as the nationality of the child.
- During the interview, particular attention will be given to the reasons for being separated or unaccompanied (e.g. parents are still in the country of origin, were lost during travel or died) as well as to the identification of particularly vulnerable children (e.g. those with disabilities, victims of trafficking, victims of sexual and other forms of violence, or former child soldiers).
- Wherever possible, interviews with children should take place in the presence of a social worker or child psychologist;
- As soon as UASC are identified, a guardian shall be appointed by the Ministry responsible for Social Welfare to accompany the child throughout the entire process until a durable solution that is in his or her best interests has been identified and implemented.

6.3 In-depth Interview for Case-type Determination

Proper identification of vulnerable migrants, particularly irregular migrants, requiring protection is important because irregular migrants are often simply classified as prohibited immigrants (PIs), putting them at risk of being placed in detention facilities or deportation without due consideration for their rights and protection needs. Therefore, adequate, accurate and timely identification is essential to ensure the individuals are protected and that their needs are met. It is important at this stage to ensure that vulnerable migrants in mixed flows are assessed using case determination forms or procedures. This process allows for an in-depth interview that facilitates the determination of the actual category/categories of each migrant and provides for a specific needs assessment for follow up protection assistance. The categories of migrants in Box 1, and highlighted below, should be referred to the relevant mandated institution for case determination as indicated below:

Refugees/asylum seekers - For cases involving refugees or asylum seekers including UASC, first line officials will refer them to COR for Refugees Status Determination (RSD).

Rejected asylum seekers shall be required by the Commissioner for Refugees to report to the Department of Immigration.

Presumed/potential and actual victims of trafficking (VoTs)\(^{37}\) should be referred to Police, as provided for under Section 25, sub-sections (1) and (2) of the Anti-Human Trafficking Act No. 11 of 2008. The police will assess the migrant’s status and refer the case to the Ministry responsible for Social Welfare for protection assistance. Section 25 of the Anti-Human Trafficking Act No. 11 of 2008 also specifies that adult VoTs should be referred to shelter and children to the Department of Social Welfare for protection assistance.

Unaccompanied and separated children will be referred to Department of Social Welfare.

Stranded migrants in need of repatriation assistance may be referred to IOM for consideration.

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\(^{37}\) Possible VoT also requiring RSD should be referred to COR. COR will take the lead, working in collaboration with UNHCR, IOM and other actors as appropriate, to ensure provision of the best available protection, including any specialized assistance that may be available through existing programmes and/or any national or regional protection mechanisms.
Stateless migrants should be referred to the Department of Immigration to determine their immigration status. Case may be referred to Citizenship Board for restoration of citizenship and naturalization where parents are Zambian; or may be requested to apply for citizenship. Thereafter, they may be referred to UNHCR for assistance if all options have been unsuccessful.

The mandated institutions (i.e. institutions providing assistance to the migrants requiring protection as highlighted in section 6.2 above) for case-type determination will undertake the following procedures:

1. **In-depth Interview** - After referral resulting from the initial interview, an in-depth interview should be conducted by the organisation that the migrant has been referred to in order to obtain concrete information for more detailed case determination.
   In addition to the existing practice and processes normally applied by actors, the following specific issues should be taken into consideration during the in-depth interview:
   - *Inability to return to country of origin*
   - *Fear for his/her safety or that of his/her family in country of origin, transit, current location or intended destination*
   - *Interest in pressing charges or testifying as a witness*
   - *Interest in accessing temporary residency*
   - *Interest in claiming compensation*

2. **Final case-type determination** - This is undertaken by a mandated institution using existing institutional assessment procedures taking into consideration the existing practices and processes.

3. **Additional Interview(s)** - If required, a follow-up interview(s) may be conducted to confirm a migrant’s category, noting that migrants of mixed types may fall in to a number of different categories. The actor undertaking the in-depth interview should provide a brief to the follow up actor, with due respect for data protection considerations.

**6.4 Needs Assessment**

The in-depth interview provides indicators on the needs of each vulnerable migrant. The assistance needs assessment for each category of migrant may require collaboration among actors at different levels including district, provincial and national levels. Every effort should be made to provide identified vulnerable migrants requiring protection with the necessary support services from competent institutions as quickly and safely as possible. Upon admission to a referral centre or other facility, an assessment should be undertaken by the designated staff with the appropriate training to ensure adequate care and services are provided.

**Table 2: Protection Needs of Irregular Migrants***

<table>
<thead>
<tr>
<th>Immediate Basic Needs</th>
<th>Medium Term Needs</th>
<th>Long Term Needs</th>
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</thead>
<tbody>
<tr>
<td>Safety and Security</td>
<td>Health Care: ongoing medical care and psychological assistance</td>
<td>Continuation of immediate and medium term needs</td>
</tr>
<tr>
<td>Shelter</td>
<td>Skills building and recreation</td>
<td>Economic stabilization and independence</td>
</tr>
<tr>
<td>Food, drink, clothing</td>
<td>Family Tracing</td>
<td>Sustainable/Durable Solutions: Voluntary repatriation, resettlement, or regularization of long-term stay or reintegration</td>
</tr>
<tr>
<td>Health Care: Emergency medical treatment</td>
<td>Legal assistance</td>
<td></td>
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<tr>
<td>Maintain foster care services</td>
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</tbody>
</table>

Legal Assistance: Regularization of stay

*Note: This table is adapted from the needs of a VoT (UNPJHT, 2012). The provisions are indicative and may not be exhaustive to meet the protection needs of irregular migrants and is intended as guidance only*
PROCEDURES:

1. **Assigning Focal Points** – As stated under Section 6.1, each institution providing protection assistance to vulnerable migrants must appoint focal points to facilitate effective collaboration. The focal points will act as liaison officers between the organisation and other service providers/structures providing protection assistance to vulnerable migrants in Zambia. Where possible, a focal point should be assigned to each migrant’s case at all times;

2. **Conducting Needs Assessment** - A needs assessment is to be conducted by the focal point upon the migrant’s referral to, or arrival at the referral centre or facility. The needs assessment should detail the migrant’s immediate basic medium term and long term needs. The needs assessment should form the basis for service provision and should be regularly reviewed.

3. **Establishing cooperation for effective referrals** - Service providers/actors should maintain a list of key actors and their contact details to enhance cooperation and referral of migrants in need of protection assistance.

When providing protection assistance to migrants, the best interests of the migrant are paramount, short term interventions should not compromise long term solutions.

7. **NATIONAL REFERRAL MECHANISMS**

It is important that vulnerable migrants requiring protection assistance are provided with differentiated processes for an effective response to meeting their particular needs. The National Referral Mechanism (NRM) in Annex 3 outlines the different stages of protection assistance to vulnerable migrants and includes service providers responding to the needs of these migrants at each stage. The NRM promotes coordination among actors to ensure that the comprehensive needs of vulnerable migrants are met. The NRM takes into account provisions of the national legal framework and international best practices, which should be followed by all actors. This NRM provides a clear framework for meeting the migrant’s immediate, medium and long term protection needs. Zambia has in place existing referral mechanisms that provide for the protection of some categories of migrants. A good practical example of an existing mechanism is the NRM for VoTs. This NRM is intended to build on and complement existing NRMs.

Where a service provider is not able to provide adequate or appropriate immediate needs at the earliest possible time, the migrant should be referred to an appropriate registered service provider.

PROCEDURES:

1. **Notification of Rights** - During the referral, each migrant should be notified in writing and verbally of their rights and of available services.

2. **Obtain Informed Consent** - Service providers/actors referring vulnerable migrants should seek the migrant’s informed consent, prior to referral service provision;

3. **Engaging Service Providers** - Services should be sought, as soon as practically possible, to ensure that the migrant’s immediate basic needs are met. It is important that service providers offering shelter be registered with the Ministry responsible for Social Welfare. UASC should be referred to shelters with an appropriate child-care license.

4. **Providing – the requested services** - Referring service providers/actors should consider and address the safety and security needs, as well as the age and gender of each migrant, when determining the most appropriate place of shelter and services to be provided;

5. **Ensuring Data Confidentiality and Security** - Due consideration should be given to confidentiality of data during the referral process. Information should be shared on a ‘need-to-know basis’ to ensure confidentiality and protection of the migrant and service provider. Referral service providers/actors should ensure that any and all referral decisions are documented and kept in a safe, secure and confidential location.
8. SERVICE PROVISION

The following sections highlight some of the services that should be considered for vulnerable migrants. It is important to note that not all vulnerable migrants fit established categories for protection and that they face different degrees of vulnerability. It is therefore critical that migrants are provided with differentiated processes and procedures as not all services will be applicable to all categories of vulnerable migrants. Hence the service providers should conduct a needs assessment as a guide for the services to be provided (refer to Section 6.4). Where needs cannot be met by one service provider, collaboration can be sought with other existing competent organizations. In some cases, organizations already cooperate when providing services, but there may be need to establish cooperation with potential partners where gaps are identified.

8.1 Immediate Basic Needs

Immediate basic needs are addressed through provision of initial and sometimes emergency services that address basic needs.

**Security and Safety**

The security and safety of each migrant and the service provider(s) must be ensured at all times, with due consideration for national security. In case of a security threat, mitigation measures and action must be undertaken in a timely manner by notifying the relevant authorities.

**Risk Assessment**

Risk assessment refers to the process of identifying and assessing the risks associated with a given situation or event. The first step in confronting any threat is to properly identify and assess the level of risk. It is however important that various categories of vulnerable migrants may face security risks, however, the groups of vulnerable migrants with perhaps the highest immediate security risk are persecuted refugees and VoTs, particularly when they have escaped the persecutors/ traffickers respectively. It is therefore important to conduct risk assessments and put in place a risk management plan for increased security and safety. This is the responsibility of every service delivery organization.

**Health Care: Emergency medical treatment**

During their journey, migrants may have experienced physical and mental distress, as well as being exposed to communicable diseases. First line officials should have the capacity to identify migrants with health issues and first aid should be provided promptly. Those migrants requiring further medical assistance should be referred to the nearest health service provider. Psychological support should be provided to migrants who experience traumatic events during the migration process. Psychological support should be provided by trained personnel. Vulnerable migrants should be afforded access to health care services. The reproductive health needs of vulnerable migrants should also be carefully considered and where appropriate they should be accorded access to such services, as needed.

**Box 6: Special health considerations for vulnerable migrants**

Many vulnerable migrants experience health problems due to the ill treatment, violence and adverse travel conditions, as well as exploitation experienced before and during their journeys, and/or upon arrival (in particular for VOTs). Some of these health problems include HIV and AIDS, sexually transmitted infections, dehydration, exhaustion, bodily injuries, psychological distress and stress. An initial medical check-up should be considered for all vulnerable migrants at the earliest possible time even if the migrant appears to be in good health. Where needed, first aid should be rendered immediately and the migrant should be referred to health service providers to ensure a full medical assessment and appropriate management of life threatening conditions.

**Foster care services**

In order to secure the proper representation of an unaccompanied or separated child’s best interests, foster care services should be sought. Where guardianship is in question, the case should be referred to the Ministry to responsible for Social Welfare.

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38 Existing Guidelines on Foster Care Services should be adhered to
Shelter
Registered service providers can provide temporary shelter/safe accommodation to vulnerable migrants who have no place of residence. In doing so, priority should be given to the safety of the migrants and detention facilities should be considered as a last resort for irregular migrants, even during emergencies. In providing shelter/accommodation, due regard should be given in particular to the ethnic, religious, cultural and linguistic background and safety and security needs of the migrants.

Nutrition and Sanitation
Migrants should be provided with adequate nutrition, clothing and sanitary facilities, taking into consideration the special needs of female migrants, including those that are pregnant and breastfeeding. There should be provision for dietary needs based on any medical condition or cultural or religious practices particular to each migrant. Each individual should be provided with food and supplements appropriate to their needs. Food should meet health and safety standards required by law.

Access to asylum procedures
For the principle of non-refoulement to be effective, access to asylum procedures or Refugee Status Determination (RSD) is crucial. It is therefore essential that those officials who first come into contact with asylum-seekers are fully aware of international legal requirements. First line officials should immediately inform, without exception, the COR or the nearest competent authority mandated to take substantive decisions on refugee claims. Asylum-seekers must be allowed to remain in a country, for the sole purpose of the asylum procedure, until the determining authority has made a decision.

Legal Assistance: Regularization of stay
Vulnerable migrants receiving assistance may be issued with Report Orders or Temporary Permits by the Department of Immigration to regularize their stay while their cases are under consideration. Those seeking asylum undergo the RSD process, which has one of two outcomes, namely: 1) the granting of refugee status; or, 2) the rejection of the asylum application. For the former, an individual's stay is regularized as soon as they are granted refugee status. Rejected asylum cases are referred to the Department of Immigration for regularization of their stay as they await return/repatriation.

Consular Services
Migrants should be informed of their right to access consular services. Authorities should, wherever possible, facilitate access to consular services for migrants who request it, including those in detention.

Box 7: The principal of non-refoulement

The right not to be returned to the place of persecution is generally known as non refoulement. As below, the term refoulement is used in international human rights law, in reference to the expulsion or return of any persons who may face a risk of being subjected to torture or inhuman or degrading treatment or punishment. The 1951 Convention clearly states in Article 33. 1 that:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

n.b. this principle should be extended to include any other migrant who is in danger of being persecuted or tortured if returned.

Furthermore, major human rights treaties prohibit the forcible return of persons to countries where they may be exposed to torture or cruel, inhuman or degrading treatment or punishment. The UN Convention against Torture (CAT) states in Article 3 that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danaer of being subjected to torture.”

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39 Shelter should meet the 2005 Minimum Standards of Care in Child-Care Institutions developed by the Ministry responsible for social welfare and Zambia Association of Child Care Workers.
**Box 8: Regularization of stay for victims of trafficking**

**Legal provision:** Part III, Sections 31-39 of the Anti-Human Trafficking Act No. 11 of 2008.

**Standard:** The deportation of a trafficked person is prohibited. VoTs should be made aware of their right to remain in Zambia while their safety and security and long-term options for care are established.

**Procedures:**

The immigration status of non-Zambian VoTs should be regularized at the earliest possible time.

- A non-Zambian child VoT is a child in need of care and protection, and this serves as authorization for allowing the child to remain in Zambia for the duration of the court order (Part III, Section 31 (3)).
- Service Providers should inform non-Zambians, irrespective of their immigration status, who are placed in authorized care, of their right to remain in Zambia for a non-renewable period of no more than 60 days (initial provision). This is not contingent on a VoT’s willingness to cooperate with the investigation of the case (Part III, Section 33).
- Temporary residency can be granted to a trafficked person who has cooperated with investigation and prosecution, and who is placed in authorized care (Part III, Section 34).
- A trafficked person may apply for permanent residency under the Immigration and Deportation Act after five years of continuous residency in Zambia, provided that the VoTs can prove that their safety would be compromised if they returned to where they were trafficked from (Part III, Section 35, relates to Section 34).

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**8.2 Medium Term Needs**

Medium term needs include the continuation of immediate services such as safety and security, as well as ongoing medical care and psychological assistance. Other medium term needs are highlighted below.

**Skills building and recreation**

Selected categories of migrants such as VoTs and UASC may be provided with skills training. Recreation facilities may also be provided for irregular migrants held in protective facilities.

**Birth Registration**

All children whose birth is not registered should be provided with birth registration in line with national legal provisions.

**Family Tracing**

Where relevant, family tracing should be conducted to facilitate for more sustainable and durable reintegration solutions. Tracing of family members should commence as early as possible and is particularly important after a child has been identified as unaccompanied or separated. Even if immediate reunification is not possible, tracing should be carried out on behalf of the migrant with a view to restore contact with close or extended family members, or with previous primary caregivers, unless safety or security is compromised by doing so. This service should be provided by the Department of Social Welfare in collaboration with organizations facilitating family tracing. For minors, referral to organizations working with children should be facilitated as soon as possible after the initial interview has been conducted.

**Legal assistance**

Migrants may require legal assistance to ensure that their rights are upheld as many vulnerable migrants have limited knowledge or understanding of the transit or destination country national laws and are unaware of how to seek justice. All vulnerable migrants, including irregular migrants, should be made aware of their legal rights, and be provided with professional legal services to ensure they may be able to exercise these rights. Migrants should be informed of the legal process as soon as possible, including civil and criminal proceedings. Migrants have the right to access support from competent legal aid providers before, during and after legal proceedings, if such legal proceedings are to take place.

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40 See Sections 31 – 39 of the Anti-Human Trafficking Act No. 11 of 2008
8.3 Long Term Needs

Long term needs include continuation of immediate and medium term needs. Generally, long-term needs for vulnerable migrants may be grouped into the three categories namely: repatriation/return; local integration; or resettlement to a third country.

Repatriation/Return

All returns must be consistent with respect for the rights (including the right to dignity and privacy) of the migrant. Steps to ensure sustainable return include evaluating the safety, security and other conditions, including socio-economic conditions (effective access to basic social rights such as education, training and health), awaiting the migrant upon return. The Ministry responsible for Foreign Affairs should play a critical role in facilitating collaboration with the country of origin to ensure that human rights are preserved and that safety is ensured. The return of migrants, regardless of their status, should be on a voluntary basis. However, as part of their sovereign rights, states have the right to expel undesired persons from their territory, after due consideration of the state obligations towards the protection of vulnerable migrants. For return of UASC, a BID must be conducted.

Local Integration

If return is not possible, there is need to identify other options and migrants should be informed of all the possible options available to them. This includes a possible extended stay on various immigration permits as provided for by national legislation, and may lead to eventual granting of citizenship in specific cases.

Resettlement to a third country

This is a durable solution, usually for refugees where security cannot be assured in their home country or country of asylum.
9. CONCULSION

The information provided in these Guidelines aims to building the capacity of first line officials to respond to the protection needs of vulnerable migrants in Zambia. It is hoped that the information in the Guidelines will be used to facilitate provision of protective assistance to rejected asylum seekers, VoTs, UASC, stranded, stateless migrants and other vulnerable migrants. It is further anticipated that the Guidelines will allow for differentiated approaches for effective identification, referral and service provision to migrants. In conclusion, it is important to emphasize the need for service providers to adhere to the procedures if a human rights-based approach to protection assistance is to be realized for vulnerable migrants in Zambia and the need for partnership and coordination to ensure a broad spectrum of needs can be met.
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2010 Assisted Voluntary Return and Reintegration Handbook
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United States Department of State Office to Monitor and Combat Trafficking in Persons
2013 Trafficking in Persons Report
## ANNEX 1: PROFILING FORM FOR VULNERABLE MIGRANTS

### PROFILING FORM FOR VULNERABLE MIGRANTS WITH PROTECTION NEEDS

(For use by First Line Officials and Service Providers who may come into contact with vulnerable migrants in the course of their duties)

This profiling form is intended to assist First Line Officials and Service Providers in identifying indicators for initial case-type determination of vulnerable migrants, including for asylum seekers who have yet to enter the asylum process. It provides a basis for the identification and referral of migrants in need of assistance and follows a victim-centered approach, taking into consideration the best interest of the child. This form should not be used for actual case-type determination or to limit claims to rights in follow-up processes.

<table>
<thead>
<tr>
<th>Date of interview:</th>
<th>Organization/Department:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of interviewer:</td>
<td>Location of interview (including district):</td>
</tr>
<tr>
<td>Name of interpreter(if any):</td>
<td>Interpreter contact details:</td>
</tr>
</tbody>
</table>

Before starting the interview, the interviewer should inform the migrant that this interview is intended to facilitate protection assistance, with a focus on immediate needs. Information collected during the interview should remain strictly confidential, and will only be shared with the consent of the migrant, and should not limit claims to rights during follow-up processes.

<table>
<thead>
<tr>
<th>Information Required (To be completed in block letters)</th>
<th>Information Provided by the Migrant</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. (a) Surname (b) Other names</td>
<td></td>
</tr>
<tr>
<td>2. First language: Other languages spoken (indicate all that apply)</td>
<td></td>
</tr>
<tr>
<td>3. (a) Can the interviewer conduct the interview in a language that the migrant fully understands?</td>
<td>Yes No</td>
</tr>
<tr>
<td>(b) IL no are vetted interpretation services available in a language that the migrant fully understands?</td>
<td>Yes No</td>
</tr>
<tr>
<td>4. Sex (Tick (✓) where applicable) Male Female</td>
<td></td>
</tr>
<tr>
<td>5. Date of birth (dd/mm/yyyy) Tick if minor (under the age of 18 years)</td>
<td></td>
</tr>
<tr>
<td>6. Place of birth Town Country</td>
<td></td>
</tr>
<tr>
<td>7. Nationality Town Country</td>
<td></td>
</tr>
<tr>
<td>9. (a) Does migrant have passport or other travel/ID documentation? (yes answer (✓) no answer (✗)) Yes No</td>
<td></td>
</tr>
<tr>
<td>(b) Passport/ID No</td>
<td></td>
</tr>
<tr>
<td>(c) Date of issue (dd/mm/yyyy)</td>
<td></td>
</tr>
<tr>
<td>(d) Date of expiry (dd/mm/yyyy)</td>
<td></td>
</tr>
<tr>
<td>(f) Reason for not having documentation</td>
<td></td>
</tr>
<tr>
<td>10. Particulars of children under age of 18 traveling with migrant. (If more than three children, please include details in Comments section overleaf) Name:</td>
<td>Date of Birth: (dd/mm/yyyy) Sex (m/f):</td>
</tr>
<tr>
<td>11. Details of next of kin Name:</td>
<td>Physical Address:</td>
</tr>
<tr>
<td>12. Is the migrant currently facing any pain or physical discomfort? (if so, please give details) Yes No</td>
<td></td>
</tr>
<tr>
<td>13. Does the migrant have any of the following conditions? (tick all that apply) Pregnancy Disability (tick and specify): Other health concerns: (tick and specify):</td>
<td></td>
</tr>
</tbody>
</table>
Guidelines for Protection Assistance to Vulnerable Migrants in Zambia

| 14. Where did migrant’s journey start: | Country: | Province: | Town/ village: |
| 15. When did migrant leave place of origin (dd/mm/yyyy): | _____/_____/_____ | When did migrant arrive in Zambia? (dd/mm/yyyy): | _____/_____/_____ |
| 16. Method(s) of Travel (Tick (☐) all that apply) | Air | Water | Rail | Road |
| 17. Countries passed through in transit: | | | | |
| 18. Point of entry into Zambia: | Official border point - land/ air/ sea (specify) | Entered through unofficial border point (specify location) | Do not know |
| 19. Reasons for travel (Tick (☐) all that apply) | Education | Visit family/ friends | Work opportunity | Marriage | Security reasons | Tourism | Political | Do not know | Other (specify) |
| 20. Expected length of stay in Zambia (if any) | Days | Weeks | Months | Years |
| 21. Residential address in Zambia (if any) | | | | |
| 22. Is Zambia migrant’s intended final destination? | Yes | No | If no, specify intended destination | Country: | Province: | Town/ village: |
| 23. Are there any barriers for migrant to return to country of origin? (specify) | | | | |
| 24. Has the migrant ever applied for and/ or been granted asylum in Zambia or any other country? | Yes | No | If yes, provide details: |

DECLARATION
I hereby consent for the information provided during the interview to be shared, on a need to know basis, for the purpose of my protection. I have been informed that the information I have provided in this interview will not affect my claim to rights during follow-up.

.......................................................... .......................................................... ..........................................................
Name of migrant Signature Date

INTERVIEWERS ADDITIONAL COMMENTS:

NOTES TO INTERVIEWER – MIGRANT CATEGORIES OF CONCERN:
Asylum seeker: A person who is seeking protection from a foreign country and is still waiting to have his/her claim assessed.
Rejected Asylum Seeker: An asylum seeker whose application for asylum was unsuccessful.
Victim of trafficking: A person who has been exploited and has suffered loss of fundamental rights and psychological or physical harm as a result of being trafficked. A ‘potential’ victim of trafficking is any person intercepted before exploitation occurs and is considered to be at risk of exploitation by traffickers should they reach their final destination. A presumed victim of trafficking is any person who may reasonably be presumed under the circumstances to be a victim of trafficking.
Unaccompanied children (also called unaccompanied minors): Children who have been separated from one and/or both parents and other relatives and who are not being cared for by an adult who, by law or custom, is responsible for doing so.
Separated children: Children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.
Stranded migrant: Migrants become legally stranded where they are caught between removal from the state in which they are physically present, inability to return to their state of nationality or former residence, refusal by any other state to grant entry. They may also be stranded where there are practical or humanitarian reasons that prevent them from returning home. Many of those who become stranded entered a country irregularly, assisted by smugglers or transported at the hands of traffickers. Some are legally stateless.
Stateless person: A person who is not considered as a national by any State under the operation of its law.
## REFERRAL FORM (Please complete one form per migrant, including for each accompanying child)

**Bio-data of referred migrant:**

<table>
<thead>
<tr>
<th>Surname:</th>
<th>Other names:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of birth:</th>
<th>Nationality:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Please tick *(Tick *(of all that apply)* assistance required and indicate the service provider**

- [ ] Medical care: *(to be provided by)*
- [ ] Shelter: *(to be provided by)*
- [ ] Legal guardian for child migrants: *(to be appointed by)*
- [ ] Regularization of stay: *(to be provided by)*
- [ ] Family tracing: *(to be provided by)*
- [ ] Other, please specify: *(including security considerations)*

**Specify categories that migrant may fall into based on information collected during initial profiling interview *(Tick *(of all that apply)*):**

- [ ] May be an **asylum seeker**
- [ ] Is a **rejected asylum seeker** requiring protection assistance
- [ ] May be a presumed/potential or actual **victim of trafficking**
- [ ] Meets the criteria set out for **unaccompanied and/or separated child**
- [ ] May be a **stranded migrant**
- [ ] Meets the criteria set out for a **stateless migrant**
- [ ] Meets none of the above criteria, but has protection needs *(please elaborate)*

**Referred by:**

(Name) ..................... *(Institution) .....................

Contact details of referee: ..................... Date of referral: .....................

**Remarks including any particular/ immediate protection needs and considerations:**

........................................................................................................................................
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33
Annex 2: Guidelines for Detention of Irregular Migrants

The criteria and standards below reflect provisions of both international\(^{42}\) and Zambian law relating to detention – on immigration-related grounds of migrants seeking international protection. They apply to migrants found to be in need of protection, should they exceptionally be detained for immigration-related reasons. However, they do not cover irregular migrants imprisoned for criminal offences. Regardless of the name given to a particular place of detention (prisons or purpose-built detention, closed referral or holding centres or facilities), the issue of relevance is whether a migrant is being deprived of his or her liberty and whether this deprivation is lawful according to international law.

**Legal Provision:** Immigration and Deportation Act No. 18 of 2010 Section 18 sub-section 1 and 2 protects immigrants from being held in detention for longer than 48 hours from time of arrest or the time the immigrant was taken into custody for examination; 14 days for purposes of removal; and 21 days for purposes of deportation.

**Guidelines for Detention of Irregular Migrants:**

1. The rights to liberty and security of person and to freedom of movement apply to asylum-seekers
2. Detention must be in accordance with and authorised by law
3. Detention must not be arbitrary, and any decision to detain must be based on an assessment of the individual’s particular circumstances
   a. Detention is an exceptional measure and can only be justified for a legitimate purpose
      i. To protect public order
      ii. To protect public health
      iii. To protect national security
      iv. Purposes not justifying detention
   b. Detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose
   c. Alternatives to detention need to be considered including issuance of a removals, Report Order, Temporary Permit and Foster Care
4. Detention must not be discriminatory
5. Indefinite detention is arbitrary and maximum limits on detention should be established in law
6. Decisions to detain or to extend detention must be subject to minimum procedural safeguards
7. Conditions of detention must be humane and dignified
8. The special circumstances and needs of particular migrants must be taken into account
   a. Victims of trauma or torture
   b. Children
   c. Women
   d. Victims or potential victims of trafficking
   e. Migrants with disabilities
   f. Older migrants
9. Detention should be subject to independent monitoring and inspection
10. Where possible, and when requested by the migrant, prompt communication should be facilitated with the appropriate authorities, including legal services, consular services, etc.
11. Migrants should have the right to compensation if detention is unlawful.

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\(^{41}\) Adapted from the UNHCR Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012

\(^{42}\) UNHCR Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012
Additional information on Immigration Detention can be found in the following references:

- GLOBAL Detention project (http://www.globaldetentionproject.org)
- HRW, Detained and Dismissed. Women’s Struggles to Obtain Health Care in United States Immigration Detention, March 2009 (http://www.hrw.org/sites/default/files/reports/wrd0309web_0.pdf)
- “There are Alternatives. A handbook for preventing unnecessary immigration detention” http://idcoalition.org/handbook/ and the other tools the International Detention Coalition (IDC) developed
- The Impact of Child Detention Occupied Palestinian Territory, Save The Children, 2012
ANNEX 3: NATIONAL REFERRAL MECHANISM (NRM) FOR VULNERABLE MIGRANTS IN ZAMBIA
ANNEX 4: APPLICABLE OPERATIONAL GUIDELINES

**Asylum seekers/refugees:**
- UNHCR Confidentiality Guidelines (IOM/71/FOM/68/2001)

**Victims of trafficking**
- IOM Handbook on Direct Assistance for VoTs (2007)

**Unaccompanied and separated children:** Guidance on how to ensure that the most appropriate decision is taken when dealing with UASC is included in a number of documents including the following:
- IOM Assisted Voluntary Returns and Reintegration of Unaccompanied Migrant Children, (IOM, 2013)
ANNEX 5: INTERVIEWING GUIDELINES

Interviewing irregular migrants requires a lot of careful consideration and time to gather or establish the full facts of the case from the migrant. In particular the needs, safety and wellbeing of the migrants should be a priority at all times. Vulnerable migrants should be interviewed in a sensitive manner, ideally by a specialized interviewer. There are a number of basic guidelines which facilitate a fruitful interview with a meaningful outcome:

Privacy: While this basic rule is often difficult to follow, depending on the circumstances, every effort should be made to minimize disruptions during the interview.

Put interviewee at ease: Emotions and stress play a big part in any type of interview. The interviewer will have a difficult time evaluating a nervous person. Starting the interview casually with no threatening conversation can have a calming effect. By defusing negative feelings and reinforcing positive ones, the interviewer can properly handle the emotions exhibited by the interviewee.

Define objective: The interviewer should ask questions carefully in view of the objective of obtaining as much essential information as possible (for example trying to establish if the falls under any of the categories of concern).

Good questioning techniques: The way you ask questions is just as important as what questions you ask. Use open-ended rather than leading questions to avoid pre-empting the interviewee’s response. Ensure that the tone of your voice is not aggressive or sarcastic. Also, make sure the language you use makes questions easy to understand; avoid using unnecessarily complicated or technical language.

Let the person being interviewed do the talking: One of the biggest mistakes for an interviewer is to talk too much. Accurate evaluations of persons or gathering crucial information regarding a case depends on letting the interviewee talk under controlled conditions. The interviewer should control the interview, but not dominate it.

Be a good listener: A good interviewer is a good listener. Interviewers must discipline themselves to focus on what is being said and how it is being said. They should not look ahead to subsequent questions or begin to analyse an answer before the person finishes. Nor should they anticipate what the answer will be.

Body language: Reassuring body language is extremely important to get the confidence of the person being interviewed. Be aware of your body language as you conduct your interviews to ensure that you do not appear to be threatening or impatient, but are supportive and encouraging.

Do not challenge answers given: Interviewers must keep emotional reactions private and should not let personal feelings interfere with the interview. They should not show disgust or disbelief should some of the information be repellent or simply incredible.

World Health Organization (WHO) Guidelines for First Contact with Trafficked Persons:

Do no harm: If there is any reason to believe that conducting an interview will cause the person to be worse off than before, it should not be undertaken at that time. The risks related to trafficking are very real and can be extreme. Do not discount potential risks until you are certain that they have been eliminated.

Know your subject: Learn the risks associated with trafficking and with specific cases.

Prepare referral information: Be prepared to provide information about appropriate legal, health, shelter, social support and security services, and to help with referral if appropriate.

Ensure anonymity and confidentiality: Protect an interviewee’s identity and confidentiality.

Listen to and respect each VoT’s assessment of their situation and risks to their safety: Recognize that each person will have different concerns and that the way (s)he views them may be different from how others might assess them.

Do not re-traumatize the VoT: Do not ask questions intended to provoke an emotionally charged response. Be prepared to respond to a person’s distress and to encourage/support her/him.

Be prepared for emergency intervention: Be prepared to respond if a trafficked person says (s)he is in imminent danger. Contact Zambia Police and the necessary support services if the person needs special assistance. If in doubt as to how to address a specific case, or in presence of difficult circumstances, the correct action to take is always to call the police, or if the person is in immediate need of support refer her/him to a local NGO or State Service Providers supporting trafficked people and inform the specialized unit accordingly.

Special considerations for interviewing child migrants:

- Only staff trained in the special needs and rights of children should question children. When possible and appropriate, children should be interviewed by interviewers of the same sex;
- Create an interview space that is age-appropriate, possibly containing toys, books or games;
- Establish a rapport by talking about, or doing things that are not related to the child’s migration experience (discuss things that the child is familiar with);
- Keep the atmosphere simple and informal. Communicate with children at their eye level;
- Use appropriate and child-friendly language (pick up the terms that the child uses);
- Explain things in a manner that the child can understand. Questions should be adapted depending on the age and mental capacity of the child;
- Begin with open-ended questions, allowing the child to give their own account. Avoid leading questions, for example “did the person abuse you?”
- Do not pursue and press for details where there are signs that the child has told everything that they know. Keep in mind that children may leave out information, or may give an answer that they believe the interviewer wishes to hear;
- Interviews should take place in the presence of a parent, guardian, or a trained social worker or psychologist;
- End the interview in a way that reassures the child that they have done well and that the interviewer will be available if they need to talk again.