STANDING COMMITTEE ON PROGRAMMES AND FINANCE

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UNDERSTANDING MIGRANT VULNERABILITIES AND CAPACITIES:
A FRAMEWORK FOR ANALYSIS AND PROGRAMMING
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Introduction

1. People are moving on an unprecedented scale, making migration an international megatrend. Migration governance frameworks have not kept pace, however, and many migrants face significant protection risks during the migration process and after having reached their final destination.

2. Protection frameworks for migrants, which to date have focused on upholding the human rights of migrants or on the protection of specific categories of migrants, have proven insufficient to meet the needs of all vulnerable migrants in today’s world. That is not because there are no standards applicable to migrants, including vulnerable migrants, but rather because those standards are not being fully implemented.

Protection gaps

3. The international legal framework underpinning the protection of all individuals, including migrants, is set out in several branches of international public law. The most relevant for the protection of and assistance to vulnerable migrants are international human rights law, international labour law, the law of the sea and maritime law, international refugee law, transnational criminal law and international humanitarian law.

4. International human rights law details the basic civil, political, economic, social and cultural rights that all human beings enjoy.

5. International labour law contains provisions related to international labour migration and the rights of migrant workers and their families.

6. The law of the sea and maritime law establish standards and rules for the search and rescue of people who are in danger or distress at sea.

7. International humanitarian law seeks to limit the effects of armed conflicts and protect those who are not participating in hostilities.

8. International refugee law defines the term “refugee” and establishes the legal rights and protections to which refugees are entitled. It applies only to refugees.

9. Transnational criminal law contains elements relevant to migration, specifically two of the Protocols to the United Nations Convention against Transnational Organized Crime. The Protocol against the Smuggling of Migrants by Land, Sea and Air aims to prevent and combat the smuggling of migrants, to promote cooperation between the States Parties, and to protect the rights of smuggled migrants. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, aims to prevent and combat trafficking in persons, to protect and assist the victims of trafficking with full respect for their human rights, and to promote cooperation between the States Parties.

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

11. The New York Declaration, adopted by the United Nations General Assembly following the 2016 Summit for Refugees and Migrants, refers to the vulnerabilities of migrants to exploitation and abuse, and notes that States are committed to “protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times”. It also notes the need to consider developing non-binding guiding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable situations.

12. The two declarations have stimulated discussion of the types of protection and assistance currently available to migrants in the international system, and which migrants are entitled to them.

13. While international human rights law is applicable in all circumstances and for all persons, including migrants, it is rarely fully implemented in State responses to irregular migration. Migrants, and the practitioners assisting them, are rarely equipped to obtain formal redress for human or other rights violations.

14. Furthermore, many of the migrants vulnerable to violence, exploitation and abuse fall outside the existing definitions of migrants entitled to special protections, specifically refugees and trafficked persons, or are not migrant workers. This does not put them beyond the reach of legal protection, but it does at times diminish the attention paid to their needs and respect for their rights. The legal categories created to underline the specific needs of certain vulnerable groups may not directly address the potential needs and clearly established rights of individuals who do not fit neatly into one or the other category; what is more, individuals may “move” between categories, or fall into more than one category at a time.

15. A better understanding is required of what is meant by the term “vulnerable migrant” or “migrant in a situation of vulnerability”, and those definitions have to be operationalized in such a way that the migrants concerned are eligible for protection and assistance services under existing provisions, even when they do not fall into one of the above-mentioned special categories.

Proposed model

16. IOM proposes a more comprehensive understanding of vulnerability, one that does not focus solely on protected categories of migrants or on the migrant’s membership in a particular group, but instead complements that approach with a more complete understanding of the factors that contributed to the vulnerability of the individual migrant or group of migrants, and the resources and capacities they can mobilize to resist or recover from their vulnerability. That understanding would apply at any stage of the migration process and in any context.

17. IOM is of the view that its model, if widely adopted, would set the stage for more effective operational and programmatic responses to current and future migration crises, and would enable the international community to meet the protection and assistance needs of vulnerable migrants more fully.
18. IOM proposes that, within the migration context, vulnerability be defined as the diminished capacity of an individual or group to resist, cope with or recover from violence, exploitation, abuse and/or rights violations. This vulnerability is determined by the presence, absence and interaction of factors or circumstances that increase the risk of and exposure to, or protect against, violence, exploitation, abuse and rights violations.

**Determinants of vulnerability**

19. The IOM model conceives of vulnerability as the interplay of factors that either increase or decrease the vulnerability of individuals, households, communities and groups to violence, exploitation, abuse and rights violations. It analyses factors at the individual, household, community and structural levels, and takes into account the situational circumstances that can intensify exposure to these risks.

20. Individual factors are those related to migrants as individuals: their status in society; their histories and experiences; their beliefs and attitudes; their individual emotional, psychological and cognitive traits; and their physical and mental well-being.

21. Household factors are those related to the family circumstances of individuals, their role and position within the family, and family histories and experiences.

22. Individuals and their families are situated within a broader physical and social community context, and are affected by the community’s economic, cultural and social structure and their position within it.

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

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

**Interaction of factors**

25. In the IOM model, vulnerability, or the capacity to resist or overcome violence, exploitation, abuse and rights violations, is conceptualized as the presence of and interaction between various factors, rather than as the result of membership of a vulnerable group. Assessing or predicting the vulnerability of an individual, a household or a group therefore requires a holistic evaluation of the risk and protective factors of their circumstances, and the resources at their disposal.

**Implications for programming**

26. The IOM model has clear implications for programming, as it calls for holistic responses that take account of risk and protective factors at each level and at any stage in the migration process, in order to reduce the vulnerability of individuals, families, communities and/or groups to violence, exploitation, abuse or rights violations.
A holistic approach for sustainable results

27. At the individual level, migrants who are vulnerable to or have experienced violence, exploitation, abuse or rights violations require responses that directly address their immediate needs and the particular constellation of risk factors contributing to their vulnerability.

28. At the household level, a holistic response involves understanding the position of the individuals within the household, and addressing any household factors that contributed to their vulnerability.

29. Community-level programming usually involves medium- to longer-term approaches, as addressing community risk factors tends to require changes to broader social, economic, environmental and cultural factors.

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

31. Migrants’ circumstances can quickly change in a number of ways. Appropriate programmatic responses to situational factors are varied and context-specific.

Improved coherence and capacity

32. The broad adoption of the IOM model (see Annex for a visual depiction) would complement existing significant efforts to protect migrants, while at the same time closing the protection gap between recognized categories of migrants and those who are experiencing violence, exploitation, abuse and/or rights violations but are not in a protected category. It would thereby constitute a more complete approach to the human rights of migrants, as it would enable the full protection of migrant rights regardless of the migrants’ migratory or other status.

33. Over time, implementation of programmes based on this model would serve to enhance the evidence base on migrant vulnerability, as the collection and analysis of data on individual, household, community, structural and situation-related variables would facilitate a better understanding of what factors are in fact associated with vulnerability, and how these factors may vary across regions and in different contexts.

Conclusion

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

The determinants of vulnerability and programmatic response