



IOM HANDBOOK

PROTECTION AND ASSISTANCE

FOR MIGRANTS VULNERABLE TO

VIOLENCE, EXPLOITATION AND ABUSE

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Advance copy

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ABBREVIATIONS AND ACRONYMS

BIA	Best interests assessment
BID	Best interests determination
HIV/AIDS	Human immunodeficiency virus/acquired immune deficiency syndrome
IASC	Inter-Agency Standing Committee
ICRC	International Committee of the Red Cross
ILO	International Labour Organization
IOM	International Organization for Migration
ISS	International Social Services
NGO	Non-governmental organization
OHCHR	Office of the High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organization

THE DETERMINANTS OF MIGRANT VULNERABILITY

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PART 1

INTRODUCTION

Part 1 of this Handbook introduces IOM's determinants of migrant vulnerability model, which is used to assess risk and protective factors at the individual, family/household, community and structural levels. It also introduces IOM's programmatic approach to protecting and assisting migrants vulnerable to violence, exploitation and abuse. It discusses the model's operationalization and its application at different stages of migration and in countries of origin, transit and destination.

The information presented in Part 1 is intended for case managers, service providers, local and national government officials, policy- and decision-makers, development partners, and members of the international community.

Scope and purpose

This Handbook is intended for case managers, service providers, communities, development entities and States working to provide protection and assistance to migrants vulnerable to violence, exploitation and abuse, or to mitigate and reduce factors contributing to migrant vulnerability. The guidelines, practices and standards it describes can be adapted and applied to a range of situations, including crisis, emergency, humanitarian, transition, developing and developed contexts.

For the purposes of the Handbook, the term "migrant vulnerable to violence, exploitation or abuse" means a migrant or group of migrants exposed to or with experience of violence, exploitation or abuse within a migration context and with limited capability to avoid, resist, cope or recover, as a result of the unique interaction of individual, household/family, community and structural characteristics and conditions.

The term "migrant" does not refer to refugees, asylum seekers or stateless persons, for whom specific protection regimes exist under international law, but it may refer to victims of trafficking in persons and smuggled migrants, who also benefit from specific protection regimes under international and national law. All these groups are addressed at specific places in the Handbook and are referred to as such.

The Handbook provides practical, voluntary guidance enabling States, private sector entities, international organizations and civil society to protect and assist migrants vulnerable to violence, exploitation and abuse and to take action to mitigate and reduce migrant vulnerability. Nothing it says is intended to diminish or affect in any way the legal protection afforded any of the above categories of persons in international or national law.

Many areas of international law are relevant to the protection of migrants, specifically international human rights, humanitarian, transnational criminal and labour law. Nothing in the Handbook should be construed as limiting or undermining any legal obligations by which a State may be bound or to which it is subject under international law. Similarly, nothing in the Handbook should be read as limiting, undermining or detracting from domestic legal obligations or other standards that apply to the efforts of States, international organizations, private sector entities or civil society organizations to better protect and assist migrants. This Handbook aims at giving guidance as to how duty bearers under international and national law can better assist and protect individual rights holders.

Background

IOM has been engaged in efforts to combat human trafficking and protect and assist victims of trafficking since 1994. At that time, there was no internationally recognized definition of human trafficking, although there was growing recognition that cross-border exploitation of migrants was a significant problem.

Since the adoption, in 2000, of the United Nations Convention against Transnational Organized Crime and two of its protocols, on trafficking in persons and migrant smuggling, IOM has used the definition of trafficking therein established¹ to guide its identification, assistance and protection policies, procedures and programmes.

IOM is the world's largest provider of direct assistance services to victims of trafficking. Since the 1990s, it has assisted over 10,000 victims from at least 138 countries. IOM's unique access to migrants and victims of trafficking

¹ See page 26 below for the definition of trafficking.

worldwide has allowed it to develop significant expertise in the identification, protection, assistance, referral and case management of trafficked persons, as demonstrated in the 2004 publication, *The IOM Handbook on Direct Assistance for Victims of Trafficking*, which has been translated into 12 languages² and is a key resource for governments and NGOs around the world.

Through its work with migrants, IOM came to realize that many non-trafficked migrants experience violence, exploitation and abuse. For example, some labour migrants were employed under exploitative conditions, but were not the subject of an act of trafficking. Some migrants consented to be smuggled, but during the course of the smuggling process faced significant risks to their lives and safety, and were subject to violence and abuse. Other migrants were vulnerable to ill-treatment or exploitation – in the form of demands for bribes, labour or sexual acts, or abduction for ransom – related to their status as migrants, particularly when they were migrating or had migrated through irregular channels. The migration process itself entails risks that may render migrants vulnerable, such as loss of documents, insufficient resources to continue the journey in safety and dignity, severe psychosocial health stressors, and exposure to criminal elements and gender-based violence. These risks are often compounded by limited access to services able to mitigate or address their impact.

Such situations posed operational challenges for IOM. It was clear that migrants in these and similar situations were in distress and required protection and assistance, but it was often unclear what services were most appropriate, how they should be delivered, and by whom. Eventually, IOM began asking its partners and donors to fund more flexible programmes to allow for delivery of assistance services not only to trafficked persons but also to those considered to be vulnerable to trafficking, and not only to women and girls, but also to boys and men. Over time, IOM and others began to use the terms “vulnerable migrants”, “migrants in vulnerable situations”, and “migrants vulnerable to violence, exploitation and abuse”. IOM also began to pursue policies and programmes applicable to all migrants with protection and assistance needs, not only victims of trafficking.

However, unlike for victims of trafficking, there are no internationally accepted definitions of the terms “vulnerable migrants”, “migrants in vulnerable situations”, and “migrants vulnerable to violence, exploitation and abuse”. Further, there are no clear, internationally agreed procedures for identifying vulnerable migrants, and no operational guidelines for their protection and assistance. In the absence of such operational processes, both governmental and non-governmental practitioners and service providers³ may face uncertainty as to which migrants are vulnerable and which services should be provided to them, resulting in potential and actual protection gaps and unmet needs.

The main objective of this Handbook is to provide conceptual clarity, operational definitions, and a framework for protection and assistance for use by IOM and others.

Conceptualizations of vulnerability

The concept of vulnerability can be understood to mean that some people are more susceptible to harm, relative to others, as a result of exposure to some form of risk. The type of harm to which they are more susceptible varies: it may be psychological, physical, environmental, etc. Risk factors depend on the type of harm being examined and may or may not overlap.

IOM uses the definition of vulnerable migrants set out in the Principles and Guidelines on the human rights protection of migrants in vulnerable situations:⁴ vulnerable migrants are migrants who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer’s heightened duty of care.

2 The Handbook is available at http://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf and has been translated into Albanian, Arabic, Chinese, Japanese, Macedonian, Mongolian, Polish, Portuguese, Russian, Turkish and Ukrainian.

3 For the purposes of this Handbook, the term “practitioner” refers to persons professionally engaged in migration-related functions, such as officials from government ministries, departments or agencies, or technical specialists from United Nations bodies, international organizations, the private sector and civil society organizations. The term “service provider” refers to persons who provide a service to migrants. This can include humanitarian services (e.g. distribution of food and hygiene items) and professional services (e.g. case management, health care) provided by government agents (e.g. government social workers), the private sector (e.g. doctors in private practice), community- or faith-based organizations (e.g. migrant associations and religious congregations) or NGOs.

4 OHCHR/Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of vulnerable migrants* (Geneva, 2017). Available at: <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.

This Handbook is specifically concerned with a subset of vulnerable migrants: those vulnerable to violence, exploitation and abuse. Any use of the term “vulnerable migrants” for stylistic purposes should be understood to mean migrants vulnerable to violence, exploitation and abuse.

1.1 THE IOM DETERMINANTS OF MIGRANT VULNERABILITY MODEL

IOM’s approach to migrant vulnerability is rooted in the belief that the human rights of all persons, including migrants, should be upheld and promoted and that all migrants who are vulnerable, regardless of category or status, should be afforded the protection and assistance services that they require.

The determinants of migrant vulnerability model was specifically developed to identify, protect and assist migrants who have experienced or are vulnerable to violence, exploitation and abuse before, during or after migrating, and to guide the development and implementation of interventions to reduce such vulnerability.

For the purposes of the Handbook:

- Violence is defined as the intentional use of physical force or power, threatened or actual, that either results in, or has a high likelihood of resulting in, injury, death or psychological harm;⁵
- Abuse is defined as an improper act by a person in a position of relative power, causing harm to a person of lesser power (including physical abuse, sexual abuse, abuse of a position of vulnerability,⁶ psychological abuse, etc.);
- Exploitation is defined as the unfair treatment of a person for someone else’s benefit.

The model encompasses not only vulnerability but also resilience. It therefore considers both risk factors (which contribute to vulnerability) and protective factors (which improve capabilities to avoid, cope with or recover from harm), and the way that the two interact.

The model recognizes that migrants and the households/families, communities and groups to which they belong are all situated in a broader social environment. It considers both resilience and vulnerability to be determined by the presence, absence and interaction of risk and protective factors at different levels: individual, household/family, community and structural. Each factor, at each level, is considered to be either a risk or a protective factor, depending on the context.

Further, each factor may have a different impact on the type of harm (violence, exploitation or abuse) migrants may be vulnerable or resilient to. For example, being female and travelling along a migration route plagued by widespread acceptance of sexual assault is a risk factor for experiencing such violence. Being a male migrant in a context where male migrants are perceived as dangerous is a risk factor for arbitrary detention. In many contexts, belonging to a higher socioeconomic group is a protective factor against a range of ill-treatment, such as labour exploitation or exclusion from education and health services. Being in a context where rights are protected empowers individuals and is a protective factor against violence, exploitation and abuse.

This approach therefore considers the vulnerability or resilience of migrants to violence, exploitation and abuse before, during or after migration as the net impact of the interaction of these factors at different levels.

5 Adapted from the WHO definition (see <http://www.who.int/violenceprevention/approach/definition/en/>).

6 See UNODC, *The concept of “exploitation” in the Trafficking in Persons Protocol*, Issue Paper (Vienna, 2015). Available at: http://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf.

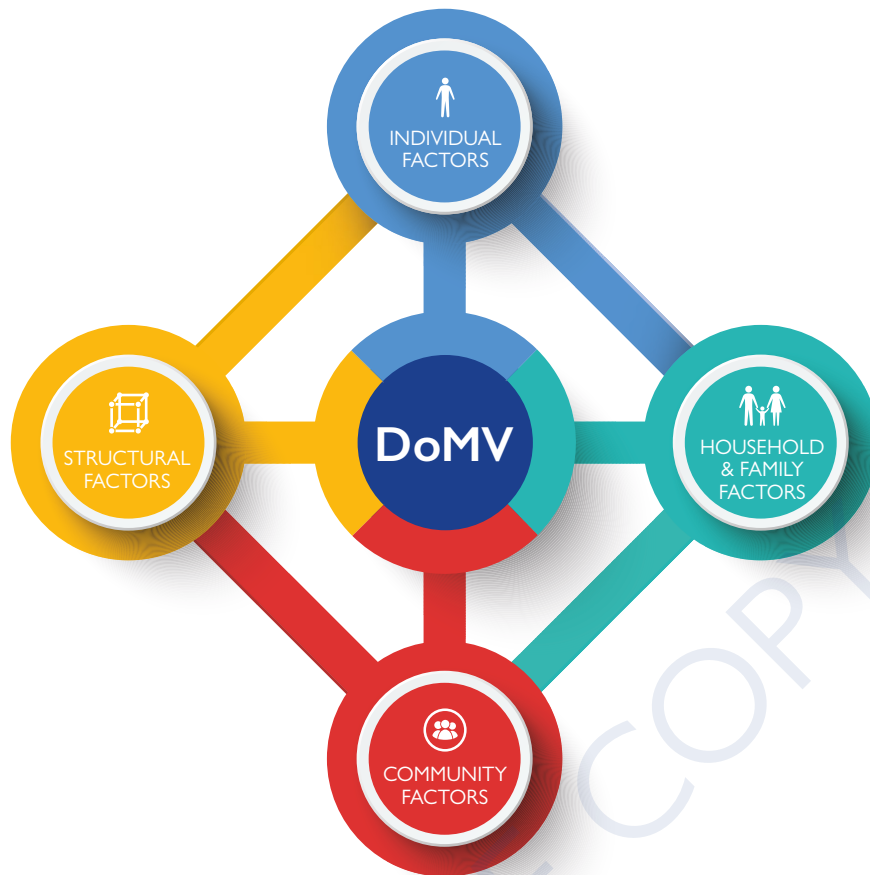


Figure 1.1

The determinants of migrant vulnerability (DoMV) model⁷

Individual factors

These are factors related to individuals: their status in society; their physical and biological characteristics; their histories and experiences; their beliefs and attitudes; their individual emotional, psychological and cognitive characteristics; and their physical and mental health and well-being. Individual characteristics are a central element of vulnerability and resilience, as they mediate how individuals respond to household/family, community and structural contexts. All individuals are rights holders, and the extent to which an individuals' rights are respected will affect how individual factors impact vulnerability or resilience.

Some examples of individual factors are age, sex, racial and/or ethnic identity, sexual orientation, gender identity, personal history, mental and emotional health, and access to resources such as money, goods or support.

For some individual factors, whether they are risk factors or protective factors is context specific. For example, being a member of a particular racialized group may be a protective factor in some contexts (if that group is dominant or privileged), but a risk factor in others (if that group is marginalized or oppressed). Other individual factors may be broadly considered to always be risk factors or protective factors. For example, literacy is almost always a protective factor, while illiteracy is almost always a risk factor.

⁷ This model is similar to the ecological model developed by Urie Bronfenbrenner in *The Ecology of Human Development* (Harvard University Press, 1979).

Household and family factors

Household and family factors are related to the family circumstances of individuals and their family members, the role and position of individuals within the family, and family histories and experiences. Families are important in determining vulnerabilities, as they are typically the first option for individuals who require support, particularly children and young people. All members of the household and family are rights holders, and the extent to which their rights are respected will affect how family and household factors impact vulnerability or resilience.

Examples of household and family factors include family size, household structure, socioeconomic status, migration histories, employment, livelihoods, education levels, gender discrimination and family dynamics.

Households and families can constitute both risk and protective factors against violence, exploitation and abuse. Risk factors can include interpersonal violence between family members, households headed by a child or a single parent, and a history of unsafe migration behaviour. Protective factors can include the presence of a supportive environment within the home, equitable distribution of resources and opportunities between boys and girls, and sufficient earnings to meet both basic needs and the main aspirations of all family members.

Community factors

Individuals and their families are situated within a broader physical and social community context. They are affected by their community's economic, cultural and social structures, and their positions within these structures. Communities with strong social networks and access to resources can provide support and protection to individuals and families, whereas communities without such networks and resources can create risk factors for individuals and families. Some community factors may affect groups within the community differently, making some groups more vulnerable and others less so. For example, social networks that provide support to some groups but exclude others work to protect some and increase risk for others. Some risk and protective factors can apply to all members in a community, making the community as a whole more or less vulnerable. All members of a community are rights holders, and the extent to which their rights are respected will affect how community factors impact vulnerability or resilience.

Examples of community factors include availability of quality educational opportunities, health care and social services; equal access to resources; livelihood and income-generating opportunities; the natural environment; and social norms and behaviours.

All communities will have a combination of risk and protective factors. Community risk factors include practices such as forced marriage, exclusion of some members of the community from the full benefit of community resources, or the presence of natural hazards such as landslides or flooding. Protective community factors include a good education system accessible to all, sufficient access to quality health care, a functioning social welfare system, and adequate preparedness measures to mitigate risks from natural hazards.

Structural factors

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

Examples of structural factors include histories of colonization and conflict, political systems, migration policies and governance, respect for human rights, and the rule of law.

At the structural level, risk factors include patterns of systemic marginalization and discrimination, conflict and instability, poor governance, the absence of accountability mechanisms, and weak rule of law. Protective factors include peace and security, good governance, respect for human rights, and equitable development.

Interaction of factors

In the IOM model, the overall vulnerability of individual migrants and the households, families, communities and groups to which they belong to violence, exploitation and abuse before, during or after a migration process, or their capability to avoid, resist, cope with or recover from such violations, is the result of the interaction of multiple risk and protective factors at different levels.

This means that no one factor will lead to a specific outcome. It also means that the presence of one or more risk factors does not necessarily result in a migrant being vulnerable, as the protective factors may mitigate the risk factors. It is an overall preponderance of risk factors, coupled with inadequate protective factors, that results in vulnerability. On the other hand, when protective factors are present in sufficient quantity to outweigh risk factors, migrants are better able to avoid, resist, cope with or recover from violence, exploitation and abuse – this can also be referred to as resilience.

Example 1

A middle-aged man having a high level of education, enjoying good health and belonging to a powerful segment of society would typically have a low level of vulnerability. However, he could find himself vulnerable to extortion and violence if he were to engage in unsafe migration practices, such as hiring migrant smugglers to help him gain access to a country through irregular means, particularly if he were to travel with the smugglers through countries with no mechanisms to protect smuggled migrants from violence.

Example 2

A family that experiences a crisis, such as the loss of employment owing to a health emergency for the primary wage earner, might make migration decisions that heighten the vulnerability of one or more family members to labour exploitation. However, it would be less likely to make such decisions if it could turn for support to extended family members, community members and/or social welfare programmes. The household/family risk factors would be mitigated by protective factors at the community level.

Example 3

People who regularly face discrimination, harassment and barriers in accessing services because of their status as migrants are more likely to be vulnerable to violence, exploitation and abuse. If they cannot turn to other members of the community for assistance, and if they cannot access the same services as others, they are likely to become isolated and vulnerable to being targeted by those who would abuse or exploit them.

Example 4

Members of a community displaced by a natural disaster may face increased risks of trafficking, as traffickers often target displaced populations. However, if local and national leaders act quickly to mitigate the trafficking risk by providing displaced persons with accurate and timely information and by taking effective law enforcement action against trafficking, then the community members are likely to be adequately protected from the risk.

Some of these factors are relevant at more than one level. For example, while sex is an individual characteristic, it influences individuals' experiences with their families and communities, and structural inequalities between boys and girls/men and women can both reflect and sustain inequalities in households, families and communities. The purpose of the determinants of migrant vulnerability model is not to define strict categories of factors, but rather to facilitate a structured and meaningful examination of how multiple factors intersect to influence vulnerability and resilience.

1.2 PROGRAMMATIC RESPONSES: THE FRAMEWORK FOR PROVIDING PROTECTION AND ASSISTANCE TO MIGRANTS VULNERABLE TO VIOLENCE, EXPLOITATION AND ABUSE

The purpose of the model is to provide practitioners and service providers with an operational methodology for gaining a thorough understanding of the risk factors that contribute to migrant vulnerability and the protective factors that enhance migrant resilience, so that responses can be designed and implemented at the appropriate levels. The model's application also provides a framework for assessing who should be involved in designing and implementing comprehensive responses.

An appropriate, comprehensive and sustainable programmatic response is one that addresses the risk factors that contribute to vulnerability and mobilizes protective factors that enhance resilience, at all levels and with the engagement of all relevant stakeholders.

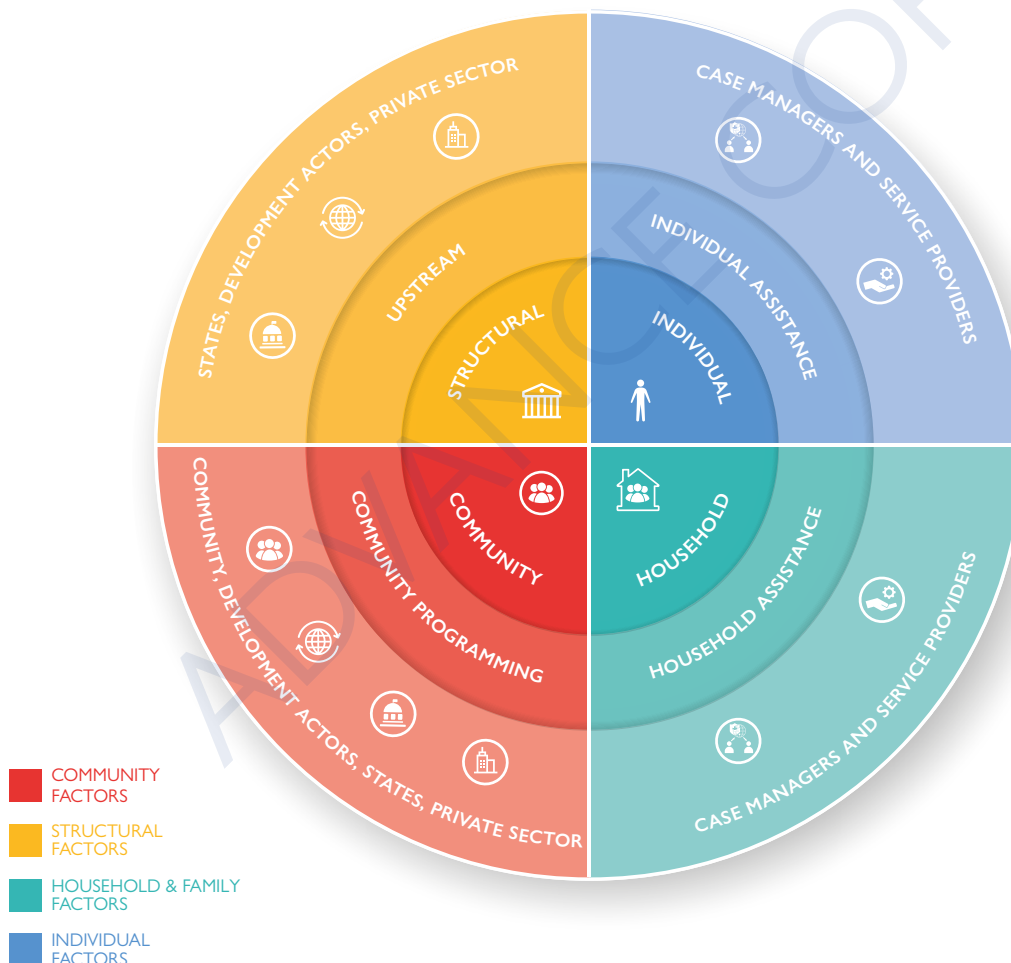


Figure 1.2

Programmatic responses and relevant players at each level

Who's involved in programmatic responses?

Depending on the level, responses will require the involvement of different protagonists, with expertise in different fields and various levels of capacity. Responses at individual and household/family level are typically delivered person to person, by case managers and service providers coming from different spheres: governmental, non-governmental or private sector. They may be, for example, government social workers, doctors in private practice, or lawyers working for a non-profit organization.

Responses at community level should involve the community itself, local government and other stakeholders, such as the private sector and development partners.

Responses at the structural level are typically the domain of local and national governments, regional or international institutions, and major development partners, such as United Nations Country Teams.

Individual responses

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

Examples of individual responses include safe shelter or accommodation; physical and mental health care; legal and consular assistance; education, skills development and training; livelihood and income-generating opportunities; opportunities for regularization of immigration status, family reunification, complementary protection, humanitarian and other legal statuses; challenges to immigration detention; return and reintegration services and support; and counselling on safe migration practices.

At this level, risk factors should be handled along a continuum, with some risk factors being more amenable to immediate solutions (e.g. a temporary lack of shelter), while others require more medium-term solutions (e.g. improving educational attainment) or longer-term or even lifetime efforts (e.g. treatment of some physical and mental health concerns).

Household and family responses

At the household/family level, a holistic response requires understanding the position of and relationships between the individuals within the household and addressing any household/family factors that contributed to their vulnerability.

Appropriate responses may include family tracing and assessment, best interests assessments and determination for child migrants, alternative care arrangements for unaccompanied child migrants, responses to domestic or gender-based violence within the family, family reunification services, family counselling, livelihood and income-generating opportunities, and education.

Household and family interventions may require shorter- or longer-term approaches, depending on the particular risk factors being addressed.

Community responses

Community programming tends to require medium- to longer-term approaches, as addressing community risk factors requires changes to broader social, economic, environmental and cultural factors. Appropriate responses can include efforts to change attitudes and beliefs so that community members view all people, regardless of age, sex, race, ability or any other personal characteristic, as full and equal participants in the cultural, social, economic and political life of the community; efforts to encourage full and equal participation of boys and girls in education; public information campaigns to inform communities about safe migration processes; capacity development programmes that improve community members' and leaders' skills, knowledge and resources for adapting to, mitigating and reducing the effect of climate change and environmental degradation; and community development programmes.

Structural responses

At the structural level, programming tends to be longer term and is typically the domain of local and national governments and regional or international institutions. Efforts to effect structural change may require more time to achieve, but are also likely to have wide-ranging impact.

Programming that aims to address structural factors can include improvements to national laws and policies to ensure that they recognize migrant rights and offer adequate protection for migrants; the development and implementation of policies for safe and regular migration, including labour mobility; the pursuit of pro-poor and equitable development policies; improvements to the rule of law and respect for human rights; and barriers to discrimination against specific groups.

The role of the State

As the primary duty bearer for upholding the rights of all persons, including migrants, the State has a particularly important role to play in upholding rights and reducing vulnerability to rights violations in all spheres and at all levels. The Principles and Guidelines on the human rights protection of vulnerable migrants⁸ list 20 principles, couched in international human rights law and related standards, to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect vulnerable migrants.

- Principle 1: Ensure that human rights are at the centre of efforts to address migration in all its phases, including responses to large and mixed movements.
- Principle 2: Counter all forms of discrimination against migrants.
- Principle 3: Ensure that migrants have access to justice.
- Principle 4: Protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance.
- Principle 5: Ensure that all border governance measures protect human rights.
- Principle 6: Ensure that all returns fully respect the human rights of migrants and comply with international law.
- Principle 7: Protect migrants from torture and all forms of violence and exploitation, whether inflicted by State or private actors.
- Principle 8: Uphold the right of migrants to liberty and protect them from all forms of arbitrary detention. Make targeted efforts to end unlawful or arbitrary immigration detention of migrants. Never detain children because of their migration status or that of their parents.
- Principle 9: Ensure the widest protection of the family unity of migrants; facilitate family reunification, prevent arbitrary or unlawful interference in the right of migrants to enjoy private and family life.
- Principle 10: Guarantee the human rights of all children in the context of migration, and ensure that migrant children are treated as children first and foremost.
- Principle 11: Protect the human rights of migrant women and girls.
- Principle 12: Ensure that all migrants enjoy the highest attainable standard of physical and mental health.
- Principle 13: Safeguard the right of migrants to an adequate standard of living.
- Principle 14: Guarantee the right of migrants to work in just and favourable conditions.
- Principle 15: Protect the right of migrants to education.
- Principle 16: Uphold migrants' right to information.
- Principle 17: Ensure that all responses to migration, including large or mixed movements, are monitored and accountable.

⁸ See OHCHR/Global Migration Group, op. cit., note 4.

Principle 18: Respect and support the activities of human rights defenders who promote and protect the human rights of migrants.

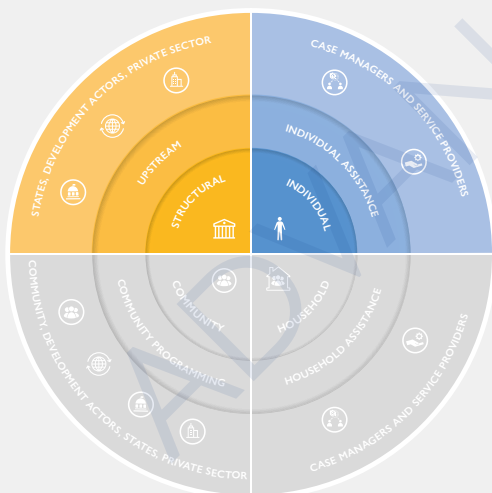
Principle 19: Improve the collection of disaggregated data on the human rights situation of migrants while protecting personal data and the right to privacy.

Principle 20: Ensure human rights-based and gender-responsive migration governance.

Examples of programmatic responses based on the determinants of migrant vulnerability model

Example 1

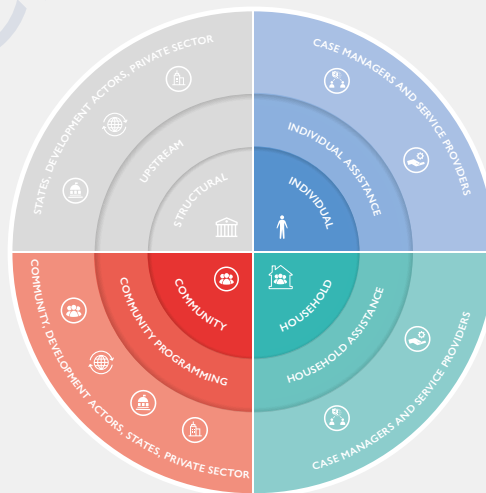
Vulnerability: A middle-aged man wants to move to a different county, but his visa application is denied. He decides to pay smugglers to get him there. He leaves with the smugglers by an overland route that requires travelling through several other countries. One of the countries is experiencing a political crisis and violence has broken out. The man does not speak the local language and does not feel safe on his own. His smugglers take advantage of the situation and lock him up, beat him, and threaten to turn him over to the authorities if he does not get his family and friends to send money. He is discovered by a cleaner who calls law enforcement. He is put in immigration detention.



Programmatic response: A comprehensive response would involve programming at individual and structural level. Individual programming could include legal assistance to help the man exit detention. Structural programming in his home country could include law enforcement action against migrant smuggling. It could also include efforts in the country in which he was detained to develop laws and policies to protect migrants subject to violence by smugglers.

Example 2

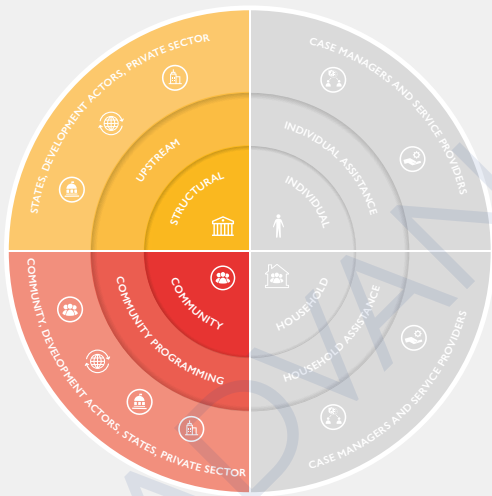
Vulnerability: An adult woman is sick with tuberculosis but there is no treatment available in her town. Eventually she becomes unable to work. Her partner is able to work, but there are limited employment opportunities in town. As the sick woman was the primary wage earner for her family, she is considering sending her eldest son, who is 16, abroad to work, even though neither she nor her partner want him to have to migrate for work – he is a talented student and they would rather he finish school. Also, the places where he could find work are known to mistreat migrant workers, and they want their family to stay intact.



Programmatic response: A comprehensive response would involve programming at the individual, household/family and community level. At the individual level, the woman requires medical treatment so that she can return to work. At the household/family level, income support or income-generating alternatives are needed, so that the son can stay at school rather than migrating alone. At the community level, programming to improve the availability of medical services and employment opportunities would improve this family's circumstances and resilience.

Example 3

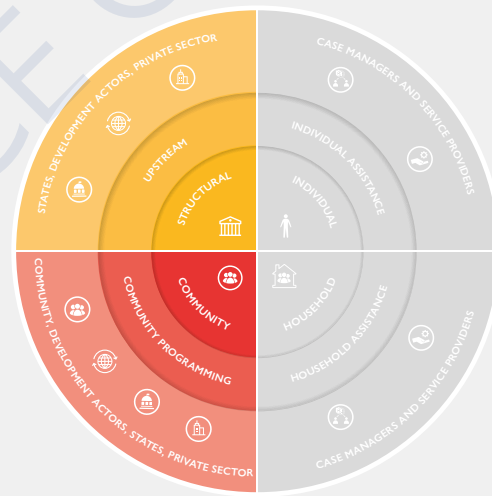
Vulnerability: A few thousand migrants have moved from their home country, which is convulsed by a long-running civil war, to a neighbouring country with better political and economic conditions, in which they have legal residence rights owing to a free movement of people agreement between the two countries. Most have settled in the same community. The host community was initially receptive but has grown resentful of the newcomers. Local business owners have started to refuse to serve the migrants, and health and education services regularly turn them away, despite the fact that they have the same rights to those services as nationals. Local law enforcement officials have started to harass the migrants and demand that they pay bribes to avoid arbitrary detention. A local factory employing many of the migrants takes advantage of the situation, knowing that the migrants are unlikely to report unsafe working conditions or wage theft. It stops providing them with appropriate safety gear and regularly underpays them.



Programmatic response: A comprehensive response would include community and structural components. At the community level, campaigns to make the host community aware of the rights of migrants and aimed at changing attitudes and behaviours could be implemented. Community leaders could be engaged to promote social cohesion and ensure that migrants have access to the services to which they are entitled. At the structural level, efforts are needed to address corruption and to uphold the rights of migrants. Structural interventions to improve political, economic and security conditions in the country of origin could prompt the migrants to spontaneously return to their country of origin.

Example 4

Vulnerability: Abnormally high levels of rainfall cause a major river to burst its banks; several towns are flooded and tens of thousands of people displaced. The area is near an international border, and the people concerned are displaced both across the border and within their own country. The neighbouring country has long-standing problems with criminality, and trafficking networks begin targeting the cross-border displaced with false offers of jobs in the capital. Both local and national governments in their country of origin have been monitoring the displacement situation closely and quickly hear of the trafficking threat. A multi-agency, cross-border anti-trafficking committee is immediately established, which engages community members, local authorities and the national governments of both countries. The committee deploys outreach teams to inform the displaced and host communities about the risks of trafficking, and law enforcement officials launch an investigation and quickly apprehend the traffickers.



Programmatic response: In this case, community and national authorities responded rapidly and effectively, countering the immediate threat of trafficking. Additional programming at the community and structural level should be undertaken to resolve the displacement crisis and mitigate the risk of future displacement caused by flooding, for example by setting up early warning systems and pre-positioning flood barriers. The national government of the neighbouring country should work to improve the rule of law and eradicate the trafficking networks.

1.3 KEY TERMS AND DEFINITIONS

The key terms and definitions used in this framework are:

- Vulnerability: Within the migration context, vulnerability is defined as a limited capability⁹ to avoid, resist, cope with or recover from violence, exploitation, and abuse;
- Resilience: The capability to avoid, resist, cope with, or recover from violence, exploitation and abuse.
- Risk factor: Factors at the individual, household/family, community or structural level that increase migrants' likelihood of experiencing violence, exploitation or abuse before, during or after migrating.
- Protective factor: Factors at the individual, household/family, community or structural level that decrease migrants' likelihood of experiencing violence, exploitation or abuse before, during or after migrating.
- Community: A number of persons who regularly interact with one another, within a specific geographical territory, and who tend to share common values, beliefs and attitudes.
- Group: A number of persons whose individual members are defined by their ethnic, cultural, religious or other status.
- Migrant(s) vulnerable to violence, exploitation or abuse: A migrant or group of migrants exposed to or with experience of violence, exploitation or abuse within a migration context and with limited capability to avoid, resist, cope or recover, as a result of the unique interaction of individual, household/family, community and structural characteristics and conditions.

1.4 OPERATIONALIZING THE DETERMINANTS OF MIGRANT VULNERABILITY MODEL

The determinants of migrant vulnerability model and the framework for protection and assistance for migrants vulnerable to violence, exploitation and abuse provide an overall approach to understanding migrant vulnerability and developing appropriate interventions. This Handbook contains several forms that can be used to operationalize this approach. The forms can be used unchanged or adapted to suit the context. Copies can also be downloaded from the IOM website (www.iom.int).

- The individual assessment form is used to identify migrants vulnerable to or having experienced violence, exploitation and abuse in a migration context.¹⁰ The form is meant for use by service providers with specialized training and experience interacting with vulnerable populations, for the purpose of identifying, referring, protecting and assisting those identified as being in need of services.
- The household/family assessment form is used to identify household and family risk and protective factors and overall vulnerability to violence, exploitation and abuse in a migration context. This form is meant for use by service providers with specialized training and experience interacting with vulnerable populations, for the purpose of identifying, referring, protecting and assisting those identified as being in need of services.
- The community profiling form is used to identify community risk and protective factors and assess how they contribute to or mitigate the vulnerability of the individuals, households and families, and groups within the community to violence, exploitation and abuse in a migration context. This form is meant to be used to develop a migrant vulnerability profile to assist local and national governments, protection practitioners and development players to develop programming to mitigate risk factors and mobilize protective factors.
- The structural profiling form is used to identify structural risk and protective factors and assess how they contribute to or mitigate the vulnerability of individuals, households and families, communities, and groups within the country or region to violence, exploitation and abuse in a migration context. This form is meant to be used to develop a migrant vulnerability profile to assist national governments, regional or international institutions, and major development partners to develop programming to mitigate risk factors and mobilize protective factors.

⁹ IOM's determinants of migrant vulnerability model is informed by the capabilities model developed by Amartya Sen, which focuses on a person's capability to function (i.e. what they can do or be) and reflects a person's freedom to choose between different ways of living. See Amartya Sen, *Commodities and Capabilities* (Amsterdam, North-Holland, 1985).

¹⁰ Migrants being screened who share information that indicates that they may be victims of trafficking should be further screened for trafficking. IOM's screening form for victims of trafficking is available for download on its website (www.iom.int).

These forms are meant to be used in a complementary fashion, with the information gathered from them contributing to a holistic understanding of the impact of interacting factors at various levels on the vulnerability and resilience of individuals, households and families, groups, and communities.

All personal information collected using these forms should be subject to strict confidentiality and privacy principles. See, for example, IOM's data protection principles and guidelines as contained in the IOM Data Protection Manual, available for download from the IOM website (www.iom.int).

1.5 VULNERABILITY AT ORIGIN, TRANSIT AND DESTINATION

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

A number of vulnerabilities may arise as a result of factors, conditions or experiences at each specific stage of the migration process. They may arise from the reasons for leaving the country of origin. According to a report by the United Nations High Commissioner for Human Rights,¹¹ these vulnerabilities “can include poverty, discrimination, lack of access to fundamental human rights, including education, health, food and water, and decent work, as well as xenophobia, violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family”. They may apply to individual migrants or to groups of migrants.

Vulnerabilities may also arise owing to circumstances associated with being in transit. This can include threats to physical safety as a result of difficult transit conditions, such as unsafe means of transportation, and threats of exploitation posed by human traffickers, migrant smugglers or unscrupulous officials. Migrants in transit may be particularly vulnerable to rights violations and abuses, particularly when their status is irregular. According to the same report, “the inadequate and often harsh conditions in which they are received at borders can also violate rights and further exacerbate vulnerabilities. Responses, such as the arbitrary closure of borders, denial of access to asylum procedures, arbitrary push-backs, violence at borders committed by State authorities and other actors (including criminals and civilian militias), inhumane reception conditions, a lack of firewalls, and denial of humanitarian assistance, increase the risks to the health and safety of migrants, in violation of their human rights”.¹²

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

¹¹ See United Nations General Assembly, *Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations*, Report of the United Nations High Commissioner for Human Rights (A/HRC/34/31), para. 13.

¹² *Ibid.*, para. 14.

1.6 APPLYING THE MODEL BEFORE, DURING AND AFTER MIGRATION

The determinants of migrant vulnerability model can be applied before, during or after migration, for purposes that will likely differ depending on the situation.

If applied before migration, the model should be used to encourage safe and informed migration, and/or prevent violence, exploitation or abuse of migrants. Its application involves examining factors at the individual, household/family, community and structural levels with a view to identifying push factors for migration and risk factors that might exacerbate vulnerability during migration. It also involves assessing what protective factors might be mobilized in order to minimize risks.

If applied during migration, the model should be used to identify vulnerable migrants with a view to taking measures to prevent them from experiencing harm and/or to developing appropriate protection and assistance plans if harm has already been done.

If applied after migration, the model should be used to identify vulnerable migrants with a view to taking measures to prevent them from experiencing harm and/or to developing appropriate protection and assistance plans if harm has already been done. It should also be used to support the development of longer-term sustainable resolution of vulnerability. In the context of returns, it should be used to address vulnerabilities and promote sustainable reintegration.

ADVANCE COPY

PROTECTION AND
ASSISTANCE FOR MIGRANTS
VULNERABLE TO VIOLENCE,
EXPLOITATION AND ABUSE:
INDIVIDUAL CASE MANAGEMENT

PART 2

INTRODUCTION

Part 2 of this Handbook focuses on the determinants of migrant vulnerability at the individual level, and on appropriate programmatic responses for mitigating and addressing vulnerability factors at this level. It discusses protection, types of protection, and the ways in which protection systems and referral networks can be mobilized to protect migrants vulnerable to violence, exploitation, and abuse. It outlines principles of assistance that should be followed in any effort to provide assistance to vulnerable migrants, and offers standards and guidelines on various forms of individual assistance for vulnerable migrants. Specific topics include: case management; shelter and accommodation; water, sanitation and hygiene; food and nutrition; personal safety and security; health and well-being; education and training; livelihoods, employment, and income generation; family tracing, assessment and reunification; access to justice; and case closure.

Part 2 includes an annex that addresses the specific needs of vulnerable child migrants. The Annex provides guidance on the practical application of the best interests principle when identifying appropriate care, protection and long-term solutions for migrant children outside their country of origin or habitual residence, and who are travelling either alone or with families or trusted adult caregivers. It includes a detailed overview of the legal framework created by the best interests principle and discusses the meaning of the best interests principle, the identification and verification of separated and unaccompanied migrant children, and the basic needs of vulnerable migrant children. It also discusses processes for applying the best interests principle in practice, including the search for solutions, guardianship arrangements, family tracing and restoring family links, and best interests assessments and determination procedures.

The guidance provided in Part 2 is intended mainly for individual case managers providing direct support and assistance to vulnerable migrants, including vulnerable migrant children. It may also be useful for those delivering services to vulnerable migrants, including health-care providers, law enforcement officers, and those working for service providers accessed by migrants.

2.1 PROTECTION AND PROTECTION SYSTEMS

Understanding protection

There is no universally accepted definition of “protection”, but the term is often used to describe all actions intended to maintain individual safety and well-being in accordance with the letter and spirit of relevant bodies of law.

Under international law, it is the State's responsibility to protect people within their jurisdiction by respecting, protecting and fulfilling their rights and by establishing and allowing ways of implementing those rights meaningfully. States also have an obligation to provide protection to their citizens abroad. Where a State cannot or will not provide this protection, certain international organizations have been mandated to provide this protection.

The protection of people, including migrants, is codified in instruments of human rights, labour, humanitarian, maritime, transnational criminal, nationality and consular law, and in the law of the sea. Those instruments are often not accompanied, however, by the implementing mechanisms needed to protect and assist vulnerable migrants. Vulnerable migrants may therefore require support to enforce their rights and obtain protection from States or other mandated actors.

Types of protection

The types of protection relevant to migrants include human rights, legal, physical, social and humanitarian protection.

Human rights protection is the obligation of States to respect, protect and fulfil the rights of all individuals on their territory or under their jurisdiction, regardless of their nationality, statelessness or migration status and without discrimination, in order to preserve in particular their safety, physical integrity and dignity.

Human rights protection is based on international human rights law, notably the 1948 Universal Declaration of Human Rights, which states that human rights are inherent to all human beings regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, including migration status.¹ International human rights law outlines the obligations of governments to act or to refrain from certain acts in order to promote and protect the human rights and fundamental freedoms of individuals or groups.

Human rights empower and protect individuals against actions that interfere with fundamental freedoms and human dignity by delimiting State power and obliging States to take positive measures to guarantee that these rights can be enjoyed by everyone on their territory. Human rights are legally guaranteed by international human rights law.

Although the enjoyment of individual human rights can be positively and negatively affected by various entities (for instance, organized criminal groups, businesses and corporations, armed groups, international organizations, NGOs), the States are the primary duty bearers, their legal obligations including the duty to respect, to protect and to fulfil.

Respect – States must refrain from interfering with the enjoyment of human rights. They must refrain, for example, from arbitrary detention, torture or collective expulsion of migrants.

Protect – States must prevent private individuals or entities and third parties from violating human rights. They must, for example, regulate recruitment agencies, sanction abusive employers and protect migrants from violence and abuse by smugglers.

Fulfil – States must take positive measures to ensure the realization of human rights. They must, for example, consult migrants when developing relevant public policy and introduce alternatives to immigration detention.

From Migration and human rights: Improving human rights-based governance of international migration (OHCHR)

International human rights law is based on inter-State consensus. Its main source is legally binding agreements between States. Three core human rights instruments form the International Bill of Human Rights:

- The Universal Declaration of Human Rights (1948) sets out the fundamental human rights to be universally protected in 30 articles that are now considered to be customary international law;
- The International Covenant on Civil and Political Rights (1966) articulates civil liberties and political freedoms, including freedom of expression, equal protection and due process;
- The International Covenant on Economic, Social and Cultural Rights (1966) articulates economic, social and cultural rights, including the right to work, health and education.

Importantly, these instruments stipulate no hierarchy of rights; all human rights are interrelated and indivisible because the improvement of one right facilitates advancement of others. Many multilateral human rights treaties promulgated under United Nations auspices have drawn from and elaborated on the International Bill of Human Rights to address particular issues and groups of concern, including the:

- International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- Convention on the Elimination of All Forms of Discrimination against Women (1979);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984);
- Convention on the Rights of the Child (1989);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention) (1990);
- International Convention on the Rights of Persons with Disabilities (2006);
- International Convention for the Protection of All Persons from Enforced Disappearance (2006).

Legal protection is provided through effective rule of law and the implementation of domestic and international legal instruments designed to protect individuals from violations of their human rights and reduce risks to their safety, security, health and well-being.

¹ The full text of the Universal Declaration of Human Rights is available at <http://www.un.org/en/universal-declaration-human-rights>.

Specific groups of people may be given additional or specific legal protection in laws or regulations that recognize their elevated risks and status as vulnerable. Common examples are women, children, people living with disabilities, older persons, refugees and asylum seekers, trafficked persons, migrant workers, indigenous people, and marginalized or oppressed groups.

State authorities may grant additional legal protection in response to harm, neglect, exploitation or abuse, including by issuing restraining orders against the perpetrators of intimate partner or domestic violence, or communal violence, or removal orders for neglected, abused or exploited children.

Physical protection includes measures to maintain the safety and integrity of individuals and their assets and possessions and to prevent damage or harm. It can be provided by government agencies such as police forces, the military and border management agencies; non-State authorities; private security providers; United Nations or regional peace-support operations; informal organizations such as community watch groups or networks of family members; and individuals themselves. The physical environment, both natural and built, also provides physical protection through its design and use.

Social protection has numerous definitions, but common elements include support for individuals, households, families and communities to prevent, manage and overcome the hazards, risks and stresses threatening their well-being,² and contributions to reducing poverty, exclusion and inequality. Social protection programmes are designed to provide an income or livelihood to reduce the economic and social vulnerability of individuals or groups. Also called “social security”, it is a right articulated in the International Covenant on Economic, Social and Cultural Rights, which recognizes the role social security plays in securing human dignity.

Groups typically targeted by social protection programmes include single-parent households, female- or child-headed households, the unemployed, or those living with illness or disability.

Social protection systems can take various forms. Cash transfers are direct and predictable provisions of cash and can be unconditional or conditional. In the latter case, the beneficiary must fulfil certain obligations, such as sending his/her children to school or visiting a social service to receive the benefit. State pensions are a form of cash transfer targeting older persons or those who cannot work. Transfers of food or other goods are another form of social protection and can be arranged through school-based feeding programmes or to meet acute needs, for instance following a natural disaster.

Microfinance programmes, which provide financial services to people living on low incomes, can also have a social protection function when they alleviate poverty by supporting income generation, asset acquisition, savings plans and financial risk management. Typically, microfinance programmes offer small loans to community-based groups to be used for productive engagement in the local economy; the community-based groups have an accountability function that guarantees the repayment of the loans at lower interest rates than those offered by formal financial systems.

Public works programmes designed to provide employment through State-sponsored investment, often to develop infrastructure, are another form of social protection. They can provide livelihoods by giving cash or other needed goods, including food, for work.

Social insurance is another form of social protection. Examples are maternity leave and pay schemes, unemployment insurance, workers' compensation programmes, or disaster insurance. In these instances, individuals make regular contributions through tax systems or to a bank, an employer or a community-based fund on which they can draw when a specific event (e.g. pregnancy, illness or injury, death, a weather event like drought or flood) impedes their ability to work and earn a living.

Other interventions have social protective functions, providing additional support to those deemed more vulnerable within a society, and are often linked with economic protection. State subsidies can provide social protection by removing or reducing taxes on basic necessities, using a proportion of gross national product to lower costs, or capping the market price of basic goods and services.

2 Adapted from UNDP International Poverty Centre, “Social protection: the role of cash transfers”, *Poverty in Focus* (June 2006). Available from www.ipc-undp.org/pub/IPCPovertyInFocus8.pdf.

Humanitarian protection refers to the protection afforded to those affected by an armed conflict, natural disaster or other crisis. The IASC defines humanitarian protection as all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law, international humanitarian law, international refugee law).³ Humanitarian protection encompasses the efforts of humanitarian actors to ensure that the rights of crisis-affected persons and the obligations of duty bearers under international law are understood, respected, protected and fulfilled without discrimination.

Under international humanitarian law, civilians affected by an armed conflict or other situation of violence, sick and wounded combatants and prisoners of war are protected groups in respect of whom State authorities and other armed entities have a legal obligation to preserve their safety, physical integrity and dignity. The 1949 Geneva Conventions for the protection of war victims and their Additional Protocols govern the rules of warfare and are intended to reduce the impact of armed conflict on civilians, medical and religious military personnel, the wounded, shipwrecked and sick combatants, and prisoners of war.⁴

The need for protection is not limited to situations of conflict; it also arises in humanitarian crises such as natural and human-induced disasters and disease outbreaks. In all such situations, protection should be afforded to all those affected and their rights respected in accordance with the law, without discrimination and throughout all phases of the crisis.

Humanitarian protection can be provided by States, United Nations agencies, international organizations, the ICRC and National Red Cross and Red Crescent Societies, NGOs and/or communities. The Global Protection Cluster provides coordination and leadership within the United Nations humanitarian system, furnishes global inter-agency policy advice and guidance on the conduct of humanitarian operations, supports protection responses in humanitarian operations not involving refugees, and spearheads standard- and policy-setting relating to protection in complex humanitarian emergencies.⁵

Protection for specific groups

There are also types of protection for specific groups.

Child protection refers to preventing and responding to violence against, and exploitation, abuse and neglect of, those under the age of 18. In practice, child protection often focuses on children considered to be the most vulnerable to rights violations, such as those living without parental care, children in contact with the law, children affected by armed conflict, and migrant children.

The 1989 Convention on the Rights of the Child and its Optional Protocols outline the fundamental rights of children, including the right to be protected from economic exploitation and harmful work, from all forms of sexual exploitation and abuse, and from physical or mental violence, and the right not to be separated from their family against their will unless such separation is in their best interests.

The Convention outlines the basic rights held by all children:

- the right to survival;
- the right to develop to the fullest;
- the right to protection from harmful influences, abuse and exploitation;
- the right to participate fully in family, cultural and social life.

The Convention has four core principles:

- non-discrimination;
- devotion to the best interests of the child;
- the right to life, survival and development;
- respect for the views of the child.⁶

3 See *Inter-Agency Standing Committee Policy on Protection in Humanitarian Action* (2016), p. 2. Available at: https://interagencystandingcommittee.org/system/files/iasc_policy_on_protection_in_humanitarian_action_0.pdf.

4 *What is International Humanitarian Law?* (ICRC Advisory Service on International Humanitarian Law, 2004). Available at: https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf.

5 Who We Are (Global Protection Cluster). Retrieved from <http://www.globalprotectioncluster.org/en/about-us/who-we-are.html>.

6 What is the CRC? Retrieved from https://www.unicef.org/rightsite/237_202.htm.

Other international legal instruments that afford children specific protection include the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), which calls for the prohibition and elimination of the worst forms of child labour, including the compulsory recruitment of children into armed forces.

Women's protection is the promotion and protection of women's rights. It entails recognition that women worldwide continue to suffer discrimination in the form of gender-based exclusion or restrictions. The 1979 Convention on the Elimination of all Forms of Discrimination against Women calls on States to work towards gender equality. Underlying this type of protection is recognition that violence against women and girls is pervasive and has immediate and long-term consequences that affect the physical health, psychological well-being and social lives of women and girls. Women's protection includes the prevention of and response to intimate partner violence, gender-based violence, and the social isolation and economic exclusion of women and girls.⁷

Protection of persons living with disabilities is framed in the 2006 Convention on the Rights of Persons with Disabilities and its Optional Protocol. The Convention is a human rights instrument with a social development dimension. It reaffirms that all persons with all types of disabilities are equally entitled to enjoy all human rights and fundamental freedoms. It identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights, where their rights have been violated, and where protection of rights must be reinforced.⁸

The Convention comprises eight general principles:

- Respect for the inherent dignity, individual autonomy (including the freedom to make their own choices) and independence of persons with disabilities;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women;
- Respect for the evolving capacities of children with disabilities and for their right to preserve their identities.

The **protection of trafficked persons and smuggled migrants** is based on the nine core human rights treaties, with specific provisions for protection outlined in the United Nations Convention against Transnational Organized Crime (2000) and two of its Protocols, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking in Persons Protocol), and the Protocol against the Smuggling of Migrants by Land, Sea and Air (the Smuggling of Migrants Protocol).⁹ Both Protocols have protection provisions.

The Trafficking in Persons Protocol defines "trafficking in persons" as follows:

- a. "Trafficking in persons" shall mean 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d. "Child" shall mean any person under eighteen years of age.

7 For the full text of the Convention on the Elimination of all Forms of Discrimination against Women, go to <http://www.un.org/womenwatch/daw/cedaw/>.

8 For the full text of the Convention on the Rights of Persons with Disabilities, go to <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

9 For the full text of the Convention and the two Protocols (also known as the Palermo Protocols), go to <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

Article 6 of the Protocol outlines protection and assistance measures for victims of trafficking:

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - a. Information on relevant court and administrative proceedings;
 - b. Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - a. Appropriate housing;
 - b. Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - c. Medical, psychological and material assistance; and
 - d. Employment, educational and training opportunities.
5. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
6. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
7. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

The Smuggling of Migrants Protocol defines the smuggling of migrants as follows:

- a. "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
- b. "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

Article 16 of the Protocol outlines protection and assistance measures:

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in Article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in... this Protocol.
3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in... this Protocol.
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.
5. In the case of the detention of a person who has been the object of conduct set forth in Article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Additionally, the Smuggling of Migrants Protocol requires States not to criminalize migrants for having been the object of the crime of smuggling (Article 5).

Furthermore, Articles 24 and 25 of the United Nations Convention against Transnational Organized Crime, which applies to both of the above Protocols, require States to take appropriate measures to provide effective protection to victims and witnesses participating in criminal justice proceedings against traffickers or smugglers.

The specific **protection of migrant workers** is described in the 1990 Migrant Workers Convention.¹⁰ The Convention defines “migrant worker” as a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national. The Convention does not afford migrant workers additional rights, but rather reiterates their rights under existing human rights instruments.

The Convention recognizes the vulnerable situation that migrant workers may find themselves in outside their home State and affirms that their rights are to be protected without discrimination, including discrimination based on their status as migrants.

Other relevant treaties include four ILO conventions:

- the Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol;
- the Abolition of Forced Labour Convention, 1957 (No. 105);
- the Domestic Workers Convention, 2011 (No. 189);
- the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Refugee protection refers to the unique protections required by those who flee their countries of origin and who cannot avail themselves of the protection of their own State due to conflict, violence, events seriously disturbing public order, or persecution, and who have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group.

International refugee law consists of the 1951 Convention Related to the Status of Refugees (the 1951 Refugee Convention), its 1967 Protocol, and related regional refugee instruments, including the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa,¹¹ the 1984 Cartagena Declaration on Refugees,¹² and the European Union Asylum Acquis¹³. Together, these instruments constitute the global legal framework for international refugee protection.

The 1951 Refugee Convention provides the international definition of who is to be considered a refugee and who is excluded from obtaining refugee status; together with its Protocol, it also outlines specific rights and protections for refugees, including the right to seek and enjoy asylum, protection from non-refoulement, protection afforded without discrimination, and the right to freedom of movement.¹⁴ The 1950 Statute of the Office of the United Nations High Commissioner for Refugees provides UNHCR with the mandate to ensure refugee protection and seek permanent solutions for their plight, among other competencies.

Protection systems and referral pathways

It is the State’s responsibility to ensure that all people, including migrants, benefit from the protections outlined in international law. In so doing, the State can rely on various systems established to mitigate the risks faced by individuals and their families and/or respond if individuals experience harm, violence, neglect, exploitation, abuse or other rights violations. These systems use combinations of laws, regulations, policies and programmes that can be delivered by the State, international organizations, non-governmental agents, the community, and/or individuals themselves. The aim of these systems, regardless of who carries out their practical implementation, is to ensure that rights guaranteed at the international level are being respected for the individuals concerned.

Protection systems include those designed for children, people who have experienced intimate partner violence, trafficked persons, asylum seekers and refugees. While these and other protection systems can be entry points

¹⁰ For the full text of the Convention, go to <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>.

¹¹ For the full text of the Convention, go to <http://www.unhcr.org/uk/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>.

¹² For the full text of the Declaration, go to <http://www.unhcr.org/uk/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>.

¹³ EU Asylum Acquis: Working towards a common system. Retrieved from <http://www.unhcr.org/ceu/159-enresourceslegal-documents-eu-asylum-acquis.html.html>.

¹⁴ For the full text of the Refugee Convention and Protocol, go to <http://www.unhcr.org/uk/1951-refugee-convention.html>.

enabling vulnerable migrants to access protection and assistance, in some cases vulnerable migrants who cannot access them may fall between the gaps even though they are rights holders and legal frameworks exist for their protection. Rarely are specific systems set up to meet the protection needs of vulnerable migrants.

Multiple and overlapping systems may exist in a single context, and a single entity may not be able to provide all the types of protection required by an individual or his/her family, which is why referral pathways between different systems are essential for ensuring that protection needs are met. Where an individual can have recourse to more than one referral mechanism, they should be helped to access the system that allows for the highest level of protection.

Referral pathways often include both protection and assistance services. Assistance can be considered a form of protection when it safeguards the life and well-being of individuals and groups by providing life-saving and essential services. Assistance should be offered alongside protection and can include shelter and accommodation, water, sanitation and hygiene, food and nutrition, safety and security, health care, education and training, and livelihoods, employment and income generation.

In operational contexts, a referral pathway serves to link individuals with the protection-related services and support they require and to identify and close gaps between existing protection systems. To that end, all types of protection available and their providers should be mapped, included in referral pathways and integrated into the case management approach for vulnerable migrants.

Referral pathways commonly exist in fields that provide protection and assistance to children and families in vulnerable situations, survivors of gender-based violence, refugees and asylum seekers, and trafficked persons. They are sometimes referred to as national referral mechanisms. Existing pathways should be used to access available protection and services when they are accessible and suitable for vulnerable migrants.

2.2 INDIVIDUAL ASSISTANCE FOR MIGRANTS VULNERABLE TO VIOLENCE, EXPLOITATION AND ABUSE

Principles of assistance

All assistance provided to migrants vulnerable to violence, exploitation and abuse should follow the principles set out below.

Rights-based approach – Vulnerable migrants should be empowered to understand and claim their rights at the same time as steps are taken to increase the ability and accountability of duty bearers responsible for respecting, protecting and fulfilling rights. Protection and assistance should not be provided contingent on involvement with law enforcement. This approach serves as an underlying principle and guide for all other principles.

Do no harm – Organizations providing assistance should assess the potential for harm of any proposed action. Assistance should not be provided or it should be deferred if there is reason to believe that it might leave vulnerable migrants worse off than before. Support for migrants vulnerable to violence, exploitation and abuse should cause no harm to the wider community, including migrant communities and host communities.

Non-discrimination – Assistance should be provided to vulnerable migrants without discrimination or prejudice on the basis of nationality, gender, age, sexual orientation, gender identity, ability, race, ethnicity, religion, language, social status or any other status.

Self-determination and participation – Migrants vulnerable to violence, exploitation and abuse are entitled to make choices and participate in decision-making regarding their protection and assistance, and this right should be respected and supported. Services should be delivered in collaboration with vulnerable migrants, whose autonomy and agency should be reinforced and encouraged by the individuals and organizations providing protection and assistance.

Individualized assistance – Migrants vulnerable to violence, exploitation and abuse have unique experiences, vulnerabilities and needs, and the services they receive should be tailored accordingly, to the extent possible. This includes ensuring that services are age, gender and culture sensitive, provided in the migrants' preferred language, and appropriate in the circumstances and the context.

Accountability – Migrants vulnerable to violence, exploitation and abuse who are accessing services should play an active role in efforts to measure the quality of those services. Their views should be solicited and used to adapt and improve services. Effective complaints systems and procedures should be included in all service delivery programming and safeguards should be put in place to ensure that no harm is done to migrants through their use of services.

Continuum of assistance – A holistic approach to assistance includes ensuring comprehensive service delivery where all identified needs are met. This is contingent on a strong case management system where assistance services are mapped and service delivery is tracked and monitored throughout the time the vulnerable migrant is accessing services. It is particularly important if vulnerable migrants move to different locations, be it back to their countries of origin, to third countries, or elsewhere.

Informed consent – Before receiving assistance or accessing services, vulnerable migrants should freely give their permission with the knowledge of possible risks and benefits. Inherent in the right to give consent is also the right to refuse assistance. Consent is not static and should be evaluated throughout the time vulnerable migrants are accessing support. Consent can be given in full or in part and access to one service should not be contingent on consenting to others.

Consent is a process that includes providing information to migrants, giving them the opportunity to ask questions, ascertaining that the information is complete and understood, clarifying and restating information, and documenting consent. Consent forms are one way to record consent, but may not be appropriate for children, migrants with low levels of literacy, and/or those without the capacity to give consent. Consent can also be given verbally, but should be recorded in a secure and confidential manner.

Potential barriers to obtaining informed consent include language and communication barriers that hamper understanding of the services available; cultural, social and gender norms that limit the ability to ask questions or articulate misunderstandings; and the characteristics of the person requesting consent, i.e. his/her gender, age, profession, etc.

Case managers and all service providers should use clear and understandable language to inform vulnerable migrants of the nature and purpose of any services, the known risks of using them, the criteria for accessing them, limits to services and programmes, and alternatives to accessing services. Vulnerable migrants should also understand the time frame their consent covers and their right to refuse or withdraw consent at any time.

Capacity to give consent is affected by vulnerable migrants' age, physical and psychological state, cognitive ability, and the impact of their experiences and pathway to interacting with a service provider. For instance, arrest or detention can influence their willingness to consent to provide identifying information about themselves or others. Appropriate measures should be taken to determine whether a vulnerable migrant is able to give consent. If s/he is deemed incapable, appropriate guardianship authorities should be involved, but the migrant should remain involved in any decisions regarding assistance.

Barrier-free access – Services provided to vulnerable migrants should be available in sufficient quantity and quality, be culturally and socially relevant, be physically accessible, and should not present any safety and security concerns. Vulnerable migrants should be aware of what services are available to them and any barriers to access should be identified and rectified, including physical, financial, social and security barriers.

Confidentiality, privacy and data protection – Information should not be requested or required from vulnerable migrants unless it is essential to the provision of assistance. Information regarding a vulnerable migrant's location, health and well-being, and participation in any services should be considered confidential and not be shared without the vulnerable migrant's prior knowledge and informed consent. Where vulnerable migrants are accessing various services and their care and support would benefit from sharing of information, appropriate information-sharing protocols should be put in place and the vulnerable migrants informed of and consent to their information being

shared. Any information obtained through direct or indirect disclosure in the course of providing services should be considered confidential.

Confidential information should be disclosed without consent only to prevent serious, foreseeable and imminent harm to a vulnerable migrant or another person. When this is necessary, the least amount of confidential information should be disclosed and only to the relevant persons, organizations or authorities. The vulnerable migrant should be informed before the information is shared.

Legal obligations to disclose information without consent may exist within the jurisdiction of operation and should be followed as long as they do not cause harm. Vulnerable migrants should be made aware of these requirements before accessing services.

Vulnerable migrants should be granted access, on request, to any information stored regarding their personal data and the delivery of protection and assistance services to them. They should have the opportunity to amend, add or correct their data.

The privacy of vulnerable migrants should be respected and identifying information and details regarding their location, health and well-being, and participation in any services should not be discussed in public spaces or shared electronically unless on secure data-sharing platforms. Such data should be stored in secure electronic and physical locations that are not left unattended. Identifying information should not be shared with the media, researchers, in training materials, or in communications to the public without prior informed consent.

Written and electronic records should be transferred or destroyed within an appropriate amount of time when no longer needed or as required by relevant laws and regulations. Confidentiality and privacy also apply in the event of the death of a vulnerable migrant.

Gender-sensitivity – The impact of gender on experiences, vulnerabilities and needs should be explicitly acknowledged and appropriately addressed throughout the delivery of assistance. This approach acknowledges gender-based discrimination and promotes gender equality through the provision of services. This may include having a case manager of the same gender, providing gender-specific services, or providing services that seek to address gender inequality and discrimination.

Child-centred assistance – In the case of children under the age of 18, the above principles should be considered in conjunction with other relevant procedures.

Services for migrant children should be age appropriate, follow best practices in child protection and be child friendly (the approach should be accessible and appropriate for children). Wherever possible, specialized agencies should provide protection and assistance to vulnerable child migrants using a child-centred approach in which the child's or children's needs and best interests are central to service delivery. Family unity should be maintained unless it is unsafe to do so or presents a risk to a child or children involved in the family unit.

Agencies providing protection or assistance to vulnerable migrants should have adequate child safeguarding or protection policies and procedures in place and those working directly with children should have staff with specialized training and qualifications.

For more detailed information on the provision of protection and assistance to vulnerable child migrants, see the Annex to Part 2.

Case management approach

A case management approach is a model of providing assistance to individuals with complex and multiple needs who may access services from a range of agencies and organizations. It has its roots in social work practice. It is also called care management, case coordination, service coordination, client navigation, or patient navigation.

Case management allows for collaboration between multidisciplinary stakeholders and is useful for the assessment, planning, implementation, coordination and monitoring required to effectively meet an individual's multiple needs and to promote positive outcomes.

Inherent to this approach is an understanding of what services are available, what the criteria are for accessing them, who offers them, any risks associated with their access, and their quality and appropriateness.

Case management can fall to State authorities, international organizations, United Nations agencies, NGOs or civil society organisations. It may be regulated, and case managers may belong to professional associations of, for example, social workers or legal advocates, or be appointed by the State, for instance through judicial or immigration processes. Importantly, case managers do not provide all the services and support their clients need, but instead make appropriate referrals to other specialist providers of protection and assistance. It is essential for case managers to have a basic understanding of the types of assistance required to meet the needs of their clients.

In the *client-centred* or *migrant-centred* approach to case management, the case management model is centred on the client, in this case a vulnerable migrant (Figure 2.1). It ensures that vulnerable migrants are central to decision-making on protection and assistance. It also promotes their participation in decision-making and choices regarding accessing available services. As such, all services should be delivered in collaboration with vulnerable migrants, and their autonomy and agency should be reinforced and encouraged by the individuals and organizations providing protection and assistance.



Figure 2.1

Migrant-centred case management model for the protection and assistance of vulnerable migrants

Roles and responsibilities

Once a migrant has been identified as vulnerable (see Part 1), an assessment should be made to determine whether or not s/he requires or could benefit from support from a case manager. This can be done by establishing criteria for entry into a case management system. The criteria will vary depending on the organization or agency providing case management services, any existing system-wide protocols or procedures, the funding source, the programme parameters, and the availability of case managers to allocate to the vulnerable migrant.

Case managers should be matched to vulnerable migrants in collaboration with the vulnerable migrant wherever possible, and the case manager's characteristics, such as age, gender and ethnicity, should be considered and be acceptable to the vulnerable migrant.

The specific roles and responsibilities of case managers for migrants vulnerable to violence, exploitation and abuse will vary depending on the organization and the system they are working within, but can be expected to conform to the activities described below.

Engagement and communication with migrants vulnerable to violence, exploitation and abuse

Trust and rapport are built through respectful, professional and honest engagement and communication between the case manager and the vulnerable migrant. One of the case manager's essential roles is to be the main point of contact for the vulnerable migrant, to provide information regarding care, support, assistance and protection, and to solicit information from the vulnerable migrant, including information on satisfaction with the services and support received.

Case managers should communicate with vulnerable migrants through the channels with which the migrants are most comfortable, and in the language they prefer, wherever possible. They should ensure that vulnerable migrants are provided with accurate and reliable information about their rights and give vulnerable migrants opportunities to ask questions, provide feedback and share information.

The services of an interpreter – if possible, professional interpreters as opposed to family or community members or other lay interpreters – should be used if they would improve communication and understanding. Importantly, the choice of interpreter should be acceptable to the vulnerable migrant.

All communication between vulnerable migrants and case managers should be age appropriate, adapted to the migrant's level of understanding, education and literacy, and culturally appropriate.

Assessments of the needs of migrants vulnerable to violence, exploitation and abuse

Assessments should be done when vulnerable migrants first begin accessing support from a case manager and regularly thereafter. A thorough understanding of the relevant risk and protective factors will inform the services the migrants access. These factors may change over time and through the process of accessing information, support and care from service providers, so they should be regularly re-assessed.

Case managers should use client-centred interviewing skills and methods to engage with vulnerable migrants, identify their strengths and priorities, and discuss their concerns. Those skills and methods include the following:

- Creating a welcoming environment that is comfortable;
- Using the vulnerable migrant's name and an appropriate form of greeting;
- Beginning the assessment when the vulnerable migrant is ready and comfortable;
- Indicating how long the assessment is likely to take;
- Outlining the assessment process and format;
- Inquiring if the vulnerable migrant has any specific issues s/he would like to cover during the assessment;
- Using open-ended questions;
- Using simple language and avoiding terminology that is unfamiliar or unclear to the migrant;
- Sequencing questions in a way that builds trust and asking more sensitive questions later in the interview process;
- Using active listening and ensuring that the migrant has sufficient time to respond to questions and express her/himself;

- Using non-verbal cues to encourage the migrant to answer questions;
- Demonstrating empathy and compassion in the face of distressing experiences or events;
- Stopping or delaying questioning that is distressing;
- Asking clarifying questions when the information presented is unclear or requires more context;
- Summarizing the conclusions of the assessment and offering the vulnerable migrant the opportunity to correct or clarify information;
- Offering the vulnerable migrant an opportunity at the end of the interview to discuss anything not covered during the assessment;
- Sharing information on services, including if services are not available.

Interviewers should take into consideration the possibility that vulnerable migrants have experienced violence, exploitation or abuse, be prepared to respond appropriately to disclosures and avoid exacerbating any distress. Where necessary, urgent referrals should be made following disclosure of any incident or fact that is life-threatening or otherwise requires emergency attention.

See Part 1 for standardized tools to assess migrant vulnerability to violence, exploitation and abuse.

Risk assessments

Case managers should conduct regular assessments to identify any risks to the security, safety and well-being of vulnerable migrants and the risks inherent to accessing and/or not accessing services. This should be done with the full participation and knowledge of the vulnerable migrant; where risks are identified, mitigating strategies should be put in place. Identified risks and mitigation strategies should be included in the development and implementation of assistance plans, which are outlined below.

Possible risks include retribution by human traffickers or migrant smugglers, detention or removal in the case of irregular migrants, emotional or psychological harm, self-neglect, self-harm or suicide, substance abuse or misuse, harm to others, and harm to family at home or in another location.

As risks can change, they should be monitored by the case manager in collaboration with the vulnerable migrant. It may be useful to develop a schedule for periodically reviewing risks and mitigation strategies.

Mapping of available services

Case managers should be knowledgeable about the types, quality and number of services available to meet vulnerable migrants' needs, and of the conditions for accessing them. To that end, they can either conduct a mapping exercise or use exercises carried out by others to identify all available services.

Where they exist, local, national and transnational referral mechanisms should be utilized. Common types of referral mechanisms are for child protection, intimate partner violence and/or sexual violence, or trafficking in persons.

Where such referral mechanisms do not exist, case managers can map available services. They should compile lists of available services, including types of support, contact details, eligibility requirements, intake processes and any associated fees. They should also identify and analyse any barriers or limitations to access. Such limitations can include eligibility or intake criteria that exclude migrants, the location and distance of service delivery, risks to safety and security for vulnerable migrants accessing services, and nationality or immigration status requirements. Case managers should explore opportunities to advocate for the widening of such criteria to include vulnerable migrants or the removal of barriers to improve equitable access for migrants.

When mapping services, case managers should be alert to any gaps in services for vulnerable migrants. Where gaps exist, they can lead or support wider advocacy efforts for the establishment of services, whether for specific groups or in specific locations.

Case managers should have this information to hand before meeting with migrants in order to allow for timely referrals and immediate response to critical needs. Any mapping that is used should be up to date and reflect current service availability.

Development and implementation of assistance plans

Case managers should work with vulnerable migrants to develop assistance plans outlining the migrants' goals, needs, priorities, strengths and challenges. The plans should incorporate the information gathered during the vulnerability assessment (see Part 1) and provide an overview of the services the vulnerable migrants will access and relevant contact details for other service providers. They should include information on if, how and when the cases will be monitored, how feedback from the migrants will be incorporated, and how information will be shared with the migrants and between the case manager and service providers. If useful or necessary, a case management plan can include resource allocations and a budget for relevant costs.

Assistance plans should consider the length of time a vulnerable migrant will access services and incorporate, where possible, information on exit, transition and completion.

Once agreed between the case manager, appropriate supervisor or authority, and the vulnerable migrant, assistance plans should be implemented through referrals to other service providers and the vulnerable migrant helped to complete the procedures for accessing services, for instance completing administrative processes, attending appointments, and any follow-up required. Assistance plans should be regularly reviewed with the migrant and adapted as necessary, and the migrant should always have an updated copy. Assistance plans should include an exit strategy that outlines when case management will end, and a timeline for a review of the migrant's planned exit from case management.

When developing assistance plans, case managers should be aware of any mismatches between the vulnerable migrant's goals and aspirations and the available pathways and services, and do their utmost to ensure the vulnerable migrant understands. The gap between goals and services may itself constitute a human rights violation, and case managers should be prepared to uphold vulnerable migrants' rights to access to remedies and make referrals to legal services, human rights institutions, or other protection entities as necessary.

Coordination with service providers and authorities

Assistance plans are likely to include multiple service providers, as a single service provider can rarely meet all needs. Coordination is therefore essential to ensure continuity of service and a holistic approach to addressing needs. Effective coordination reduces service duplication and fragmentation and can identify gaps in service delivery. The role of the case manager is to foster, maintain and strengthen collaborative partnerships between multiple parts of the service delivery system.

Referral mechanisms are one way of facilitating coordination. They may be established at various levels: municipal, subnational, national, regional or international. Referral mechanisms typically identify the population of concern to them and the participating service providers; they specify the services they provide, the protection and assistance principles, standards and/or processes they apply, and the methods of coordination and cooperation between service providers.

The case manager is typically the main point of contact and information for the vulnerable migrant; if it is more suitable for another service provider to take on case management tasks, this should be agreed by all parties. Inter-organizational agreements, such as memoranda of understanding, can be useful for handling large caseloads or individual cases. They should outline the roles and responsibilities of each organization involved, including the resources it will provide. They are frequently signed within the framework of a broader referral mechanism.

Coordination is particularly important when a vulnerable migrant is transitioning into or out of a service and additional support may be required from the case manager.

Monitoring of service delivery

Depending on the assistance plan, case managers should monitor the services vulnerable migrants are accessing and their satisfaction with them. The monitoring should be regular and involve measurement against quantitative or qualitative outcome indicators. If the monitoring indicates the need for changes to the assistance plan, such changes should be made through regular communication with the vulnerable migrant, information-sharing with the service providers and ongoing assessments.

While it is not the responsibility of the case manager to oversee the quality of services delivered, there may be opportunities for advocacy on behalf of the vulnerable migrant for service improvement or tailoring for better outcomes.

Independent or third-party monitoring systems may exist to support accountability, particularly if vulnerable migrants are accessing case management or other services provided by State agencies.

Record-keeping

Details on the support provided by the case manager should be documented in a timely, accurate and secure manner. The records should include the contact details of all those involved, information on assessments, the assistance plan, information on the plan's monitoring, outcomes of communications with the vulnerable migrant and service providers involved in the assistance plan, feedback from the vulnerable migrant, and any other pertinent information.

Protocols should be drawn up stipulating who has access to records, including the vulnerable migrant. Records are subject to the principles of confidentiality, privacy and data protection.

Evaluation of case management and reporting misconduct

Case managers and their organization should solicit feedback from migrants on the support they receive from the case manager in a manner that allows for honest and open feedback that can be used to improve the provision of case management services. Feedback can be solicited in questionnaires, comment boxes, online forms, focus group discussions, formal consultations, or conversations between the migrant and the case manager or supervisor.

Migrant feedback on case management should be incorporated into the support they receive and the case manager, communication frequency or type, or support provided changed accordingly and as feasible.

Vulnerable migrants should be aware of the principles of case management and any standards or codes of conduct for case managers. Case managers suspected of unprofessional conduct or of flouting the principles of assistance should be investigated and disciplinary action taken in accordance with local laws, licencing boards and the child protection policies of the organization concerned.

Systems must be in place for vulnerable migrants to report misconduct by case managers, including sexual exploitation and abuse, anonymously and confidentially, so as not to affect their care and support. Reports must be investigated and the findings communicated back to the vulnerable migrant, where possible.

Advocacy on behalf of vulnerable migrants

One of the key roles of case managers is to advocate on behalf of vulnerable migrants for fulfilment of their rights, consideration of their opinions, respect for their decisions, acknowledgement of their capabilities and satisfaction of their needs. Case managers will often advocate for vulnerable migrants to have access to resources, support and services. This can take many forms, but most often includes advocating for the following:

- Establishment or refinement of referral mechanisms for vulnerable migrants;
- Establishment of services specifically for vulnerable migrants;
- Integration of vulnerable migrants into existing services (also known as mainstreaming);
- Improved quality of available services;
- Adaptation of services to improve outcomes for vulnerable migrants.

Where vulnerable migrants' human rights have been or are being violated, in addition to advocacy, case managers should make appropriate referrals to institutions with a protection mandate, including national human rights institutions and ombudspersons, and to legal advice, representation and aid.

Case managers should also strive to improve the capacity of vulnerable migrants to advocate for themselves, including to articulate their needs, priorities, strengths and challenges.

Closure of case upon programme exit, transition or completion

Case management may be terminated because the support has ended, the migrants no longer meet the criteria for case management support, they choose to stop receiving support, or they leave the area.

Before closing a case, the assistance plan should be reviewed to determine if needs were met and to identify any unmet or emerging needs. This should be done, wherever possible, with the participation of the vulnerable migrant.

The case manager should prepare the vulnerable migrant, as best as possible, for any transition, and coordinate with other service providers to ensure all necessary steps are taken. Where possible, referrals should be made to other organizations if continued case manager support would be beneficial.

Training, skills and qualifications

Case managers should have training and qualifications in social work or a related field and be skilled at engaging and supporting vulnerable people. They should follow the principles of assistance outlined on page 26 and abide by applicable laws, regulations and standards. They should be licenced or belong to relevant professional associations, where they exist.

Case managers should have knowledge about human behaviour, growth and development, and about cognitive, physiological and psychological processes and well-being at various stages of life. Understanding of behavioural health is important, including coping patterns, emotional resilience, and physical and mental health and well-being.

Case managers should be self-aware and recognize their own cultural, religious and philosophical beliefs and biases. They should appreciate the systemic or institutional power differences between themselves and the vulnerable migrants accessing their support, and should maintain professional boundaries at all times. Case managers should discourage personal or dependent relationships from forming between themselves and vulnerable migrants receiving their support, and instead support healthy relationships between the migrants and their families and community.

Working with vulnerable migrants requires specialized knowledge and training, including, in some cases, language skills, cultural knowledge, or previous experience working with migrant populations. Case managers should be knowledgeable about global and local migration trends, forced migration, international and local human rights, refugee and asylum laws and processes, and the impact of migration on vulnerability.

Case managers working with children, older people, survivors of torture or gender-based violence, trafficked persons, persons with disabilities, or other groups that may have unique needs or be particularly vulnerable, should have specialized training and expertise.

Importantly, case managers should be trained to recognize signs of trauma, abuse, neglect and exploitation, and be familiar with any reporting or referrals required in those cases.

Trauma-informed care

Because vulnerable migrants may have experienced traumatic events or situations, all service providers should aim to provide trauma-informed care. Traumatic events, by clinical definition, often involve a sudden threat to life or physical integrity. Like other stressors, they affect people in different ways and what may be traumatic for one person may not be traumatic for another. Traumatic events can – but do not necessarily – result in distrust, anxiety, fear, reluctance to engage with services, and rejection of diagnoses, advice and treatment. They can influence the way that vulnerable migrants interact with service providers.

Case managers should be competent operating in situations of interdisciplinary collaboration, including, where appropriate, with law enforcement and immigration officials, and understand the interactive nature and interdependence of the system within which they work. They should always adopt the client- or migrant-centred approach and be able to adapt their style and approach to best meet their clients' needs.

Skills important to effective case management include the capacity to work with people of diverse backgrounds with complex needs, the ability to clearly communicate and adapt communication styles to various audiences, an aptitude for building trust with clients, critical thinking and problem-solving.

Sufficient resources, including additional professional training and access to available and emerging research and evidence, should be made available to case managers to allow them to carry out their role and responsibilities.

Case manager supervision

Case managers require supervision and safeguards to do their work, including to identify and address ethical dilemmas, ensure professional boundaries are maintained, and prevent compassion fatigue, burnout, vicarious trauma and professional grief. Effective supervision and oversight will also ensure continuity of care if the case manager changes.

Employers should ensure they fulfil their duty of care for the well-being of case managers and take all reasonable steps to protect their health, safety and well-being; recognize the risks they face as case managers for vulnerable migrants; and put in place mitigation strategies and adequate risk monitoring systems.

It is also important to supervise case managers so as to provide technical backstopping to safeguard vulnerable migrants, ensure that support is provided in line with the principles of assistance (see page 26) and make certain that there are no risks introduced or harm done by the case manager. Organizations should have policies setting boundaries for safe and acceptable behaviour by case managers and the level of support they provide. Such policies should include appropriate safeguards to prevent abuse of power and authority, exploitation and violence, including policies and procedures regarding child safety, sexual exploitation and abuse.

The case manager's workload should be assessed by the supervisor. Ideally, the number of clients per case manager should reflect the complexity and resources required and be balanced, to prevent overwork and lower-quality support.

Case management delivery models

Case management delivery models should be fit for purpose and acceptable to the vulnerable migrant accessing support.

The model selected will be determined by the safety and security of vulnerable migrants and case managers, the preferences of vulnerable migrants, the size and scope of the organization providing case management, the available resources, and the possibilities for physical access and proximity to target populations.

Individual case managers can be assigned to vulnerable migrants and/or their families on a one-to-one basis. This model can be useful for building trust and rapport between a case manager and a vulnerable migrant and/or the family. It is also resource intensive, however, and can limit the vulnerable migrant's access to the case manager.

If it is more appropriate and would improve support, a team of case managers may share duties and responsibilities. This allows for continuity of care and more points of access for vulnerable migrants, but may require additional coordination and affect the relationship between case manager and vulnerable migrant.

Case managers can be based in vulnerable migrants' communities. This model is often referred to as community-based care; it allows for more direct access to the target population and enhanced knowledge of available services. Case managers can be permanently based in the community or be co-located with other available services and resources on a part-time basis. This can make it easier for vulnerable migrants to meet with case managers and remove barriers such as transportation and costs involved in accessing support.

Outreach models may be useful when populations might not wish to be identified and potentially stigmatized by going to a recognizable centre or office. With an outreach model, case managers can visit vulnerable migrants in their place of residence, temporary accommodation or detention facility, or in a convenient location in the vulnerable migrant's community.

A mobile service delivery model may be best when migrants vulnerable to violence, exploitation and abuse are in insecure or remote locations or where the case manager does not have an office or resource centre in the

community. It may be useful when vulnerable migrants' locations are changing and dynamic or for informal or spontaneous settlements of migrants. Mobile models can comprise multiple services, such as health, nutrition and child protection, or a single service (for example, periodic and, ideally, regular visits by the case manager).

Case managers can be based in resource centres where information is shared about various services and where multiple organizations can be co-located for convenience and to remove barriers to access. This is usually best for semi-permanent settlements of migrants or along a known migratory pathway. Resource centres or similar centralized service delivery models may not be appropriate where there is fear and stigma attached to accessing resources or being identified as an irregular migrant.

Remote case management, where support and information is provided via telephone or Internet communications, may be useful where vulnerable migrants are on the move, crossing international borders, or cannot or do not want to access support face-to-face with a case manager.

Case management in transit situations, in which migrants temporarily access support, including temporary shelter, tends to be an abbreviated form of case management focusing on immediate and urgent needs. It should take account of the unique needs and wishes of migrants in transit situations, including those who do not wish to be identified or formally registered in assistance programmes.

Multiple models of case management may be combined to provide the best support and assistance possible in the context, based on the needs and wishes of the target population. Wherever possible, the model should be decided with input from and the agreement of the vulnerable migrant.

Case management when services are unavailable

In some situations, no services will be available, or those that are will not be appropriate or accessible for vulnerable migrants or will not meet all identified needs. In these cases, the case manager still has an important role to play.

As the main point of contact, case managers provide direct support to vulnerable migrants and, in some cases, psychological first aid (for more information on psychological first aid, see page 60). They can sometimes meet immediate and urgent needs. Involvement in any service, including case management, provides a degree of protection and assistance to vulnerable migrants.

When there is a gap in the services required, case managers can advocate for the establishment of suitable services or the inclusion of vulnerable migrants in what services there are, if this would be appropriate, not exacerbate the migrants' vulnerability and not introduce risks to or harm the wider population accessing the service. For example, it may be possible for a trafficked woman to access a shelter for women who have experienced intimate partner violence.

When there are no available services, case managers can facilitate a safety planning exercise with vulnerable migrants. This involves working together to identify the risks vulnerable migrants face; it also involves developing mitigation strategies to avoid or reduce risks, and coping strategies in the event that a risk materializes. Where there are emergency services, for instance law enforcement and emergency health care, and they do not pose a risk to the vulnerable migrant, information on how to access them should be provided.

Where needs cannot be met, or are urgent, other options for assistance should be considered, including relocation to other areas where services are available.

Case management in detention

Case managers are sometimes called on to provide support to vulnerable migrants who have been detained by local authorities in connection with their immigration status, criminal activity, or deportation or removal order. In such situations, case managers should strive to uphold the migrant-centred approach, but the fact that the migrant does not have freedom of movement will inevitably be a challenge.

Case managers should map the services available specifically for detained vulnerable migrants, advocate for protection of their rights while detained and for their release or alternatives to detention if appropriate, coordinate with others

working in detention facilities, and help develop a release and (re)integration plan. Where detention monitoring programmes exist, the case manager should coordinate with them and support monitoring efforts as appropriate.

It is useful for case managers working with detained migrants to receive additional training, including on the applicable legal frameworks, the availability of protection and assistance for detainees, and the processes and procedures associated with the detention system. Case managers should understand the international human rights standards applicable in detention and when migrants return to their country of origin, including through repatriation or deportation, and how to refer detainees for professional legal advice, representation and aid, and to national human rights institutions or other protection entities specializing in migrant detention.

It is important for case managers working with detained vulnerable migrants to understand the impact that detention can have on an individual, families and communities, and to carry out regular assessments to determine if additional support or services are required.

Detention and alternatives to detention

In the course of managing migration and the use of detention, States should ensure respect for international standards and human rights law.

Immigration detention is the restriction of freedom of movement through confinement that is ordered by an administrative or judicial authority for reasons relating to a person's migration status. It can include detention in existing prisons or purpose-built immigration detention facilities such as closed reception or holding centres. Migrants can be detained at land and sea borders, in "international zones" at airports, on islands, on boats, in camp settings, within a residence, and even extraterritorially.

The grounds for detention vary considerably across countries. States often resort to deprivation of liberty in order to identify migrants and determine their nationalities, prevent individuals from gaining unauthorized entry into the country, expel an individual or enforce a deportation order. Some countries of transit detain migrants to prevent them from leaving the country irregularly.

Migrants should nevertheless only be detained as a measure of last resort, when necessary, and only when other, less restrictive alternatives are found to be inadequate to meet legitimate purposes. The necessity and proportionality of detention must be evaluated for each individual case, and detention must occur in accordance with applicable laws, following due process and without discrimination.

Immigration detention should not be discriminatory. It should not, for example, be used only in respect of migrants from a certain country or ethnic group. Detention must not be arbitrary, and the decision to detain a migrant should be based on an assessment of the migrant's individual circumstances. Indefinite detention is to be considered arbitrary and maximum limits of detention should be established in law. Immigration detention facilities must be humane, dignified and subject to independent monitoring and inspection. They must satisfy international standards and local regulations on the provision of food, water, sanitation, hygiene and safety.

Migrant children should not be held in detention under any circumstances. When a child's parents or adult family members are held in detention and a migrant child's best interests include keeping the family together, alternatives to detention must be found for the entire family. Migrant women who are pregnant or breastfeeding should not be detained.

States should identify and utilize less restrictive options where possible. Alternatives to detention are any law, policy or practice by which persons are not detained for reasons relating to their migration status and can include living arrangements with conditional liberty, such as regular reporting or bail, use of monitoring devices or monitoring officers, or registration with local authorities. Effective alternatives to detention use engagement and support mechanisms to ensure vulnerable migrants are able to resolve their migration situation without detention or conditions on their freedom and liberty.

Challenges to case management for vulnerable migrants

Providing case management for migrants vulnerable to violence, exploitation and abuse presents various challenges. Vulnerable migrants may be on the move and access protection or assistance at various stages of their journey; they may be in contact with a case manager for only a short period of time or intermittently. Case managers and other service providers may not have sufficient time to build relationships of trust and may find they provide more short-term or emergency support. Vulnerable migrants moving between jurisdictions will require handovers between case management systems, where they exist, and may need additional support to ensure continued service delivery or planning for onward journeys.

Migrants may be fearful for their safety and well-being, or that of their families, in their country or community of origin, which could mean they are less likely to access services through a case manager for fear of being identified, returned or detained, or that relatives or friends will suffer as a result.

Distressing events occurring before departure or on the journey may leave migrants less able to develop trusting relationships with case managers or with less interest in or ability to regularly access available services or benefit from case management. There may be stigma attached to utilizing the services of organizations providing case management services.

The concept of case management may be unfamiliar to vulnerable migrants, perhaps because they have not needed to access such support in the past or because a case management system was not available to them in their previous location(s). These and other cultural differences may affect the delivery of case management and, along with language differences, may make it more difficult to provide case management to vulnerable migrants.

Vulnerable irregular migrants may not wish to come into contact with authorities or certain service providers. Aspirations they may have for return, integration, relocation or support to continue their journey may not be possible or legal in certain contexts.

In jurisdictions where it is mandatory to report or register irregular migrants or those with specific characteristics, vulnerable migrants may not wish to avail themselves of case management or other services without assurances that suitable protections are in place. Case managers may face ethical dilemmas if they feel that the best interests of their client are at odds with mandatory reporting regimes.

Case management for migrants vulnerable to violence, exploitation or abuse, particularly when their immigration status is irregular or undetermined, may give rise to conflicts of interest or differing objectives between case management systems, including between State systems and non-governmental systems. It may not be possible to resolve these conflicts, but case managers should evaluate any competing interests and coordinate and collaborate to the degree possible to serve the vulnerable migrant's best interests.

Shelter and accommodation

The right to an adequate standard of living includes the right to housing and is articulated in Article 11 of the International Covenant on Economic, Social and Cultural Rights and in Article 25 of the Universal Declaration of Human Rights, which states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care...".

A number of other international legal instruments also articulate the right to shelter and accommodation, including:

- Article 21 of the 1951 Refugee Convention;
- Article 5.2 of the ILO Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117);
- Article 6(e)(iii) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination;
- Article 17 of the 1966 International Covenant on Civil and Political Rights;
- Articles 14(2) and 15(2) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women;
- Articles 16(1) and 27(3) of the 1989 Convention on the Rights of the Child;
- Articles 14, 16 and 17 of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169);
- Article 43(1)(d) of the 1990 Migrant Workers Convention;

- Articles 9 and 28 of the 2006 Convention on the Rights of Persons with Disabilities;
- Article 6(a) of the 2000 Trafficking in Persons Protocol, supplementing the United Nations Convention against Transnational Organized Crime, which refers to appropriate housing.

The Committee on Economic, Social and Cultural Rights has determined that the right to adequate housing should not be interpreted narrowly and should be seen as the right to live somewhere in security, peace and dignity.¹⁵

Needs for shelter and accommodation may be time-bound and emerge from a single incident, from unmet needs, including along a migration journey, or from prolonged exposure to violence, exploitation or abuse. They can be met in a variety of ways, depending on the situation and context within which the vulnerable migrant requires support and services.

Short-term or emergency shelter, or longer-term accommodation, can be provided by government agencies, United Nations agencies, international organizations, NGOs, family or community networks, or private companies or individuals through hosting or rental accommodation. The style and type of shelter or accommodation available will depend on the context, local building practices and preferences, available materials and labour, available housing stock, and administrative or social restrictions on where vulnerable migrants can live.

Vulnerable migrants' needs and the shelter and accommodation options at hand should be assessed to determine the most appropriate type of shelter or accommodation. Consideration should be given to age, gender, sexual orientation, gender identity, family size, disabilities, safety and security, capacity and desire to live independently, and the sustainability of options.

Temporary settlements

Temporary settlements are often camp or camp-like settings of communal or concentrated populations, which may be planned or spring up spontaneously. They may be constructed with materials such as tarps, plastic sheeting or tents, or consist of specially constructed or pre-existing buildings. Temporary settlements can be formally recognized by relevant authorities or be informal and run by community groups, religious organizations or the migrants themselves.

Types of temporary settlement	
Planned camps	Planned camps can be situated in either urban or rural locations and are purpose-built sites where services such as water, food, education and health care can be provided to the population residing in the camp.
Self-settled camps	Groups of migrants may self-settle in urban or rural sites, in camps that often spring up on State-owned, private or communal land. This may occur with or without negotiations with the local population or private owners over use and access.
Collective centres	When there are significant numbers of migrants in a particular place, the migrants may find accommodation in pre-existing public buildings or community facilities, such as schools, factories, barracks, community centres, town halls, gymnasiums, hotels, warehouses or unfinished buildings. These are often located in urban settings.
Reception and transit centres	Reception and transit centres are often used by migrants on arrival in a new location, pending transfer to longer-term shelter or accommodation, or before departure from a location.
Emergency evacuation centres	Emergency evacuation centres may be established to provide appropriate temporary shelter for persons fleeing a specific and immediate threat, such as an armed conflict or a natural hazard. Pre-existing buildings, including government buildings, are often used for this purpose. Where possible, emergency evacuation centres should be prepared and planned for in advance of disasters.

Table 2.1: Types of temporary settlement¹⁶

¹⁵ The characteristics of the right to adequate housing are set out in the Committee's General Comments No. 4 (1991), on the right to adequate housing, and No. 7 (1997), on forced evictions.

¹⁶ Table adapted from the Camp Management Toolkit (Camp Coordination and Camp Management Cluster, 2015), see <http://www.globalccmcluster.org/tools-and-guidance/publications/camp-management-toolkit-2015>.

Forms of camp-based shelter emerge when it is necessary to ensure that protection and life-saving assistance can be made available to migrants in a centralized manner, often when possibilities for land use and settlement are limited and migrants are subject to restricted freedom of movement. UNHCR and the Global Camp Coordination and Camp Management Cluster have found that camps have long-term negative consequences: they create dependencies while weakening the ability of refugees to manage their lives, plan their future and make autonomous decisions.¹⁷ Camps can also distort local economies and planning, have a negative environmental impact, and introduce protection risks, including rising risks of trafficking and gender-based violence.

However, where camps exist because they are needed or have been spontaneously settled, the standards set out for camp-based shelters in humanitarian contexts, such as those outlined in The Sphere Project's Minimum Standards in Humanitarian Response, should be followed. Wherever possible, more sustainable, non-camp-based shelter solutions should be sought for vulnerable migrants and alternatives to camp-based settlements should be advocated for with relevant authorities. Camps should not become de facto detention facilities that deny the resident migrants freedom of movement.

Institutional shelters

Institutional shelters are those run by State agencies, United Nations agencies, international organizations or NGOs. They do not include detention facilities. They typically house multiple people and are used in situations where shelter is needed immediately or in an emergency. Institutional shelters should be considered as a last resort for vulnerable migrants, but may be the best or only option in certain circumstances.

Instances when institutional shelters may be the best available option include the following:

- Migrants vulnerable to violence, exploitation or abuse would feel more comfortable in a location with robust security systems;
- Vulnerable migrants' irregular immigration status makes them ineligible for rental accommodation or existing social housing programmes;
- Vulnerable migrants cannot afford the market price of rental accommodation or landlords intentionally raise rents or are known to extort money from migrants;
- Vulnerable migrants require immediate emergency shelter, because they have recently arrived or have fled or been rescued from dangerous living or transportation conditions;
- Shelter is expected to be required only temporarily.

All institutional shelter should be provided in accordance with local regulations and laws governing health and safety, together with any necessary registration or licencing for the provision of shelter or accommodation for vulnerable populations, including all newly constructed shelters or accommodation. All institutional shelters should be fitted with fire safety apparatus, including smoke detectors and fire extinguishers, all safety equipment should be regularly tested, and safety information, including evacuation routes and muster points, should be signposted in relevant languages.

In some cases, it may be necessary to advocate for the inclusion of undocumented or irregular migrants and their fair treatment, or for amendments to the intake criteria for shelter programmes. Existing shelters that may be accessible to vulnerable migrants can include those for the homeless, victims of intimate partner violence, unaccompanied children or trafficked persons; if these types of shelter are to be used by vulnerable migrants, their suitability, accessibility and security should be assessed.

Where institutional shelters will be used for vulnerable migrants, the following should be provided:

- Private sleeping quarters for residents, with their own beds, and with sufficient and secure space to store their belongings;
- Where private sleeping quarters are not possible – for instance in an emergency setting where shelter needs to be found quickly and existing spaces are adapted to house vulnerable migrants in a dorm-like setting – families should be grouped together, spaces provided for specific groups such as women or the elderly, and more suitable

¹⁷ UNHCR *Policy on Alternatives to Camps* (UNHCR, 2014). Available at: <http://www.unhcr.org/protection/statelessness/5422b8f09/unhcr-policy-alternatives-camps.html>.

options pursued immediately (in shelters of this kind, it may be difficult to preserve the dignity of residents, protect their safety and prevent health problems; they should therefore be avoided except in circumstances when emergency shelter is required or used as transitional accommodation for short periods of time);

- Private, locking toilet facilities in sufficient numbers for the maximum number of residents, separated by sex;
- Private, locking washing and bathing facilities in sufficient numbers for the maximum number of residents, separated by sex;
- Common areas for social engagement and recreational activities;
- Regular meals and/or space and equipment for residents to prepare their own food;
- Access to communication equipment, such as telephones or Internet-enabled computers;
- Private space for meetings, phone calls and other communication between shelter staff or other service providers and shelter residents;
- Laundry facilities;
- Regular maintenance of shelter premises and equipment, including furniture, communications equipment and appliances;
- Regular waste collection and disposal systems;
- A system for shelter residents to provide feedback and request repairs and maintenance of the building, appliances, furniture and equipment;
- A system for shelter residents to submit complaints and report concerns relating to other residents and staff that are followed up by the shelter provider in a timely and responsive manner.

Institutional shelters should not be identifiable to the public. In order to enhance the safety and security of residents, they should not, for instance, be designated by external signs or listed as shelters in public directories. Shelters for those fleeing intimate partner violence or trafficked persons are often unidentifiable. Where security is a concern, all those working in the shelter, including any external contractors hired to carry out maintenance or repairs, and the residents themselves should protect the confidential nature of information about the shelter, including its physical location, and its residents.

Measures to protect the shelter or accommodation from intruders may include lighting, fences, cameras or guards, but they should be weighed against the risk that they may help identify the building's purpose or its residents, make it conspicuous or compromise the residents' privacy.

The safety and security of all those residing in the shelter is the responsibility of the shelter provider and should include measures to monitor and address any violence, exploitation or abuse by shelter residents against other residents or staff.

Vulnerable migrants residing in a shelter may participate in the shelter's maintenance and upkeep, so long as their duties and activities are appropriate for their ages and abilities, and are in line with local regulations and laws. It is the ultimate responsibility of shelter providers, however, to ensure all standards are met.

Any shelter provided should be safe and secure for both the vulnerable migrants and any staff members working there, and should be made as comfortable as possible. All shelters and accommodation should be maintained in good repair and comply with local health, safety, fire, electricity and building codes and standards.

All shelters and accommodation used for vulnerable migrants should be assessed from the point of view of safety and security, and mitigation strategies developed to address any risks. Security assessments should consider potential risks relating to the type of individual using the shelter; for instance, shelters for trafficked persons or those experiencing intimate partner violence may be targeted by traffickers or estranged partners and require specific protection and security measures.

Semi-independent and independent living

Where possible and considered safe, vulnerable migrants should be helped to secure semi-independent or independent accommodation, especially when they transition out of institutional or temporary shelter arrangements. Living in semi-independent or independent accommodation supports, facilitates, and maintains self-reliance, autonomy and dignity.

Semi-independent living can include living in shared or group accommodation, such as residential care with live-in support workers, and is typically in a home-like setting. Forms of semi-independent living include group homes or shared rental accommodation, where some support and/or supervision is provided in the living space.

Independent living can include private rental accommodation, hotels, guesthouses or hostels, living with family, friends or members of the community, or private housing funded by the State, United Nations agencies, international organizations, NGOs, or civil society or faith-based organizations. Vulnerable migrants may make their own independent living arrangements or may require support to do so. In some instances, they may have access to government-funded social housing programmes. These can be semi-independent or independent, and vulnerable migrants may require support to apply.

All semi-independent and independent accommodation should comply with relevant local regulations and laws, including tenancy laws, health and safety regulations, and building codes. All types of semi-independent or independent shelter and accommodation should be fitted with regularly tested fire safety equipment, including smoke detectors and fire extinguishers, and safety information, including evacuation routes and muster points, should be signposted.

Where vulnerable migrants are accessing private accommodation provided by a landlord, they may require support from a case manager to ensure that the rent they are charged is fair according to the market, that all regulations and standards are met with regard to the premises provided, and that the nature of the rental contract is non-discriminatory and not exploitative or extortionate. It may be beneficial for a case manager to advocate on behalf of the vulnerable migrant with potential landlords, to address any reluctance to rent to vulnerable migrants based on discrimination or prejudice, and to prevent any unlawful evictions and ensure appropriate redress if they do occur.

Shelter and accommodation considerations for children, families and vulnerable adults

With regard to children and families, every effort should be made to preserve family units, including sibling groups. Where this is not possible, children should be housed in accommodation appropriate for their age and maturity. Foster families or alternatives to institutional care should be pursued as a priority, but if institutional shelter is the only or best option, the shelter should have staff with specialist training and programming should be age appropriate and designed to meet the needs of migrant children.

Persons living with disabilities and older persons with limited mobility or cognition may require specially adapted shelter and accommodation. Wherever possible, shelter options should incorporate the concepts of universal design, which is the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design, to allow people of all abilities to live comfortably and safely.

Water, sanitation and hygiene

While the International Covenant on Economic, Social and Cultural Rights does not explicitly refer to the right to water, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 15, on the right to water, defined the right of everyone “to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” and deemed the right to water to be part of the right to an adequate standard of living, along with the rights to adequate food, housing and clothing.

In any type of shelter or accommodation, water should be made available in sufficient quantities for drinking, cooking, cleaning and personal hygiene. Water provided for drinking should be clean and may require testing by relevant authorities to ensure it is safe to drink. If this is not possible, other sources of drinking water should be procured, including trucked and stored or bottled water, or a filtration or other water-cleaning system installed.

Where vulnerable migrants are residing in a shelter, the shelter provider should ensure water is provided in line with local health regulations and international standards.

Any water points used by vulnerable migrants should not be prohibitively far to travel to and should be in a safe location. Any queues should be monitored so as not to create risks to vulnerable migrants' health or safety.

The shelter provider should make available appropriate and sufficient toilet and washing facilities that are separated by sex if in a communal shelter or camp-based setting, provide privacy, respect and dignity, and are safe and secure for those using them. The facilities should be clean and waste managed in a safe and timely manner. Any communal toilet and bathing facilities used by vulnerable migrants should also be easily accessible, located in well-lit areas, and planned in consultation with those accessing them.

Vulnerable migrants should be able to choose from a selection of personal hygiene products and clothing that are age, gender, weather and culturally appropriate. Detergent should be provided as well. Personal hygiene items may include soap, razors, towels, toothpaste and toothbrushes; they should be provided in sufficient quantities and be appropriate to the type of shelter or accommodation. Menstruating women should be provided with appropriate and sufficient hygiene materials and suitable processes should be put in place to dispose of or launder such materials. Differing customs on how women and girls manage menstruation should be respected and female vulnerable migrants should be consulted on their preferences.

Where vulnerable migrants are living independently, the case manager should ensure that safe drinking water and sanitation are available and accessible and, if they are not, advocate on behalf of vulnerable migrants to ensure their water and sanitation needs are met and standards are respected.

Waste management systems should be in place at any premises where vulnerable migrants are staying, including appropriate methods for disposing of human waste in a safe and dignified manner.

Household waste should be collected and disposed of regularly and any hazardous waste separated and treated so as not to introduce health or environmental risks.

Food and nutrition

The right to live free of hunger is set out in Article 11(2) of the International Covenant on Economic, Social and Cultural Rights. In addition, in its General Comment No. 12, the Committee on Economic, Social and Cultural Rights declared that the right to food should not be interpreted in a narrow or restrictive sense and is realized when everyone has physical and economic access at all times to adequate food or means for its procurement.

Food can be furnished by the organization providing emergency or longer-term shelter, particularly in camp-based or institutional settings. The food should be appropriate, meet nutritional requirements, and respect any dietary restrictions based, for instance, on religion or health. Vulnerable migrants should be consulted on available food options and be able to choose the types and quantities of food they receive.

Some vulnerable migrants may have experienced malnourishment before migrating, during the journey or in their current location. Special attention should be paid to children, pregnant and breastfeeding women, and older persons, on whose health and well-being insufficient nutrition can have lasting and detrimental effects. The unique needs of vulnerable migrants experiencing malnutrition should be considered and trained health-care practitioners should be involved in designing a treatment plan to address deficiencies and malnutrition. If therapeutic interventions are required, they should be provided by specialists with the relevant expertise and following appropriate nutritional assessments.

Stress and trauma can have an impact on appetite and vulnerable migrants may find their appetites increase or decrease in the short or long term following a distressing event or experience. Eating disorders can occur or be exacerbated by trauma, and treatment should be offered by health-care practitioners with the requisite expertise. Individuals with pre-existing mental health problems may be more at risk of poor nutrition and require specialist care.

Where vulnerable migrants are responsible for procuring their own food, they may benefit from additional support to understand local markets and purchasing systems and/or how to prepare locally available food. Vulnerable migrants receiving cash or vouchers may need information on how to obtain food and cooking equipment. For more information on cash-based programming, see page 70.

Personal safety and security

In many cases, vulnerable migrants face considerable risks to their safety and security. These risks are often linked to the situation that has contributed to their vulnerability, including involvement with unscrupulous migrant smugglers or traffickers, unsafe means of transportation or border crossings, or involvement in criminal cases against smugglers or traffickers. Risks can include threats and intimidation, harassment, discrimination, violence and abuse. They can be faced by vulnerable migrants or, in some cases, their families and community members.

The duty of care to those in receipt of assistance and staff involved in delivery thereof falls to the organization providing the service or support and, ultimately, to the State. Its discharge means identifying safety and security risks and, wherever possible, taking appropriate measures to ensure the risks are mitigated. Assistance is most effectively provided when risks are effectively managed.

Contextual security assessments

A contextual security assessment is a general overview of the risks and threats to personal safety and security in a specific location. During a contextual security assessment, the risks typically faced by vulnerable migrants should be identified and analysed, and the findings used to inform the design and delivery of protection and assistance. Contextual security assessments should also identify and analyse risks to the organization, its staff and others involved in providing assistance to vulnerable migrants.

A contextual security assessment can be conducted by any organization providing assistance to vulnerable migrants and is a useful means of ensuring that services are appropriate and effective. Security professionals or those with relevant expertise should be involved in security assessments.

Information on the following trends and patterns can be included in a contextual security assessment, which should be tailored in the light of local and current knowledge and expertise:

- Estimated numbers of migrants in the country or region;
- Routes used by migrants;
- Types of transportation used by migrants;
- Trends and patterns of trafficking in the country or region;
- Trends and patterns of smuggling in the country or region;
- Trends and patterns of crime and criminal activities;
- Involvement of organized criminal groups in migratory pathways or in facilitating movements of migrants;
- Prevalence of criminal activities such as kidnapping, ransom and extortion;
- Scope and scale of all types of gender-based violence;
- Presence of health risks, including communicable diseases;
- The legal framework in the country or region regarding refugees, migrants, trafficking, smuggling and irregular migration;
- Armed conflicts in the country or region of origin or transit of vulnerable migrants and in the current location;
- Risks of natural or human-induced hazards in the country or region of origin or transit of vulnerable migrants and in the current location;
- Law enforcement training, knowledge and practice in the country or region of origin or transit of vulnerable migrants and in the current location.

Service providers without the capacity or resources to conduct a thorough contextual security assessment may consider working with other organizations, including law enforcement agencies, United Nations agencies, international organizations, NGOs, embassies or consulates to develop a comprehensive security assessment.

Many of the factors analysed in a contextual security assessment are dynamic, and any risks identified must therefore be continuously reviewed. This should also be done after any event or change that would have an impact on the risks identified and security profile.

Examples of events or changes that warrant a review of a contextual security assessment include:

- A sudden influx of migrants;
- Seasonable changes in migration;
- Seasonable changes in weather-related hazards along a migratory route;
- A sudden-onset natural or human-induced disaster;
- An outbreak or flare-up of conflict along a migratory route;
- Changes in government policy affecting the status of vulnerable migrants in the country or region of origin or transit or in the current location;
- Law enforcement campaigns against human traffickers or migrant smugglers;
- Increased media coverage of migrants or migration;
- Health-related crises such as outbreaks of disease.

In some contexts, working with vulnerable migrants can pose risks to service provider staff, contractors and volunteers, owing to the nature of their work or the context in which they are operating. If that is the case, it is the service provider's responsibility to assess the risks and take effective security measures.

Likewise, those providing services to vulnerable irregular migrants may face risks above and beyond funding constraints. If that is the case, it may be useful for service providers to assess the risks and take mitigating action to ensure that they can continue to provide services to vulnerable migrants.

Individual security assessments

Case managers should periodically assess the risks to a vulnerable migrant's security, safety and well-being. In some cases, the case manager's assessment will suffice. Others require additional knowledge and expertise, and – if the vulnerable migrant consents – a specialist organization may be involved in the assessment and planning. Depending on the context and suitability, these specialist organizations can be law enforcement agencies or coordinating bodies, embassies or consulates, United Nations agencies, international organizations or NGOs.

If the individual security assessment identifies protection risks and relevant protection services are available, referrals should be made to specialist organizations for enhanced protection.

Information to assess risks to security can be collected through interviews and interaction with vulnerable migrants and service providers, by analysing available information related to safety and security (e.g. police data, crime statistics, or logs of security-related incidents kept by community members, NGOs or others), and from security providers.

Individual security assessments should include a holistic analysis of a vulnerable migrant's well-being, and risks to safety and security should be weighed alongside other factors that can augment or lower the migrant's resilience to vulnerability factors. For instance, an appropriate response to threats in the community may not be to avoid or prohibit leaving the shelter or accommodation, but to develop coping strategies such as using the safest transportation available, going out in small groups or at times of day where risks are lowest, or having a reliable method of communication accessible at all times.

The following list of risks that can be covered in an individual security assessment is not exhaustive and should be adapted to each situation.

- Immigration or other legal status
 - Do the vulnerable migrants have an irregular immigration or other legal status that would place them at risk of harassment, intimidation, detention or arrest?
- Shelter or accommodation¹⁸
 - Are the security systems and procedures at the shelter or accommodation sufficient and appropriate?
 - Are migrants discriminated against when accessing or using available shelter options?
 - Are there any physical hazards in or around the premises?
 - Does the shelter or accommodation provider abide by all local regulations and laws?
 - Is a specialized shelter or accommodation identifiable by signage, listed address or other features?
 - Do those known or thought to be connected to a migrant's vulnerability know where the shelter or accommodation is located?

¹⁸ For more information on shelter and accommodation, see page 38.

- Communications
 - Are the devices used by the vulnerable migrant secure?
 - Are there language barriers that present risks to the vulnerable migrant?
 - Do translators and interpreters abide by the principles of assistance to vulnerable migrants (as outlined on page 26)?
 - Are translators or interpreters acceptable to the vulnerable migrant?
 - Does the vulnerable migrant have the possibility to communicate regularly with family and friends?
 - Are there private places for communication of a sensitive nature?
 - Is the vulnerable migrant in contact with those known or thought to be connected to his/her vulnerability?
- Finances and banking
 - Is the vulnerable migrant's money kept in a safe and secure place?
 - Does the vulnerable migrant have regular access to his/her money?
 - Does the vulnerable migrant have access to credit?
 - Does the vulnerable migrant have any outstanding debts?
- Physical security
 - Does the vulnerable migrant have any identifiable characteristics that would make him/her a target for violence, harassment or discrimination?
 - Is the vulnerable migrant aware of local customs with regard to security?
 - Does the vulnerable migrant have any fears for his/her safety and security?
 - Has the vulnerable migrant been threatened or intimidated?
 - Do certain members of the vulnerable migrant's family or community pose a threat to his/her safety and security?
 - Do certain members of the vulnerable migrant's host community pose a threat to his/her safety and security?
 - Is the vulnerable migrant the victim of a crime and/or participating in judicial proceedings against an individual or group?
 - Is the vulnerable migrant's safety and security threatened by the possibility of retribution from a criminal organization or individual?
- Transportation
 - Is freedom of movement possible in the vulnerable migrant's current location?
 - Does the vulnerable migrant have access to safe transportation?
 - Does the vulnerable migrant have sufficient knowledge of safe local and international means of transportation?

Individual security planning

Once the safety and security risks have been identified, an individualized security plan should be developed for the vulnerable migrant. Again, this should be done with his/her participation.

At a minimum, the security plan should include all risks to the vulnerable migrant identified, the mitigating action to be taken and by whom, a timeline for review of the risks and actions, and emergency contact information.

The security plan should be drawn up in a format that is most appropriate for the vulnerable migrant. For instance, it should be translated into the migrant's preferred language or, if this is not possible, be couched in simple language. The security plan should be shared, with the migrant's consent, with all concerned, including those providing support to the vulnerable migrant.

When there are no or very few services available for vulnerable migrants, this should be reflected in the security plan. A security plan can be an important part of safety planning in the absence of services and can facilitate the development of mitigation strategies and coping mechanisms in such situations. (For more information on case management when appropriate services are not available, see page 38.)

The findings of individual risk assessments and security planning can be presented in various tools. Two types, risk matrices and risk registers, are outlined below.

Risk matrices

Risk matrices (see Figure 2.2) rate risks based on the likelihood or probability of the risk occurring and its consequences or severity. They are sometimes referred to as "heat charts", as they often use colours to represent the highest (red) and lowest (green) risks, with gradients between.

Risk matrices can be useful when setting risk thresholds, communicating about risks to vulnerable migrants, and developing risk management plans.

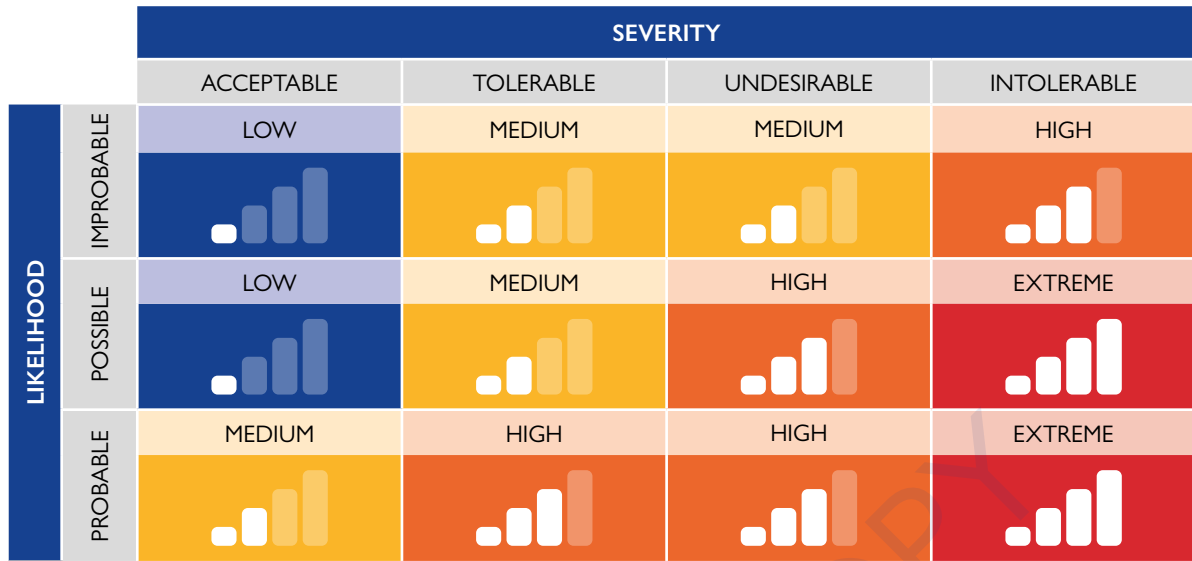


Figure 2.2
Example of a risk matrix

Risk registers

Risk registers (see Figure 2.3) list all identified risks along with information on the likelihood they will occur, their consequences and any mitigation measures to be taken. They are useful tools to monitor and manage risks and to communicate about risks to vulnerable migrants.

Risk number	Date identified	Risk description	Likelihood	Severity	Mitigating action	Progress on action	Status

Figure 2.3
Example of a risk register

Any documents produced as a result of security assessments or security planning are to be treated as confidential. Vulnerable migrants should have access to these documents at any time and be provided with copies of any assessments or plans related to their safety and security if they wish. (For more information on confidentiality, privacy and data protection, see page 27.)

Health and well-being

This section contains practical, non-clinical guidance on the provision of physical and mental health care to vulnerable migrants for case managers and health-care practitioners.¹⁹

According to WHO, “health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” and “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.²⁰

The Universal Declaration of Human Rights also refers to health as part of the right to an adequate standard of living, in Article 25. The right to health is also recognized as a human right in the International Covenant on Economic,

¹⁹ Health-care practitioners can include general practitioners and primary health-care providers, emergency response personnel, staff of health-care centres, clinicians, outreach health-care providers, mental health-care providers, and those working in both public and private health-care provision.

²⁰ See WHO Constitution, available at http://www.who.int/governance/eb/who_constitution_en.pdf.

Social and Cultural Rights and is protected under the International Covenant on Civil and Political Rights, the Migrant Workers Convention, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. Subsequent international human rights treaties have included the right to health or other relevant rights, including the right to medical care.²¹

Consequently, access to health care should not be discriminatory and health care should be made available to vulnerable migrants. Health-care systems and practices should strive to ensure access to health services regardless of immigration status and avoid disclosing the identities of vulnerable irregular migrants.

Health risks and potential consequences

Vulnerable migrants may have unique health-care needs arising from pre-existing conditions or from an injury or illness suffered during their journey or on arrival at a transit location or their destination. They may have experienced violence, exploitation or abuse that has health consequences, both physical and mental, and they may not have had access to adequate health care. Migrants in poor physical or mental health may be more vulnerable to violence, exploitation and abuse, which in turn may exacerbate or perpetuate poor health.

Table 2.2 summarizes the types of health risk and potential health-related consequences that vulnerable migrants may experience. It is not exhaustive.

Experiences of vulnerable migrants	Potential health-related consequences
Physical abuse, deprivation and neglect	Bruises, cuts, burns, broken bones, malnourishment, soft tissue injuries, dental problems, psychological distress and mental health problems
Threats, intimidation and psychological abuse	Depression, anxiety, hostility and aggression, isolation and withdrawal, psychological distress and mental health problems, sleep disturbances
Sexual violence and abuse	Sexually transmitted infections (including HIV), pregnancy, unsafe abortion, sexual dysfunction, vaginal or anal fistula, bruises, cuts, burns, broken bones, psychological distress and mental health problems
Substance abuse and misuse, including drugs and alcohol	Substance dependency, overdose, risk-taking behaviour, effects of withdrawal, psychological distress and mental health problems
Restricted social interaction and access to community and family networks	Inability to access health care, psychological distress and mental health problems
Economic exploitation	Malnourishment, dehydration, poor hygiene, risk-taking behaviour, insufficient funds to pay for health care, psychological distress and mental health problems
Legal insecurity	Restricted access or reluctance to access health care, unattended births, psychological distress and mental health problems
Dangerous transportation, living, or working conditions	Malnourishment, dehydration, poor hygiene, bruises, cuts, burns, broken bones, malnourishment, soft tissue injuries, skin conditions, infections, breathing difficulties, sleep deprivation, psychological distress and mental health problems
Social marginalization, discrimination, exclusion	Restricted access or reluctance to access health care, psychological distress and mental health problems

Table 2.2: Summary of the experiences of vulnerable migrants and potential health-related consequences²²

21 OHCHR and WHO, *The Right to Health*, Factsheet 31 (Geneva, 2008). Available at: <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

22 Table adapted from IOM/London School of Hygiene & Tropical Medicine/United Nations Global Initiative to Fight Trafficking in Persons, *Caring for Trafficked Persons: Guidance for Health Professionals* (Geneva, IOM, 2009). Available at: http://publications.iom.int/system/files/pdf/ct_handbook.pdf.

Determinants of vulnerability and health

The determinants of migrant vulnerability model outlined in Part 1 is a useful tool for considering the health risks and associated needs of vulnerable migrants. Examples of the impact on health risks and consequences at each level of vulnerability factor are given below.

At the **individual** level, factors such as age and sex have an impact on the health needs of vulnerable migrants. For instance, children may require vaccinations according to an age-based schedule or older persons may suffer loss of vision or hearing. Other considerations at the individual level are pre-existing health conditions, such as diabetes or asthma, and mental disorders requiring diagnosis or treatment.

Household and family factors that influence health can include violence in the home. Intimate partner or domestic violence will have consequences on the physical and mental health of all involved, particularly those who are targets of or witnesses to the violence. The type of shelter and accommodation that a family is living in may also have health risks, including the use of open fires for cooking, which can cause breathing problems or burns.

Social norms, which are a **community** factor of vulnerability, affect attitudes and behaviours towards health and health care. For instance, medical professionals may be distrusted and traditional healers preferred. Similarly, a community's belief systems may make it reluctant to accept available treatments for mental illness. Sometimes the community factors differ within subcommunities of migrants or between a migrant's community of origin and the current community.

The availability of qualified health-care practitioners and properly equipped health-care facilities can be a **structural** vulnerability factor. Some vulnerable migrants may not have had access to a health-care system, or the system's capacity to provide care may have been limited by lack of funding and investment. The existing health-care system may not offer services that are appropriate for or accessible to migrants, or may not be able to address the unique health-care concerns that migrants may have.

As the determinants of migrant vulnerability model in Part 1 outlines, these factors do not operate in isolation and the interaction of all levels of factors should be considered, including when assessing the health concerns, needs and available service provider options for vulnerable migrants.

Trauma-informed health care

All health-care providers should aim to provide trauma-informed care (see the textbox on page 34). A trauma-informed approach recognizes the impact that traumatic events can have on vulnerable migrants' beliefs, attitudes and behaviours, especially towards their bodies, health care and health-care providers. By incorporating trauma-informed care into routine practice, which includes an understanding of how traumatic experiences can affect vulnerable migrants' behaviour and perceptions, health-care practitioners can improve the care and support they give vulnerable migrants.

Inherent in trauma-informed care are the concepts of empowerment and holistic health care. These are central to patient-centred care, which follows the same principles as the migrant-centred approach outlined on page 29.

Figure 2.4 summarizes the dos and don'ts of trauma-informed health care for vulnerable migrants.

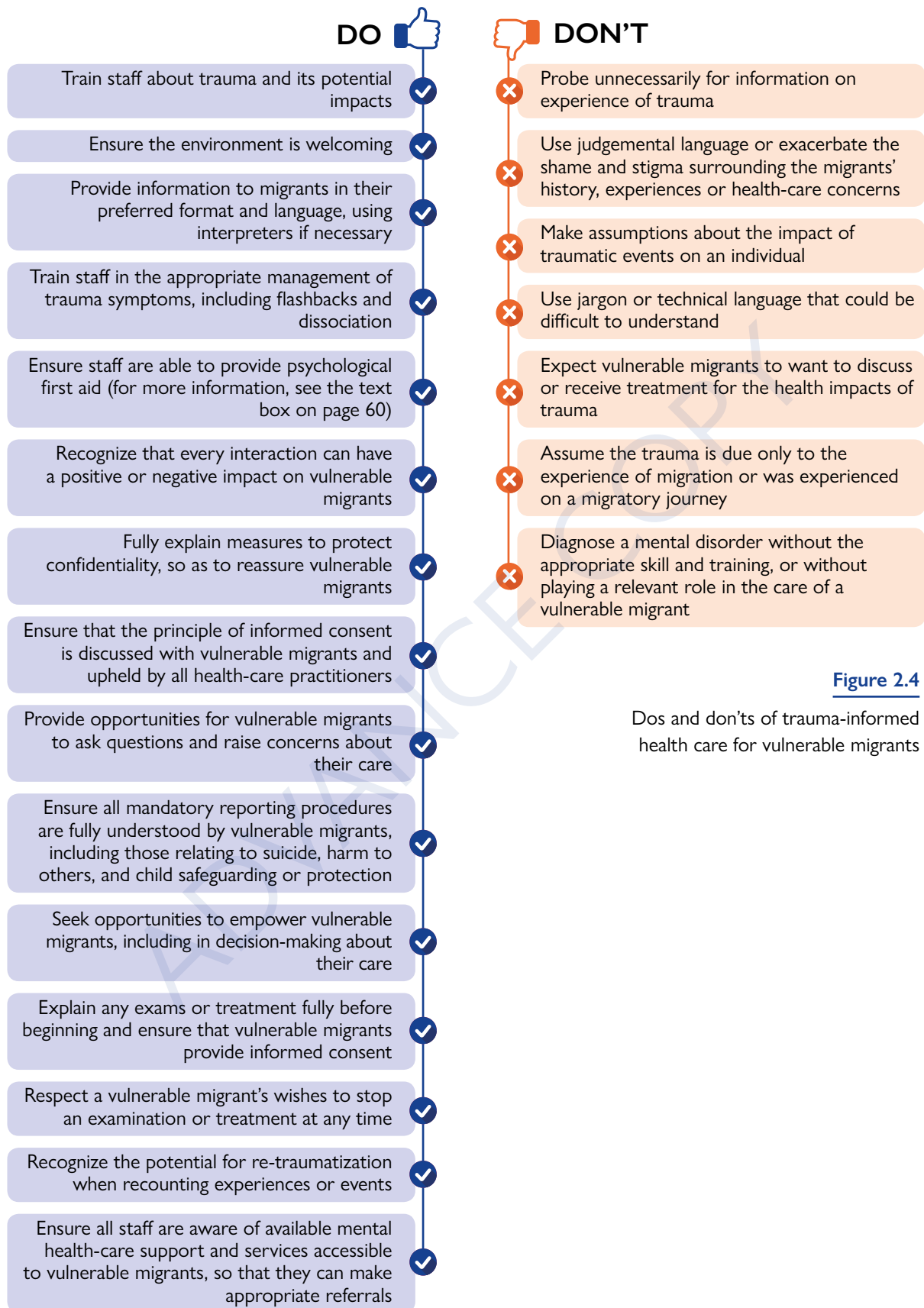


Figure 2.4

Dos and don'ts of trauma-informed health care for vulnerable migrants

Intercultural competence

Health-related beliefs, attitudes and behaviours vary between cultures and communities, including in terms of how individuals express illness or respond to treatment, and of the role of health-care practitioners in society. Health-care practitioners can garner intercultural competence by obtaining information about the cultural norms and practices of communities of migrants and acknowledging their own biases and assumptions.

Health-care practitioners should be aware of how their approach may be perceived by vulnerable migrants and be prepared to make adjustments as appropriate. This may involve using different methods of communication, such as interpreters, or incorporating elements of the vulnerable migrant's culture, religion or social customs into health care and treatment.

Explanatory model

It is important to explore the patient's understanding of illness, particularly when evaluating a range of symptoms. The explanatory model is a practical way to do this, and can help health-care providers avoid cultural stereotyping.

No single health-care provider can be familiar with all cultures and individuals, and because there is variation in communities from the same culture, it is useful to ask vulnerable migrants about their understanding of their own health and well-being and their expectations for care and treatment.

Possible questions include:

1. What is the problem? How would you describe it in your own words?
2. When and how did the problem start?
3. Why do you think the problem started when it did?
4. How does this problem affect you?
5. What worries you most about this problem?
6. What kind of care do you want from health-care providers?
7. Is there a particular treatment that you feel you should receive?

Cultures often have different approaches to mental health and illness; indeed, some communities do not consider mental illness as a health issue at all. This may affect the way that individuals react to offers and provision of mental health care. A method of addressing mental health concerns in one culture (e.g. individual counselling) may not be accepted by or appropriate for those from other cultures.

Whenever possible, health-care practitioners should be afforded training in cultural differences and suitable approaches, especially when large numbers of migrants from the same community or culture are accessing health care. They should avoid making assumptions about cultural, ethnic or religious groups and should not expect the members thereof always to react the same; every group has subcultures and individual differences, and migration transforms cultures and the sense of belonging.

Health-care practitioners should seek information on the beliefs and practices of a vulnerable migrant's culture and community and use this to inform their provision of care. They can do this by asking vulnerable migrants questions, speaking to other service providers, and using available resources and evidence. Where there are large numbers of migrants from a particular country, community, religion or other social group, specific guidance may be useful to capture best practices in a specific health-care facility.

Where appropriate and possible, elements of a vulnerable migrant's cultural approach to health and wellness can be incorporated into care and support, as they may improve uptake and overall health outcomes. This can include referencing traditional approaches and explanations for disease and poor health, collaborating with traditional healers and religious leaders, and incorporating traditional medicine, but should not be done if the elements are potentially harmful; some traditional approaches to healing, treatment and poor health can involve false information, abuse and punishment, prolonged fasting, cutting, physical restraints, unhygienic rituals or high financial costs. Attention to cultural differences must be balanced against evidence-based care and protection from potentially harmful practices.

In addition to differences in culture, vulnerable migrants' approach to health care and engagement with health-care practitioners can be influenced by their experience of migration and their immigration status. For instance, vulnerable irregular migrants may avoid authorities, including health-care practitioners, for fear of being detained or deported.

To provide culturally competent care, health-care practitioners should:

- Have a system to identify a vulnerable migrant's communication needs, provide access to interpreters if there are language barriers and be prepared to adapt the communication format and style;
- Be alert to the possible cultural, social or personal reasons for a vulnerable migrant's behaviour, beliefs or reactions;
- Explore the vulnerable migrant's understanding of the illness using the explanatory model (see text box on page 51);
- Ensure that a vulnerable migrant's preference for who examines him/her is respected;
- Recognize the importance of religious beliefs in a vulnerable migrant's symptoms, treatment and recovery.

Urgent health care

In some cases, vulnerable migrants may require immediate health care to save their lives or address life-changing injuries. The cause may be an accident, an untreated illness or disease, a physical or sexual assault, or a suicide attempt. The need for urgent health care may be identified by law enforcement or border management agencies, emergency service providers such as paramedics, fire departments, family or community members, or other vulnerable migrants.

Vulnerable migrants requiring urgent health care should be treated without discrimination and their immigration status or ability to pay related fees should not be a barrier to the provision of emergency care.

Additional points to consider when providing urgent health care for vulnerable migrants include:

- Dehydration
- Malnutrition
- Sepsis
- Wounds
- Head, neck and spinal injuries
- Broken bones
- Soft tissue injuries
- Temperature-related illnesses
- Exposure to toxins
- Exposure to communicable diseases
- Dental trauma or infection
- Post-exposure prophylaxis for possible HIV infection
- Untreated mental illness
- Untreated chronic disease
- Withdrawal from alcohol, drugs or prescription medication.

If law enforcement, border management agencies, other government or United Nations agencies, international organizations or NGOs are planning outreach activities during which they could potentially identify vulnerable migrants in need of urgent health care, those activities should be coordinated with health-care practitioners and response plans put in place. They should be designed in such a way that they do no harm and are underpinned by the concept of trauma-informed care.

Health assessment

Vulnerable migrants may have had poor health before migrating or developed health concerns as a result of migration. They may access health care during their journey, at destination or on return or relocation. Where possible and appropriate, their health should be assessed by health-care practitioners using the approaches of migrant-centred care, trauma-informed care and intercultural competence, and they should be referred to specialist health care where needed.

An initial health assessment includes the vulnerable migrant's history. The migrant should be examined in a safe space and in his/her preferred language or with the support of an interpreter.

Vulnerable migrants should be given the choice, whenever possible, to see a male or female health-care practitioner. If this is not possible, they should have the option of being accompanied by a chaperone of the preferred sex. This is particularly important for female migrants, who may not feel comfortable discussing their health and bodies with a man, and for those known to have experienced gender-based violence.

Health-care practitioners should be prepared to hear about violence, exploitation and abuse during a health assessment and to react and respond appropriately. They should be aware of the resources available for vulnerable migrants and be able to make referrals to specialized support and care, including non-health-related services and support. They should explain the referral procedures in detail, avoid discouraging the vulnerable migrant from talking about the event, so as not to heighten any feelings of shame, and take care not to ask unnecessary questions about the experience that could cause distress. The psychological and emotional significance of the event should be acknowledged and the vulnerable migrant reassured that the reaction is normal given what has happened. If specialized care is available, the migrant should be informed that there will be a further opportunity to discuss the experience and any reactions if s/he chooses to access specialized care.

Dual loyalty

“Dual loyalty” occurs when two ethical obligations stand in contradiction to each other and is commonly known as an ethical dilemma.

Examples of ethical dilemmas include when legal child safeguarding or protection reporting requirements may identify a family or group that has irregular immigration status and increase the risk of detention or deportation, or when a survivor of a sexual assault must undergo a mandatory forensic exam in order to report the crime to the police and receive health care.

In these instances, health-care practitioners have a responsibility to their patient, to professional bodies and to the wider community. They and others involved in case management must be guided by the “do-no-harm” principle; they should collectively search for solutions that preserve the vulnerable migrant’s confidentiality, privacy and right to give informed consent. Their decisions may be usefully informed with advice from senior management, organizations specializing in advocacy or victim’s rights, or professional bodies. Vulnerable migrants should be made aware of decisions and advice throughout the process.

Before the health assessment begins, health-care practitioners should understand any mandatory reporting requirements and explain them to the vulnerable migrant, including the implications of any reporting.

Vulnerable migrants should be told why the health assessment is being made, why they need to provide a history and be examined, how the examination will be conducted, and who will have access to the results. They should give informed consent to the examination (for more information on the process of obtaining informed consent, see page 27), and be told that they can withdraw consent at any time and the examination stopped. The implications of stopping an examination should be fully explained.

The medical history questionnaires used by health-care practitioners should be reviewed in the light of the unique circumstances of vulnerable migrants. For instance, it may be worthwhile to include questions on the types and lengths of journeys migrants have taken, information on the types of shelter or accommodation they have been using, any time spent in detention facilities or with restricted movement, or any pre-existing conditions, and information on how they were treated in their home or transit country.

The medical examination should be thorough and involve a systematic review of symptoms, a physical examination, and any necessary laboratory tests.

Vulnerable migrants may be at increased risk of exposure to disease owing to the means of transportation used or living conditions, or for want of regular access to health care. Types of diseases and infections that vulnerable migrants may be at risk of contracting can include, but are not limited to:

- Dermatological conditions
- Pulmonary infections
- Cardiovascular disease
- Blood infections
- Gastrointestinal conditions
- Sexually transmitted infections
- Neurological conditions

Health assessments should take account of disease epidemiology in the locations that vulnerable migrants are from and have travelled through. This could mean testing for diseases endemic to the area of origin, such as malaria, or outbreaks of which are known to have occurred along the migratory route, such as measles. The current living conditions of a vulnerable migrant should also be considered, as diseases and infections such as cholera may be present. Health assessments should also take account of vaccine schedules, coverage and compliance in the country of origin.

As physical and mental health is intrinsically linked, health assessments should also consider mental health, including any diagnosed mental illness, previous treatment and current state of mental well-being. All health-care practitioners should be able to screen migrants for basic mental health disorders, in order to identify any problems and make appropriate referrals for specialized support, if need be. The health-care provider and the vulnerable migrant may differ in their understanding of mental health and psychological well-being, and this should be considered when identifying problems, making referrals and communicating with the vulnerable migrant. Notably, what are considered symptoms of mental disorders in a normal situation may be typical reactions to stressors that vulnerable migrants may be facing, and it is important that health-care practitioner

s endeavour to understand the nature and context of the psychological reactions of vulnerable migrants before diagnosing a mental illness or disorder.

Psychological responses to distressing events include fearfulness, worry, sadness, guilt, shame, anger, grief, concentration problems and memory loss, hopelessness, reliving experiences including through flashbacks or nightmares, emotional numbing, feelings of isolation, and/or anxiety. These responses can be temporary, but if they are prolonged or severe, the migrant should be referred to specialized mental health care. The mental health and psychosocial support pyramid provided in Figure 2.4 (page 50) is useful in determining what type of mental health-care support should be provided.

For mental illnesses that require psychiatric or clinical psychological care and customized medication, trained mental health-care practitioners should be involved in the care and support of vulnerable migrants. If a vulnerable migrant requires both physical and mental health care, a holistic approach should be adopted, whereby physical and mental health is considered together and treatment is coordinated between health-care providers.

Vulnerable migrants will deploy various coping techniques. In most cases, these are constructive and support adaption to factors of vulnerability; in others, they can be maladaptive and have negative effects. One negative coping mechanism for the distress that vulnerable migrants can experience is the use and abuse/misuse of substances, including alcohol and other drugs, which can in turn lead to greater engagement in risk-taking activities such as unprotected sex and needle-sharing. Specialized treatment and recovery plans should be drafted with the full participation of the vulnerable migrant, so as to develop a holistic approach to the treatment of any dependencies and underlying mental disorders. For more on substance abuse/misuse and addiction, see the text box on page 59.

Forensic examinations

If a medical examination is to be used to report a crime or to lay charges, or as evidence in a court of law, this should be understood and consented to by the vulnerable migrant. Examples when forensic examinations can be important are in cases of sexual violence, intimate partner violence or trafficking.

In all cases, forensic evidence should be collected with the informed consent of the vulnerable migrant, never against the migrant's will. It should be collected by a health-care practitioner with specialized forensic training and knowledge of the legal system, the type of evidence required, and collection, storage and testing standards.

Forensic evidence should only be collected when it can be processed and used, and only by the relevant authority.

A careful written record should be kept by the health-care facility of the examination, any evidence collected, and other pertinent information about the vulnerable migrant's examination, as this can be useful in criminal proceedings.

Where a forensic examination is conducted in connection with criminal proceedings involving torture or other cruel, inhuman or degrading treatment, the guidance provided in the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be followed.

Any health needs identified by the assessment should be treated according to appropriate guidance and available evidence. Treatment decisions should nonetheless take account of the possibilities to continue treatment if the vulnerable migrant returns to his/her country of origin, moves to another location, or is not able to continue accessing regular health care for any other reason. If a course of treatment would have harmful consequences if interrupted or could not be continued in a future location, it should not be started.

Sexual and reproductive health

The provision of health care to vulnerable migrants should include comprehensive sexual and reproductive health care. Vulnerable migrants should be provided with information about sexual and reproductive health that is age appropriate, tailored to the vulnerable migrant's level of education and understanding, and delivered with cultural sensitivity. This includes information on available contraception and family planning options, including emergency contraception, and on voluntary testing for, counselling on and treatment of sexually transmitted infections, including HIV/AIDS. In some instances, it may be necessary to incorporate awareness and education on sexuality and reproduction into the provision of health care, including for adolescents and those who have not previously had access to information of this nature.

Health care for vulnerable migrants should take into account their risk factors for HIV/AIDS, including prevalence rates in their home, transit or host countries and any previous experiences that may have increased the risk of exposure to HIV, including involvement in sex work, trafficking for the purposes of sexual exploitation, experience of gender-based violence, or use of injectable drugs. For vulnerable migrants who may have been exposed to HIV within the previous 72 hours, health-care facilities should provide post-exposure prophylaxis to prevent HIV transmission.

Pregnancy tests should be made available to all vulnerable migrant women and girls of reproductive age and be accompanied with information and referrals for antenatal care or for termination of pregnancy, where legal and available. Pregnant women and girls should be offered comprehensive antenatal care without discrimination based on their immigration status, marital status, nationality, age or any other reason. They should not be kept in detention facilities (for more information on detention, see page 36).

Vulnerable migrants who are lesbian, gay, bisexual, transgender or intersex should not be discriminated against and receive health care that respects their dignity, privacy and rights. They need a safe space in which to disclose their status and have their health-care needs identified and met, including but not limited to sexual and reproductive health-care needs.

The risk of sexual violence, exploitation and abuse for vulnerable migrants should be acknowledged by health-care practitioners and should inform the provision of health care. Vulnerable migrants may have been trafficked for purposes of sexual exploitation, been involved in sex work in their home country, along their migratory route or at their destination, or been forced to trade sex for safe passage, promises of protection, or other goods and services.

Gender-based violence

Gender-based violence is an umbrella term for any harmful act perpetrated against a person's will and based on socially ascribed gender differences that inflicts physical or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. It can occur in public or in private and can, but does not have to, consist in acts of a sexual nature. It disproportionately affects women and girls because of underlying gender inequality.

The different forms of gender-based violence are outlined in the table* below.

Physical violence	Slapping, shoving, pushing, punching, beating, scratching, choking, biting, grabbing, shaking, spitting, burning, twisting of body parts, forced ingestion of unwanted substances
	Preventing access to medical treatment or other support
	Using objects as weapons to inflict injury
Sexual violence	Vaginal or anal rape
	Unwanted sexual touching
	Sexual harassment and demand for sexual acts in exchange for something
	Trafficking for the purposes of sexual exploitation
	Forced exposure to pornography
	Forced pregnancy, forced sterilization, forced abortion
	Forced marriage, early/child marriage
	Female genital mutilation/cutting
	Virginity testing
Incest	
Psychological/ emotional violence	Threats of violence or harm against friends or family through words or actions
	Workplace harassment
	Humiliation and insults
	Isolation and restrictions on communication or movement
	Use of children by a violent intimate partner as a means of control or coercion
Economic violence	Prohibiting engagement in work
	Exclusion from financial decision-making
	Withholding money or financial information
	Refusal to pay bills or provide resources for shared children
	Destruction of jointly owned assets

Vulnerable migrants disclosing incidents of sexual violence should be offered support, including a medical examination to identify and treat any physical and psychological health effects. Once informed consent has been given, a medical examination should include a thorough pelvic examination for women and a genital and anal examination for men, testing (and treatment) for sexually transmitted infections and HIV, and pregnancy tests and counselling for women and girls along with referrals for antenatal care or for termination of pregnancy, where legal and available.

All survivors of sexual assault should be offered post-exposure prophylaxis within 72 hours of an incident involving a risk of HIV transmission. Where legal and available, women and girls should be offered emergency contraception within 72 hours of a sexual assault if there is a risk of unwanted pregnancy.

Mental health support should be made available to all vulnerable migrants who have experienced gender-based violence and be provided by health-care practitioners with specialized training and expertise.

* Adapted from UNFPA and WAVE, Strengthening Health System Response to Gender-based Violence in Eastern and Central Asia: A Resource Pack, UNFPA Regional Office for Eastern Europe and Central Asia/ WAVE Network and European Info Centre Against Violence, Turkey/Austria, 2014.

Mental health and psychosocial support

Mental health and psychosocial support are closely related concepts that often overlap in practice but can also reflect different and complementary approaches. The term MHPSS refers to any type of support that aims to protect or promote psychosocial well-being and/or prevent or treat mental disorders.²³

The mental health and psychosocial well-being of vulnerable migrants should be assessed at the same time, or concurrently with, their physical health, by a health-care practitioner with specialized training. Where such an assessment reveals significant mental health problems, the migrant should be offered a referral to a mental health specialist. If at any time a vulnerable migrant expresses a desire or attempts to commit suicide or harm her/himself or others, he/she should be immediately referred to appropriate mental health specialists.

Mental health and psychosocial problems are interconnected, and their understanding and treatment culturally dependent. Some problems are predominantly psychological in nature, such as pre-existing mental health disorders, depression and anxiety, and post-traumatic stress disorder, whereas others are predominantly social in nature, such as family separation, disruption of social networks, and reduced access to resources.

While traumatic events experienced by vulnerable migrants can exacerbate existing mental health disorders or trigger negative psychological reactions, not all individuals who experience distressing events will develop psychological problems. It is important that reactions to traumatic or distressing experiences should not be unnecessarily pathologized.

Post-traumatic stress disorder (PTSD)

PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, acts of war or terrorism, rape or violent physical assault. It and the criteria for its diagnosis are defined in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

People with PTSD continue to have intense, disturbing thoughts and feelings related to their experience long after the traumatic event. They may relive the event in flashbacks or nightmares, feel sad, fearful or angry, or detached from their friends, families and communities. They may avoid situations or people that remind them of the traumatic event and may have strong negative reactions to seemingly harmless events, such as a loud noise or a caress.

Not everyone who experiences a traumatic event will develop PTSD. Those who experience short-term symptoms following a traumatic event may have acute stress disorder rather than PTSD. Many people will experience distress after a traumatic event; for some, emotional support and care are all they need to recover. When the symptoms persist for more than a month, or when they are severe in nature, specialist assessment and treatment should be sought, as this may indicate PTSD.

Not all those suffering from PTSD will experience it in the same way or require specialized mental health care. PTSD is treated through psychotherapy, medication or a combination of the two.

For more information on PTSD, see the website of the American Psychiatric Association (www.psychiatry.org).

There are numerous factors affecting psychological reactions to traumatic events, including gender and age, previous experiences, type and number of traumatic events, biological and epigenetic factors, and disruptions to social and familial networks.

²³ Definition adapted from *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings* (Geneva, IASC, 2007).

Torture

The 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as “an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person, has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

This definition contains three elements:

- a. the intentional infliction of severe mental or physical suffering,
- b. by a public official, directly or indirectly,
- c. for a specific purpose.

Common methods of torture include beating, rape and sexual assault, electric shocks, stretching, submersion in water, sleep deprivation, suffocation, burns, isolation, threats, humiliation, mock executions, and witnessing the torture of others.

Vulnerable migrants may have experienced torture before migrating while in their home country, along the migratory route, or in their current location. Health-care practitioners should be prepared to provide care and support to meet the health-care needs of vulnerable migrants who have experienced or witnessed torture and should make appropriate referrals to available services, including specialized agencies and organizations providing support to victims of torture.

The Istanbul Protocol* provides guidance on how to document torture that may be useful to health-care practitioners involved in the investigation and documentation of cases of torture.

* OHCHR, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Geneva/New York, United Nations, 2004). Available at: <https://www.ohchr.org/Documents/Publications/training8rev1en.pdf>.

All vulnerable migrants will have psychological reactions to their experiences. Some who may face greater risks of mental health and psychosocial problems include vulnerable irregular migrants, trafficked persons, migrants who have lost the financial means to provide for their families, pregnant women and new mothers, elderly people who have lost or been separated from their caregivers, children separated from their families or removed from school, victims of or witnesses to gender-based violence or torture, detained migrants, and those previously exposed to other traumatic events. Migrants with pre-existing or previously diagnosed psychological disorders will be at increased risk for poor mental health, especially if they have had to stop their regular treatment, including medication, and can no longer access their preferred method of support.

Responses to mental health and psychosocial problems should be multi-layered and complementary. Figure 2.5 depicts the pyramid for mental health and psychosocial support interventions.

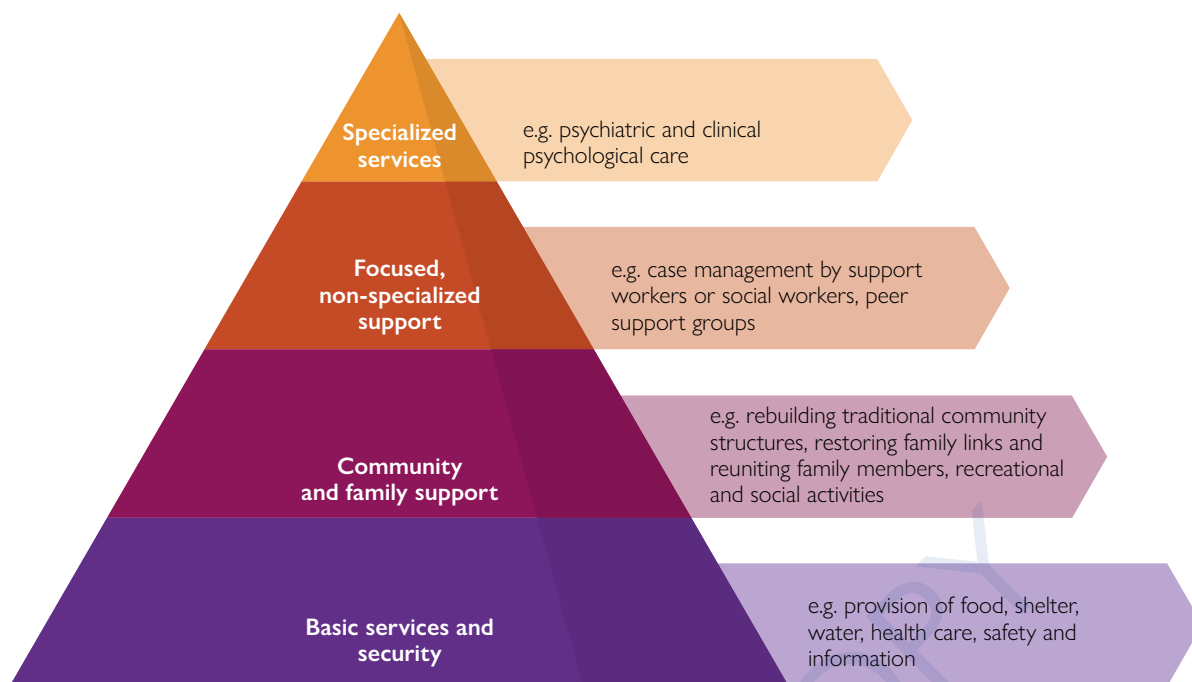


Figure 2.5

Intervention pyramid for mental health and psychosocial support²⁴

In the mental health and psychosocial support model, **specialized services** will be required by relatively few members of a community whose suffering is intolerable and who find it difficult to carry out basic daily functions. Those with mental disorders will likely require specialized services from psychiatrists or psychologists and may require medication and other forms of treatment. Those providing this type of mental health care should have specialized training and recognize that approaches to and understanding of mental health and mental health disorders vary between cultures and communities and that their usual or preferred treatments may not be appropriate for vulnerable migrants.

Mental disorders that should be treated by mental health specialists include, but are not limited to:

- Psychoses of all kinds;
- Disabling presentations of mood and anxiety disorders (including post-traumatic stress disorder);
- Abuse or misuse of alcohol or other substances;
- Behavioural and emotional disorders in children and young people;
- Neuropsychiatric disorders, including delirium and dementia, and mental disorders resulting from brain injuries or other underlying conditions;
- Any other severely disabling mental health problem that does not fit into established classification systems;
- Any risk behaviours commonly associated with mental health disorders, such as suicidal thoughts or action and other self-harm behaviour.

Substance abuse/misuse and addiction

The use of tobacco, alcohol and drugs, both prescription or illegal, can be a coping mechanism for vulnerable migrants or migrants may have had an existing dependency that contributed to their vulnerability. Dependence on substances can co-exist with mental health disorders and may be a response to undiagnosed and untreated mental health issues or may trigger or exacerbate mental illnesses.

People with substance addictions may be aware that their use of tobacco, alcohol or drugs has negative effects, but may be unable to stop even if they would like to. The use of substances can have an impact on not only the vulnerable migrant's health and well-being, but also that of his/her family and community.

Treatment for substance abuse, misuse and addiction can include a combination of medication to manage the physical and psychological symptoms of withdrawal, and individual or group psychotherapy. These may be delivered as inpatient or outpatient care, or in community-based programmes.

²⁴ Adapted from IASC Guidelines, op. cit., note 37.

Case managers can play an important role in providing **focused, non-specialized support** along with social workers or others providing protection or assistance to vulnerable migrants. This can also include the provision of psychological first aid (see text box below). Support provided according to the principles of assistance listed on page 26 will boost vulnerable migrants' mental health and psychological well-being.

Community and family support can include measures to trace separated family members and restore links, including reuniting families and establishing communication between separated family members (for more information on family tracing, assessments and reunification, see page 72). Restoring community structures and routines can promote the mental health and psychological well-being of vulnerable migrants and can include establishing educational opportunities for children and young people, restoring livelihoods through employment opportunities, and support for social networks such as children's clubs or women's groups. Families and communities that have experienced a death may benefit from traditional mourning and burial ceremonies.

The provision of basic services and security will have a positive impact on the mental health and psychological well-being of vulnerable migrants. This can include food, shelter and accommodation, water, hygiene and sanitation, health care, and personal safety and security when delivered in a manner that does no harm and according to the principles of assistance outlined on page 26.

Special considerations for health care for vulnerable child migrants

Vulnerable migrant children are likely to have a wide range of health-care needs. They may have experienced or witnessed distressing or traumatic events, not have been vaccinated against diseases, have undiagnosed or untreated symptoms, and/or be malnourished and stunted.

Vulnerable migrant children should be provided with age-appropriate health care by health-care practitioners with specialized training and experience in paediatrics. This should include consideration of their increased susceptibility to infectious diseases and different disease presentation based on their age.

Special care should be made available for pregnant women and girls who are HIV-positive and all steps taken to prevent mother-to-child transmission.

The mental health and psychological well-being of vulnerable migrant children should be an integral part of health care, given the negative impact that migration-related traumatic events and severe and prolonged stress can have on children's cognitive and emotional development. Early losses, such as the death of a parent or sibling, or witnessing violence or other distressing events can disrupt relationships and undermine health and long-term social and emotional development. With care and support, children can recover from such events, but unresolved psychological trauma can be a predictor of longer-term psychological distress and negative coping behaviours and techniques.

Emotional distress experienced by the parents or caregivers of vulnerable migrant children can also have an impact on a child's health and well-being, as it

Psychological first aid

A humane, supportive response to the suffering of other people who may need support is called psychological first aid. It does not necessarily involve a discussion or recounting of distress-causing events, but it can prevent additional harm from the experience of a distressing event.

Psychological first aid involves giving vulnerable migrants the opportunity to discuss their situation, but not making that discussion compulsory or necessary. It should be practiced by all health-care practitioners and any service providers furnishing protection and assistance to vulnerable migrants.

Psychological first aid involves:

- Listening patiently in an accepting and non-judgemental manner;
- Conveying genuine compassion and empathy;
- Identifying basic practical needs and striving to meet them;
- Asking vulnerable migrants about their concerns and trying to address them;
- Discouraging negative coping strategies, such as abuse or misuse of alcohol and other substances;
- Encouraging adherence to regular routines;
- Encouraging positive coping techniques, such as culturally appropriate relaxation methods or access to community-based and faith-based support;
- Encouraging, but not insisting on, socializing with family members and friends;
- Offering information on available specialized mental health and psychosocial support services.

affects the parents' and caregivers' ability to care for children and the coping mechanisms they adopt, which can be positive or negative as experienced by children.

Health promotion

Health promotion materials should be made available to vulnerable migrants in a format and language they can understand. They may include information on communicable and non-communicable diseases, nutrition, hygiene, sexual and reproductive health, mental health and the availability of health-care services.

Materials on available health services should also be distributed in communities of migrants, and health promotion campaigns should target communities of vulnerable migrants with information and messaging that reflects the common concerns and health-related needs of the population. This is particularly important in the known or suspected presence of infectious diseases in communities of vulnerable migrants or in a specific shelter or accommodation. Health communications should never stigmatize or identify vulnerable migrants who have been tested for or diagnosed with diseases or who have accessed health-care services.

Medical records and data management

The names of vulnerable migrants accessing health-care services are also to be considered confidential and should not be shared outside the health-care facility without the prior consent of the migrants.

All records pertaining to the physical and mental health of vulnerable migrants, whether digital or in hard copy, are to be considered confidential and must be kept in a data information system that can protect their confidentiality. They may contain contact details for vulnerable migrants and information on medical histories, tests and results, treatment prescribed and referrals.

All medical records should be kept securely, with access restricted to those involved in the care and support of the vulnerable migrants. Methods to maintain confidentiality should be developed within the health-care setting and can include coding systems to anonymize detailed records, physical systems such as locking file cabinets, and/or electronic systems that are protected against unauthorized access.

Medical records should never be left on unattended digital devices, desks or offices and should not be stored on the personal computers, phones or other electronic devices of the health-care provider's staff.

Complete medical records should be made available to vulnerable migrants on request. Vulnerable migrants should be informed of the risks of having copies of their records, so that they can make an informed decision to make or carry copies.

Health-care facilities should be designed to protect confidentiality and provide privacy. Reception desks, waiting rooms and treatment areas should be arranged to preclude the possibility of others overhearing conversations between vulnerable migrants and health-care practitioners, receptionists or others involved in their care.

Health-care providers should be aware of what information they share verbally and ensure that their conversations are not overheard or recorded. Details of the health care of vulnerable migrants should not be discussed with anyone, not even the migrants' family members or other members of their communities, without their prior consent.

Where medical records are requested by the authorities, such as law enforcement or border management agencies, see the text box on dual loyalty (page 53).

All records should be archived in accordance with local laws and regulation, and destroyed after a sufficient period of archiving. For more information on record-keeping and confidentiality, see the section on principles of assistance (page 26).

Education and training

Quality primary education for all is a fundamental human right articulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. Quality education refers to education that is available, accessible, acceptable and adaptable.²⁵

Education acts as a protective mechanism, builds resilience in students and learners, and is a vehicle for personal and social development. However, vulnerable migrants often have restricted access to quality education, have left formal education to migrate, and face barriers to benefiting from available education and training opportunities. While primary education is important and a right of all children, education and training for adult vulnerable migrants is also important and also has protective and resilience effects.

Providing quality education is the responsibility of the State, often through ministries of education or local authorities. In some instances, United Nations agencies, international organizations, NGOs, civil society organizations or the private sector may also offer education and training opportunities.

All education and training should be delivered in accordance with local regulations and laws, including those governing education, health and safety, including any registration or licencing requirements for the provision of education with government agencies or professional associations.

If designed and managed appropriately, schools and other educational facilities can help protect against violence, exploitation, and abuse. Education can be used to convey information that builds resilience against such violations and provide a means for children and adults to report them.

Age-appropriate education should be available for vulnerable migrants and include both formal and informal education and training. Types of formal education for vulnerable migrants include early childhood development, primary, secondary and higher education, and religious education.

Educational assessments may be needed to determine at what level to insert vulnerable migrants into formal education programmes. Such assessments should consider the vulnerable migrants' age and maturity, and the social implications of re-enrolment in school or training. For instance, it may be more beneficial for vulnerable child migrants to attend school with members of their age group rather than with children with the same level of education who are considerably younger.

All instruction should be delivered in a manner that is learner-centred, participatory and inclusive, as the positive psychosocial impact of attending school or participating in a training programme can introduce a sense of routine and stability, and spawn hope and aspirations. Education and training can also open the door to culture and language proficiency for vulnerable migrants when they are outside their home country or away from their community.

Older children and adults who have not been in formal education for some time should be offered education and training with their peer group and in a manner that is tailored to their age and skill level. This could include adult-only literacy classes or an adapted primary school curriculum for older children. In some cases, it may not be appropriate, or vulnerable migrants may not wish, to re-enrol at the level of their previous formal education, for instance if they are older than their peers or would not be able to meet the academic requirements; instead, other training options should be made available.

Informal education and training also has a protective impact, including by building resilience through enhanced livelihood and psychosocial outcomes. Examples of informal education, training and related support that may be suitable for vulnerable migrants include:

- Vocational training;
- Apprenticeship schemes;
- On-the-job training;
- Professional mentorship programmes;

²⁵ International Network for Education in Emergencies, *Minimum Standards for Education: Preparedness, Response, Recovery* (New York, 2010). Available at: http://s3.amazonaws.com/inee-assets/resources/INEE_Minimum_Standards_Handbook_2010_English.pdf.

- Life skills courses;
- Youth or adult education programmes;
- Literacy or numeracy classes;
- Language training;
- Financial literacy and household financial management training;
- Small-business management training;
- Career planning and guidance.

Because there are strong links between meaningful vocational training and future livelihoods, vulnerable migrants should be afforded skills development and training opportunities that qualify them for suitable employment and/or provide them with skills to run their own business in their current location, their country of origin or another location. When education or training is intended to enhance vulnerable migrants' job prospects and increase professional opportunities, market analyses should be used to inform decision-making on suitable training programmes. Vulnerable migrants should be helped to choose a training path that meets their personal aspirations but also leads to a livelihood. For more information on livelihoods, employment and income generation, see page 66.

Formal education and vocational training are not mutually exclusive, and vulnerable migrants may benefit from both. For instance, if education and training are not available in the language preferred by vulnerable migrants, they should be offered language training in addition to re-integration into school, and every effort should be made to offer them education and training in their preferred language.

Protective learning environments

Learning environments should be secure and safe, and provide protection from threats, harm, danger or loss. Schools and other educational facilities play an important role in promoting the psychosocial well-being of learners, teachers and others involved in education and training.

To create inclusive and protective learning environments for vulnerable migrants, teachers and educators²⁶ should use positive disciplinary and conflict-resolution techniques, and promote tolerance and understanding of others. They should not use corporal punishment or threats and intimidation, cause undue distress, or condone or promote discrimination.

All education and training programmes should acknowledge the increased risks that vulnerable migrants may face in the learning environment, including bullying, exclusion and challenges to learning caused by their experiences with education and educators, and recent distressing experiences and their effect on the capacity to concentrate, take in new information and engage socially in a learning environment.

In order to ensure that they are protective, education and training should include comprehensive and robust safeguards that protect children and vulnerable adults from violence, exploitation and abuse from teachers, administrators and all others affiliated with the delivery of education and training.

Routes and transportation methods should be affordable and accessible, secure and safe, and not exacerbate any risks of violence, exploitation and abuse. Journeys to schools and educational facilities should not be prohibitively long or arduous. Methods for reducing risks on the journey to and from schools and educational facilities include lit and dedicated walkways along roads, the use of reflective tape on clothing or bags, the provision of torches or other equipment, use of/avoidance of identifiable uniforms, and organized transportation, such as buses, walking as a group or use of adult escorts.

Assessing skills and level of education

Vulnerable migrants may benefit from assessments to determine their level of formal education, literacy, numeracy and language proficiency. Such assessments can be carried out by the relevant educational authority, schools and teachers, or others involved in providing assistance to vulnerable migrants. Educational assessments may include the use of the standardized testing methods applied in the current location or the vulnerable migrant's home country.

²⁶ Teachers and educators include classroom teachers, classroom assistants, head teachers and principals, vocational trainers, administrators in formal and non-formal educational settings, and volunteers in educational facilities.

The results of any assessments or tests should be combined with factors such as the vulnerable migrant's age and role within the family and community, to determine what types of education and training are most appropriate.

Participation and consultation

Vulnerable migrants, including migrant children, should be meaningfully consulted and their views obtained to inform and adapt available educational and training opportunities to their learning needs. As part of a learner-centred approach, each vulnerable migrant should be treated individually and his/her individual educational aspirations considered. Where a vulnerable migrant's aspirations do not align with available opportunities, alternatives should be sought and his/her learning objectives met in other ways.

If vulnerable migrants are themselves teachers or involved in the delivery of education in their home countries, they may have valuable insights and knowledge that can be useful for adapting available educational and training opportunities and making them more accessible to vulnerable migrants, including by changing curricula, pedagogical methodology, or scheduling of classes and training.

It is particularly important to consult vulnerable migrants when identifying and addressing barriers to education and training, as they are best placed to identify the barriers they face and may propose ways to remove them.

Identifying and addressing barriers to education

While educational opportunities should be non-discriminatory, there are often barriers to the meaningful participation of vulnerable migrants in education and training. Barriers can include:

- School and training facilities that require students and learners to have regular immigration status or documented birth registration;
- Learners not speaking the language of instruction;
- Prohibitive school fees or other associated costs;
- Vulnerable migrants not meeting admission requirements;
- Arriving in the middle of the academic year or after a training programme has commenced.

Action should be taken to remove such barriers. This may include certification or translation of vulnerable migrants' educational and training qualifications by relevant authorities. Vulnerable migrants whose certificates and diplomas have been lost or destroyed should be assessed to determine an appropriate entry level in the light of their capabilities and the psychosocial impact of enrolling with their peer group.

Additional teaching support or tutoring may be required for students and learners who arrive midway through a school year, could benefit from language learning, or need help to meet admission requirements.

Furthermore, it may be possible to adapt curricula and teaching methods to be more inclusive of different learning styles and academic levels. If tuition is prohibitively expensive, consideration should be given to deferred payment schemes, subsidized funding or waivers.

In some countries and cultures, women and girls face additional barriers to education and training, including social norms that prioritize the education of boys over girls, educational facilities that present risks of gender-based violence, inadequate facilities and equipment for managing menstruation in schools, and policies that prohibit pregnant or married women and girls from attending school.

Adults and children with disabilities also face barriers to quality education and training. These can include physically inaccessible buildings for people with mobility challenges, styles of teaching and testing that prevent persons with developmental disabilities from participating, and social norms and discrimination that prevent persons with disabilities from attending school or participating in training opportunities.

Advocacy strategies should be developed to target changes in policy, practice, attitudes and decision-making that reinforce barriers impeding vulnerable migrants from receiving education and training. Such strategies may need to target government ministries, local authorities, teachers and school administrators, or community members.

Discriminatory policies and practices that limit access to education and training for vulnerable migrants should be identified and remedied. Advocacy messaging should call for the provision of education without discrimination based on immigration status, nationality, ethnicity, age, gender, disability or any other factor.

Advocacy may also be required among families and communities of vulnerable migrants if cultural or social norms prevent some members of the family from attending formal or informal education, especially girls and persons with disabilities. Families may have legitimate concerns about the safety and well-being of their family members at schools or other training facilities and should be given the opportunity to express those concerns and help identify acceptable solutions.

Sustainable education and training

Vulnerable migrants who have obtained qualifications through education or training programmes should be provided with documents that they can carry with them if they return to their home countries or move to another location, including any assessments, grades, certificates, diplomas or degrees awarded.

In some circumstances, it may be beneficial to replicate education and training programmes from vulnerable migrants' home countries or communities. This can be done by engaging members of the migrant community who are teachers or educators, by arranging for remote support from teachers and educators in the vulnerable migrants' home country, or through online platforms or home-based learning models. In these cases, the relevant authorities should be involved to ensure the education and training is recognized in the home country, the current location, or both.

Vulnerable migrants due to return to their home countries or move on to another location should be helped to prepare for the transition and maintain and continue their education or training; to that end, they should be given the documents they will need for continued study, such as report cards, exam scores, letters from teachers and educators, and records of attendance.

Building the capacity of educators

Additional training and capacity-building may be required or desired for teachers and others involved in the administration of schools and other educational and training facilities, so that they can meet the unique educational needs of vulnerable migrants and participate in efforts to remove barriers to their education and learning.

Teachers and those involved in developing and delivering curricula can benefit from knowledge of the education system in vulnerable migrants' home countries, including the style of instruction and type of testing and assessments used, the structure of the learning environment and typical routines, and the relationship between teachers and students and their families.

Educators can benefit from training in how to teach vulnerable migrants and awareness of the challenges they may face and the techniques they can use to integrate vulnerable migrants into formal education and training programmes. They may be given professional development opportunities in the form of peer learning and sharing of best practices and case studies, or be allowed to consult vulnerable migrants and their families about curriculum design and delivery. Educators working with students from other cultures may benefit from additional training on cultural differences and suitable approaches, especially if large numbers of migrants from the same community or culture are accessing a learning environment.

Educators should seek information on the education-related beliefs and practices of the vulnerable migrants' culture and community, by asking the vulnerable migrants themselves, speaking to other service providers, and using available resources and evidence. Where there are large numbers of migrants from a particular country, community, religion or other social group, specific guidance may be useful to capture best practices in a specific educational facility.

Additional teaching assistants or subject matter specialists may be useful to help teachers and educators meet the needs of their students and learners, especially if class sizes have expanded with the inclusion of vulnerable migrants.

Teachers and educators should be given information on the services and support available for vulnerable migrants, as they are often well placed to provide referrals, especially if vulnerable migrants disclose experiences of violence, exploitation, or abuse.

Livelihoods, employment and income generation

The right to work is set down in the International Covenant on Economic, Social and Cultural Rights and includes the right to opportunities to earn a living by work that is freely chosen or accepted and the right of everyone to just and favourable conditions of work.²⁷ According to the Committee on Economic, Social and Cultural Rights, the term “work” should be understood to mean “decent work” (see text box on Decent work) that provides inter alia fair wages, a decent living for workers and their families, safe and healthy working conditions, equal opportunities within the working environment, rest and leisure, and reasonable working hours and holidays.

Decent work

In its General Comment No. 18, the Committee on Economic, Social and Cultural Rights defines decent work as “work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families ... These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.”

In its Guiding principles on the access of refugees and other forcibly displaced persons to the labour market, the ILO stresses the importance of providing decent work opportunities for all, including nationals, refugees and other forcibly displaced persons, in countries of origin and in host and third countries.

For the ILO, decent work has four constituent elements:

- a. **Creating jobs** – an economy that generates opportunities for investment, entrepreneurship, skills development, job creation and sustainable livelihoods;
- b. **Guaranteeing rights at work** – to obtain recognition and respect for the rights of workers, all workers, and in particular disadvantaged or poor workers, need representation, participation and laws that work in their interests;
- c. **Extending social protection** – to promote both inclusion and productivity by ensuring that women and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate health care;
- d. **Promoting social dialogue** – involving strong and independent workers’ and employers’ organizations is central to increasing productivity, avoiding disputes at work and building cohesive societies.

For more information on the ILO Decent Work Agenda, see <http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

In addition, the Migrant Workers Convention states that all migrant workers are to be treated on an equal footing with nationals regarding remuneration, overtime, hours, weekly rest, holidays with pay, safety, health, termination of employment, and any other conditions of work which, according to national law and practice, are covered by the terms of the Convention.

The Committee on Economic, Social and Cultural Rights has made clear that the right to work does not imply an absolute and unconditional right to obtain employment, and the Committee on Migrant Workers similarly finds that State parties may refuse migrant workers who do not have work permits access to their labour markets.

However, this does not preclude the right all individuals have to freely choose to accept work, to not be forced into work or unfairly deprived of employment, and to have access to a system of protection guaranteeing access to employment. In addition, any migrant who enters into an employment relationship, regardless of immigration status, is entitled to equal conditions of work and terms of employment.

²⁷ The normative framework relevant to this section is adapted from OHCHR, *The economic, social and cultural rights of migrants in an irregular situation* (New York/Geneva, United Nations, 2014). Available at: https://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf.

Many migrants leave their home communities and countries in pursuit of employment opportunities, and livelihoods will likely be a self-identified need of vulnerable migrants. Vulnerable migrants may have accrued debts to family members, community members, recruitment agencies or criminal organizations, and this may increase the need to secure a suitable livelihood. Often, however, they are not afforded access to decent work through the regular job market or other livelihood opportunities that would result in an income or enable them to make a living.

Without access to jobs and means of earning wages, vulnerable migrants may have to resort to unsafe work, illegal or criminal work or work that does not offer humane conditions; they may receive comparatively low wages, work in the informal economy without employment protections, or run afoul of the law for working without a work permit. Migrants without the legal means to secure a livelihood are also at higher risk of exploitation through forced labour, debt bondage or servitude; they may be paid less than the statutory minimum wage, have excessive deductions made by unscrupulous employers, or be forced to pay extortionate fees to recruiters aware that they are less likely or unable to seek recourse. Vulnerable migrants may be prevented from changing jobs and be tied to one employer; in order to escape abusive or exploitative conditions of employment, they may be compelled to enter into an irregular migration situation.

Vulnerable migrants can also suffer from violence, abuse and exploitation in the workplace, including gender-based violence and unfair dismissal. They may experience restricted access to remedies for unfair treatment by employers and be prevented from securing redress for unfair and illegal treatment, including unfair dismissal.

Often the types of employment available to vulnerable migrants pose higher risks to health and safety and afford less protection against violence, exploitation and abuse – jobs in agriculture and fisheries, food processing, factories and manufacturing, construction, and domestic and care work come to mind.

Vulnerable migrants may not be able to demonstrate that they are employed if they do not have a contract or cannot prove how many hours they have worked; this can limit their ability to secure redress for wages withheld, unfair treatment, or compensation following workplace incidents, including accidents or injuries.

Vulnerable migrants may be prohibited from opening bank accounts, participating in available savings plans, or using services to send money to family in other locations. This can drive them to use informal money savings and loan or remittance arrangements affording less protection from theft, fraud or exploitation, make any livelihood they have been able to obtain less secure, and leave them without recourse against mistreatment.

Accessing other services, such as health, education and shelter, may have associated costs, such as fees for service provision, travel to and from service providers, or time taken away from income-generating activities. This is often the case when vulnerable migrants do not have access to State services and need to pay private service providers, or when services are not locally available and involve travel and associated costs. Vulnerable migrants may have debts, particularly associated with their journey, and may not have access to productive assets such as cash savings or credit lines.

The goal of livelihoods and employment programming is to secure a regular income in a decent work environment, which can enhance well-being, reduce vulnerability and improve food security. The absence of a livelihood can introduce or exacerbate vulnerability factors for migrants. Securing livelihoods or employment for vulnerable migrants can have multiple positive impacts beyond the financial, including psychosocial impacts such as improved emotional well-being, richer social networks, restored pride and dignity, and greater independence and self-reliance, for both the migrants and their families.

Assessing livelihoods assets

Vulnerable migrants' livelihood assets – their human, social, physical, natural and financial capital, the productive use of which results in a livelihood – should be analysed with a view to identifying any gaps that could be a barrier to securing a livelihood and to informing the development or selection of appropriate livelihood activities or programmes.

Such analyses include an assessment of the following:²⁸

- **Human capital:** Skills, knowledge, work experience, physical ability to work and education;
- **Financial capital:** Savings, credit, insurance, remittances, cash flow and stock levels;
- **Natural capital:** Environmental resources that contribute to livelihoods, such as arable land, livestock, grazing land and access to water;
- **Physical capital:** Infrastructure and the physical environment, such as shelter and accommodation, transportation, energy sources, and tools and equipment;
- **Social capital:** Social networks that increase trust and the desire to work together, either in formal or informal relationships.

Some things to consider when assessing the livelihood assets of vulnerable migrants include:

Human capital	<ul style="list-style-type: none"> • What is the vulnerable migrant's work history? • Does the vulnerable migrant have any academic, professional or technical qualifications and can they be translated/transferred or accredited in the current location? • Does the vulnerable migrant speak the local language? • Does the vulnerable migrant have the physical capacity to work? • Does the vulnerable migrant have caring responsibilities that would restrict the capacity to undertake work? • Would the vulnerable migrant benefit from training or education to improve livelihood opportunities? (For more information on types of vocational training that can improve livelihood options, see page 63.)
Financial capital	<ul style="list-style-type: none"> • Does the vulnerable migrant have access to savings from home? • Can the vulnerable migrant access available savings, credit or insurance schemes at home or the current location? • Does the vulnerable migrant have a bank account in the current location or can s/ he access a bank account in his/her home location? • Does the vulnerable migrant have debts? • Did the vulnerable migrant incur any debt in the migration journey? • Is the vulnerable migrant responsible for any remittances or in receipt of any remittances?
Natural capital	<ul style="list-style-type: none"> • Does the vulnerable migrant have livestock? • Can the vulnerable migrant's livestock be kept in the current location? • Does the vulnerable migrant have access to land in the current location? • Are there any restrictions on land access for migrants in the current location?
Physical capital	<ul style="list-style-type: none"> • Are there barriers to securing work because of the shelter and accommodation options for vulnerable migrants? • Is there safe, affordable transportation to working locations for vulnerable migrants? • Does the vulnerable migrant own tools or other productive assets? • Does the vulnerable migrant have access to communal productive assets?
Social capital	<ul style="list-style-type: none"> • Is the vulnerable migrant a member of a wider community in the current location? • Are the members of the wider community motivated to help vulnerable migrants access livelihood opportunities? • Is the vulnerable migrant still connected to members of the home community? • Is there discrimination against migrants in the labour market? • Are there laws that restrict the right to work for migrants?

²⁸ Adapted from *Livelihood Programming in UNHCR: Operational Guidelines* (Geneva, UNHCR, 2012) (available at: <http://www.unhcr.org/4fbdf17c9.pdf>) and *Sustainable Livelihood Guidance Sheets* (United Kingdom, Department for International Development, 1999) (available at: <https://www.enonline.net/dfidsustainableliving>).

Another important consideration when developing livelihood strategies with vulnerable migrants is the political, social and legal context. In many countries, irregular migrants will not be able to work under local laws or customs or because of discrimination against migrant workers. High levels of poverty or unemployment in the host country may affect livelihood options for vulnerable migrants and heighten feelings of distrust or acts of discrimination against migrants, amid perceived or actual scarcity of resources and livelihood opportunities paired with competition for resources.

It is important to understand the contextual barriers to livelihoods, as they may limit options and require advocacy and technical support to enable inclusion of vulnerable migrants (see *Advocacy for access to livelihoods* on page 71).

The unique circumstances of vulnerable migrants should be taken into account as well. For instance, the type of livelihood should be in line with the amount of time the vulnerable migrants expect to remain in the location and with any future plans, including for onward migration. If the migrants are intending or will be forced to leave, a short-term cash-based or relevant skill-building intervention may be a better option than investing in starting a small business (for more on cash-based interventions, see page 70).

Vulnerable migrants returning to their homes or migrating to another location should be helped to maintain their livelihoods or prepared for the lack of a livelihood during the transition period. This can be done by developing a savings plan or budget and preparing documents such as letters of reference, qualifications and accreditation, and records of employment.

Mapping available livelihoods supports

Once the vulnerable migrants' livelihood assets have been assessed, livelihood options should be identified and mapped against their capacities and interests. The options include looking for a job, starting a small business or income-generating activity, or participating in a cash-based intervention in support of livelihoods.

Available livelihood supports should be mapped and assessed for accessibility and suitability for migrants. They may include:

- Government-sponsored programmes, such as training and education grants or employment support initiatives, that support the employment of those who are un- or underemployed;
- Livelihood programmes implemented by United Nations agencies, international organizations, NGOs, civil society organizations such as labour unions, or academic/educational institutions;
- Private sector entities that have employment schemes, are known to have inclusive human resource policies, or recruitment and employment services;
- Career counselling programmes that offer assistance with job placements, résumé drafting and employment counselling

If large numbers of vulnerable migrants require livelihood support, it may be useful to map available livelihood supports on a larger scale.

Securing employment

Job market surveys can identify opportunities for paid employment. They may be conducted by governments or local authorities, or less formally at community level by mapping major industries and employers, labour market gaps and demands, existing employment supports, and any existing livelihood programmes.

Vulnerable migrants may only have access to casual labour in informal arrangements where workers are not contractually employed and therefore not afforded protection under relevant labour laws. Casual labour is often employed in industries with a relatively higher risk to health and safety, such as agriculture and fisheries, food processing, factories and manufacturing, construction, and domestic and care work. In casual labour situations, workers may be employed in poor conditions without access to recourse. Wherever possible, vulnerable migrants should have access to the regular labour market, although this may require advocacy (see *Advocacy for access to livelihoods* on page 71).

Vulnerable migrants who have secured employment should be offered support to ensure that any contracts they are asked to sign are fair and not exploitative, and their employment conditions, including wages and hours and conditions of work, should be reviewed to ensure that they comply with relevant labour laws. Any equipment, especially safety and personal protective equipment, should be provided by the employer, or the vulnerable migrant should be given a grant or loan to purchase it.

Vulnerable migrants should have access to labour-related grievance mechanisms and should be supported if they wish to join or form workers' organizations, including labour or trade unions.

The routes and transportation methods used to get to work should be secure and safe; they should not exacerbate any risks of violence, exploitation and abuse. Commutes should not be prohibitively long or arduous; they can be made safer and more secure by various methods, including lit and dedicated walkways along roads, the use of reflective tape on clothing or bags, the provision of torches or other equipment, use/avoidance of identifiable uniforms, or organized transportation such as buses provided by the employer or organized by the community.

Vulnerable migrants not previously registered with the local authorities, including tax authorities, should be helped to register and may benefit from support to navigate tax systems and processes, ensure that they make the appropriate contributions and access any social security programmes.

Income-generating activities

Where a formal job market does not exist or is not accessible or the best option for vulnerable migrants, other income-generating activities can be pursued. In some instances, small-scale income-generating activities are the only allowable livelihoods for migrants under local laws. Examples include cleaning, cooking, arts and crafts, and agricultural work, which can generate revenues if there is a sufficient market. Vulnerable migrants wishing to pursue self-employed income-generating activities should do so on the basis of market assessments that outline the potential for earnings or profit and map the value chain to identify growth potential, required inputs and expected outputs.

Self-employment offers flexibility and autonomy, but can also be a less reliable source of income.

Market assessments should analyse the market price of the goods or services concerned, current supply and demand, operating costs, including procurement of goods and supplies, and any market distortions, including those caused by the presence of significant migrant populations or influxes.

Where possible, vulnerable migrants should be encouraged to think beyond traditional or stereotypical roles and find a niche area in which they may have a competitive advantage.

Seasonal fluctuations in profitability should be considered and planned for, especially in agriculture and other cyclical industries such as tourism. The impact of inflation on the selected livelihood activity should also be assessed, and contingency plans put in place if the activity is no longer sustainable.

Vulnerable migrants should be provided with the necessary equipment and supplies or a grant or loan to cover the initial start-up costs for income-generating activities, the expansion of existing livelihoods, or additional training relevant to their livelihoods.

Cash-based interventions to support livelihoods

In some situations, cash-based livelihoods are the best or only option for supporting the livelihood needs of vulnerable migrants. These include situations where the local job market is inaccessible to migrants or does not offer them appropriate or suitable employment options, or where vulnerable migrants are not able to carry out regular work or are not expecting to be in the location long enough to establish a livelihood.

Vulnerable migrants may not be able to work or only be able to work part-time if they have caring responsibilities within their families or communities, are physically or mentally unwell, are living with a disability that prevents them from working, are pregnant women or breastfeeding mothers, or are older. In these cases, cash-based livelihoods can be used to supplement the livelihood needs of vulnerable migrants and their families. They can be provided by State institutions, United Nations agencies, international organizations, NGOs, civil society organizations or community support mechanisms.

The mechanisms that can be used to deliver cash-based interventions include existing infrastructure such as banks or post offices, preloaded bank or smart cards, mobile money platforms and/or direct cash transfers or distributions. Cash transfers can be made conditional on certain obligations, such as children attending school or visiting a social service. Voucher systems, whereby a voucher is exchanged for a specific household good or food, are another option.

Cash-based livelihood programmes should be designed taking into account the impact on vulnerability factors. Cash should not be distributed to vulnerable migrants if doing so exacerbates the factors making them vulnerable. Cases where cash distribution could worsen migrant vulnerability should be identified through regular monitoring and consultation with the vulnerable migrant. These could include instances where vulnerable migrants are staying in insecure shelters or accommodation, where carrying cash or preloaded bank or smart cards would put them at risk of theft, violence, exploitation or abuse, or where they risk seizure of their assets because of their irregular immigration status or discrimination.

One way to mitigate the risks of cash-based livelihood programmes is to ensure that vulnerable migrants participate in decision-making and are consulted on the risks and benefits.

Vulnerable migrants may need support to access the cash distribution system, especially if they have not previously participated in such a programme, are unfamiliar with or do not possess the technology needed, or do not know how to access local markets for goods and services.

Support to manage income

Vulnerable migrants may benefit from training and support to increase their financial literacy, develop and manage a household budget, open bank accounts or participate in available savings plans. This is particularly important for vulnerable migrants who have not previously been responsible for generating an income or managing the household or family income, for example when the household structure has changed or in female- or child-headed households. Vulnerable migrants wishing to send money to family or community members at home or at another location may need help to do so in the most cost-effective and safe way.

Advocacy for access to livelihoods

In many countries, irregular migrants are not able to work under local laws or customs or because of discrimination. There may be opportunities for collective advocacy for changes to the law, policy or practices that prevent vulnerable migrants from securing decent work and livelihoods through the labour market. There may also be opportunities for advocacy on specific cases for temporary or permanent changes to an individual's immigration status to include access to the labour market. This is particularly important for vulnerable migrants who have no immediate options for returning to their homes or relocating to a third country.

Specific groups of vulnerable migrants may require additional employment protection, for instance pregnant women or migrants with disabilities; in their case, advocacy vis-à-vis policymakers and employers should promote the participation of all in the labour market and the protection of all workers according to international and local labour laws and standards.

Where there are existing social protection systems, there may be an opportunity to advocate for the inclusion of vulnerable migrants through changes to intake criteria and support for vulnerable migrants who wish to submit applications to existing social protection systems.

The ILO's Guiding principles on the access of refugees and other forcibly displaced persons to the labour market outline voluntary principles to help Member States ensure that refugees and other forcibly displaced persons have access to the labour market and to assist Member States affected by such situations.

The Guiding principles can be used as a tool for advocacy and are framed around the following areas:

- Governance frameworks on access to labour markets;
- Economic and employment policies for inclusive labour markets;
- Labour rights and equality of opportunity and treatment;
- Partnership, coordination and coherence;
- Voluntary repatriation and reintegration of returnees;
- Additional pathways for labour mobility.

Those supporting vulnerable migrants may face resistance from vulnerable migrants and their families in terms of what types of work are considered suitable, especially for women. There may be opportunities to challenge stereotypes and social norms and encourage more choice in livelihoods and the economic empowerment of those typically denied access to the labour market, paid work or income generation. Similarly, there may be resistance to children attending school in favour of earning an income through a job or livelihood activity.

Family tracing, assessments and reunification

Migration has the potential to separate family members, particularly if it is forced, sudden, includes multiple, unsafe or irregular methods of transportation, border crossings or routes, or is due to a natural disaster and/or armed conflict. Children, the elderly, those who are physically or mentally unwell, persons living with disabilities and detained migrants are particularly vulnerable to being separated from their families. The definition of family differs between cultures and societies and may change in the circumstances, including the experience of migration.

Separation is a distressing experience that contributes to poor health and form, including feelings of anxiety, depression and loneliness; it can also have a negative impact on child development. Migrants, especially children, might be more vulnerable because they have been separated from their families.

Under international law, including the Universal Declaration of Human Rights, the 1949 Geneva Conventions for the protection of war victims and their Additional Protocols, and the Convention on the Rights of the Child, everyone has the right to know what happened to missing relatives, to communicate with members of their family, to stay united with their family members, and to be reunited if they are separated. Primary responsibility for ensuring respect for these rights lies with the State and, in situations of conflict, the organized armed group exercising control.

Family separation in migration can be unintentional or deliberate. Unintentional separation is not planned or anticipated. Deliberate separation occurs when families make a conscious decision to separate; it may start out being intentional, with the expectation that the family will be reunited in the future, but it can become longer than planned.²⁹

Families may be unintentionally separated when:

- Family members are accidentally split up during an unplanned or poorly planned migration;
- Family members are split up owing to confusion associated with spontaneous or irregular migration;
- Younger, older or less mobile family members are unable to keep up;
- Unsafe or unreliable transportation routes or methods are used (for instance, boats that capsize);
- Family members are in different locations (for instance, school and work) when an event causing spontaneous migration occurs, such as a natural disaster, and are unable to find one another;
- Family members are injured, killed, captured, kidnapped, trafficked, arrested or detained;
- Family members are abducted for ransom, recruitment into armed forces or groups, or forced labour;
- Family members are separated in transit sites, camps or settlements;
- Families that separated with every intention of reuniting face challenges or barriers to doing so;
- Service providers' policies or practices do not ensure families remain united (for instance, shelters that admit only women and their children or residents of a certain age or sex).

Deliberate separations may occur when:

- Families under stress, including as a result of poverty or the death, illness or disability of a parent, send their children away or entrust them to the care of others in an effort to increase the children's chances of survival, improve their well-being or alleviate stresses, including financial stress on the household;
- One or more family members migrate to areas where education, employment or services are available or presumed to be available;
- Families leave their children, older family members or those living with disabilities with relatives, community members or institutions when they migrate;

²⁹ The definitions and causes of accidental and deliberate family separations are adapted from *Field Handbook on Unaccompanied and Separated Children*, Inter-agency Working Group on Unaccompanied and Separated Children/Alliance for Child Protection in Humanitarian Action (2017). Available at: <https://www.iom.int/sites/default/files/HANDBOOK-WEB-2017-0322.pdf>.

- Some family members are encouraged to migrate because the legal and policy framework is favourable for them but not all family members (for instance, if unaccompanied children are allowed through border crossings or there are migration pathways for men who receive temporary permits for employment in male-dominated industries);
- One or several family members travel the migratory route first to assess its safety and security;
- Families choose to migrate in smaller groups to heighten the chances of successful entry into a territory through irregular means;
- One or several family members migrate to another location to establish themselves by securing a livelihood, finding suitable shelter or accommodation, or regularizing their immigration status before being joined by the rest of the family.

Reuniting families can have positive psychosocial impact on all family members, improve overall health and well-being, enhance feelings of safety and security, and reduce vulnerability factors for separated family members.

Tracing family members

Individuals have the right to a family life, and family tracing programmes help uphold that right. They exist in many contexts and may be operated by States, including through embassies and consulates, IOM, the ICRC, a National Red Cross or Red Crescent Society, UNHCR, UNICEF, the ISS, the International Commission on Missing Persons or NGOs. Vulnerable migrants searching for family members should be referred to family tracing programmes, where they exist. Any family tracing efforts should be coordinated with the relevant local authorities and organizations in countries where separated family members are known or thought to be, as appropriate.

Methods of tracing family members include:

- Filing missing person reports with law enforcement agencies;
- Registering on family tracing websites;
- Notifying embassies or consulates about missing family members;
- Posting photos/names of family members on dedicated notice boards in public places;
- Broadcasting names of family members on radio or television;
- Distributing leaflets with photos/names of family members;
- Sending messages or messengers to the last known address of family members;
- Searching the records of hospitals, border crossings, police stations, detention facilities, schools and other institutions and service providers for the names or identifying information of family members;
- Using social media platforms to search for, or post messages soliciting information on, family members.

All these methods can be used in vulnerable migrants' places of origin, along the migratory path and at their current destination. It might also be necessary to trace family members in other locations, including their intended destination.

The risks of using any of the available methods must be assessed. For instance, if sharing information publically would identify family members to authorities or criminal elements that would do harm to any of them, including those who have been separated, other tracing methods should be sought. Vulnerable migrants should help determine the most appropriate and effective method of family tracing and should be asked for their views on the methods of contacting family members most likely to success.

The risks associated with tracing methods should be mitigated. For example, if photos are used, it might be safer not to include names, contact details or information on current location on notice boards, community messages or leaflets. Vulnerable migrants searching for family members must consent to the use of their personal information, including photos, and location.

Vulnerable migrants who do not wish to be registered with the local authorities, for fear of deportation or detention, should not be denied support to trace family members.

Migrant families will often undertake their own tracing efforts, including by the methods listed above or by accessing their community and social networks. Their efforts should be supported insofar as they do not pose a risk to the migrant, including by providing phones, phone credit or access to the Internet.

When the tracing process leads to the discovery that a family member has been detained, family members should be reconnected and the most effective communication channels identified and established. Support should be provided for family members wishing to visit detained relatives; this may require advocacy vis-à-vis the detaining authorities for visits and financial support to cover transportation costs. (For more information on the detention of migrants, see the text box on page 37.)

Family tracing may uncover news of a family member's death. The vulnerable migrants concerned should be afforded the ability to mourn their loss in the way they feel most comfortable with. They should be given information on the whereabouts of the deceased's remains and any known information about the death. They may wish to travel to the place where the death occurred or share this information with their community, and should be helped to do so.

A family member's death may have financial implications, including costs of burial or cremation, funeral rights and/or repatriation of remains, and different cultural, religious and social approaches to mourning and handling of remains should be considered and respected. Any expenses should be monitored; if they become unaffordable, vulnerable migrants may require additional livelihood support or support to manage their household finances. Where available, consular assistance should be provided to surviving family members, including for repatriation of remains. (For more information on livelihoods, employment and income generation, see page 66.)

Vulnerable migrants should be provided with psychosocial support throughout the tracing process, which involves uncertainty and can therefore be distressing, igniting feelings of anxiety, hopelessness, helplessness and depression. This is particularly the case when a family cannot trace a missing member or discovers that a family member has been detained or died.

Where family members cannot be located, there should be collective advocacy in support of the establishment of mechanisms and processes to provide information on the fate of those who are unaccounted for or missing, or who cannot be located. If the vulnerable migrant is a child and no family members can be located, appropriate and sustainable alternative care arrangements must be found.

Reconnecting family members

When family members have been located, appropriate methods of communication should be identified and used to re-establish a connection between them. These may include phone calls, text messages, letters, emails, online audio/video platforms and/or social media. The principles of confidentiality, privacy and data protection apply to all steps in the family tracing and reunification process, including information shared between family members.

Where communication with family members involves risks – the communication platform is insecure or correspondence could be intercepted – vulnerable migrants should be informed and choose whether or not to communicate.

When separated family members include children, the principle of the best interests of the child should guide all actions, including those aimed at reconnecting and reuniting family members. This should include an assessment of the best interests of the child and may require an assessment of family relationships, especially for younger children. For more information on best interests assessments and determination for migrant children, see the Annex to Part 2.

The Interagency Guiding Principles on Unaccompanied and Separated Children* contain the following definitions:

Unaccompanied children: Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

Separated children: Children 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.

Orphans: Children whose parents are known to be deceased. In some countries, a child that has lost one parent is also referred to as an orphan.

* Interagency Guiding Principles on Unaccompanied and Separated Children, (Geneva, ICRC, 2004).

Separated and unaccompanied children³⁰

Separated and unaccompanied migrant children are at increased risk of violence, exploitation, and abuse. The Convention on the Rights of the Child is the cornerstone of the international legal framework that guides policies, programmes and decisions regarding separated and unaccompanied children.

When separated and unaccompanied children are identified, every effort should be made to reunite them with family members, but only when this is in the best interests of the child.

The best interests of the child is determined in a best interests assessment (BIA) undertaken by child protection agencies and individuals with appropriate training, with the participation of the migrant child. BIAs are an essential component of any child protection system or programme, but are particularly important for separated and unaccompanied children.

BIAs should be conducted:

- Before efforts are made to trace the family;
- Before the child is placed in alternative care settings in the absence of family members;
- Before family reunification.

Best interests determination (BID) may also be required and must be conducted by a State agency or delegated authority. Those involved in the protection and assistance of migrant children may be requested or required to support a BID process.

More detailed information on separated and unaccompanied migrant children, including on family reunification, BIAs and BIDs, can be found in the Annex to Part 2.

Reuniting family members

Family reunification between countries requires considerable coordination and communication between the relevant authorities and the vulnerable migrant, including authorities from all relevant countries. In some cases, international organizations may help States reunite families, typically IOM, the ICRC, National Red Cross and Red Crescent Societies, UNHCR and UNICEF.

When the person to be reunited is a separated or unaccompanied migrant child, the family relationship must be verified to protect the child and ensure there have been no errors in the tracing process. (For more information on reuniting separated or unaccompanied migrant children, see the Annex to Part 2.)

All family members should be prepared for reunification, and support, including psychosocial support, should be provided to individual members of the family and the family as a whole. A significant amount of time may have passed since the family members last lived together or saw one another, and they may not be aware of everything that has happened in each other's lives since their separation.

In preparation for family reunification, vulnerable migrants and their family members may require support to obtain travel documents, including passports and visas. Vulnerable migrants should be offered support to make travel arrangements and, especially in the case of children, provided with a suitable escort for their journey. Travel escorts should have specialized training and expertise in supporting vulnerable migrants and must abide by all the principles of assistance (see page 26). Vulnerable migrants and their family members should be consulted about and agree to the choice of the escort.

Any costs associated with family reunification, including to obtain appropriate documentation, transportation and accommodation, should not be prohibitive or prevent the reunification. Where possible, grants or loans should be provided to vulnerable migrants to cover such costs.

³⁰ This section refers only to family tracing and reunification of separated and unaccompanied children. For more information on separated and unaccompanied children, see the Annex to Part 2.

Post-reunification support

After vulnerable migrants and their families have been reunited, they may require additional support, including to register recently reunited family members with relevant authorities and service providers. The services available for reunited family members should be mapped, including health care, training and education, and livelihoods, employment and income-generating services. All reunited children should be enrolled in school. Ideally, State social services or other service providers in the country of reunification should be able to conduct follow-up assessments to verify that reunification continues to be in the child's best interests.

The addition to the household may be a source of financial stress. This should be monitored and, where possible, additional financial support provided to the family to cover additional costs. (For more information on livelihoods, employment and income-generating activities, see page 66.)

Some or all members of the family may benefit from psychosocial support to adjust to the reunited family and deal with the circumstances of the family separation. Appropriate support should be made available to all family members for a sufficiently long time.

Maintaining family unity

Efforts should be made to maintain the unity of families of vulnerable migrants, to prevent separation and to ensure that families that have been reunified stay together. This can be done by registering all family members with the relevant authorities, registering all births, adoptions and deaths in the family, providing shelter and accommodation for entire families, ensuring livelihoods are sufficient for the family size, ensuring children have the opportunity to attend school, and ensuring all family members have access to health care in their communities.

A family of migrants wishing to continue its journey should be helped to do so as a unit. If it chooses to separate, for instance if one family member will travel to a new location before the others join him/her, it should find ways to stay in touch. This may require support for the purchase of mobile phones, SIM cards and airtime vouchers, or training in the use of available means of communication, including social media. Any available information about the migratory pathway, including risks, should be shared with family members so that they can make informed choices about who migrates and how. Information on what to do if a family member is unintentionally separated should be shared with and understood by all family members in the event that communication is interrupted or the separation continues longer than planned.

Access to justice

The Universal Declaration of Human Rights enshrines the principle of equality before the law and the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal established by law, the right to all guarantees necessary for the defence of anyone charged with a penal offence and other minimum guarantees, and the right to be tried without undue delay.

The International Covenant on Civil and Political Rights states that all those charged with a criminal offence shall be entitled to be tried in their presence and to defend themselves in person or through legal assistance of their own choosing or assigned to them where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Convention on the Rights of the Child enshrines the principle of the best interests of the child, meaning that any action taken by either a public or private entity and affecting a child should be based on the appreciation of the child's best interests as a primary consideration. This applies to the justice system as well. The Convention establishes the additional and specific rights of children involved with the justice system, whether as victims, witnesses or alleged offenders, with a view to guaranteeing their fair access to justice.

The Third Optional Protocol to the Convention on the Rights of the Child establishes a complaints procedure whereby the Committee on the Rights of the Child may hear complaints from children, groups of children or their representatives about violations of children's rights. Children from States that have ratified the Protocol can use this mechanism to seek justice if the national legal system has not been able to provide a remedy. The Committee

is also empowered to launch investigations into grave or systematic violations of children's rights, and States are empowered to bring complaints against each other if they accept this procedure.

The United Nations Convention against Transnational Organized Crime and its Trafficking in Persons and Smuggling of Migrants Protocols outline the protections to be afforded to trafficked persons and smuggled migrants participating in the criminal justice system. They stipulate that States are not to criminalize migrants for having been trafficked or smuggled and should take appropriate measures to provide effective protection to victims and witnesses participating in criminal proceedings against traffickers or smugglers.

Effective remedy

Effective remedies include both procedural and substantive elements.

Procedural elements refer to the process ensuring that victims of rights violations or crimes are heard and their claims decided by the judicial system. They include the legal and other assistance needed to claim remedies.

Substantive elements refer to the outcome of the proceedings and the relief afforded to successful claimants. Possible reparations include restitution, rehabilitation, compensation and guarantees of non-repetition.

The right to a remedy, which is an attempt to correct an injustice, for the victims of human rights violations or crimes is codified in Articles 8 and 10 of the Universal Declaration of Human Rights, Article 2(3) of the International Covenant on Civil and Political Rights, Article 83 of the Migrant Workers Convention, Article 6 of the International Convention on the Elimination of all Forms of Racial Discrimination, and Article 13 of the Convention on the Rights of Persons with Disabilities.

The 2005 United Nations General Assembly resolution, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, outlines victims' rights to remedies, including restitution and compensation.

Assessing legal needs

Vulnerable migrants may be involved with the justice system for a variety of reasons, including their irregular immigration status, as the victims of crime, or because they have been accused or found guilty of committing a criminal act themselves.

Case managers involved in the provision of protection and assistance to vulnerable migrants should conduct an initial assessment of the migrants' legal needs, which may include support to determine and/or regularize their immigration status, to report a crime committed against them, legal aid and advice to engage with the justice system as a victim or witness, or legal representation if they have been accused, charged or convicted of a crime.

Legal aid and legal representation

Legal aid is the provision of assistance to people otherwise unable to afford or overcome barriers to legal advice and representation and therefore having limited access to the justice system. The provision of legal aid contributes to the right of equality before the law. Legal aid encompasses legal advice and assistance, legal education and information, and legal representation.

Legal aid can be provided to those in contact with the law, for instance those arrested, questioned or charged by law enforcement, to the victims of a crime, or to those involved in other ways, such as asylum seekers, detainees, witnesses to a crime or parties to civil proceedings.

Every country's legal system determines for which proceedings an individual is entitled to legal aid, and many systems limit mandatory legal aid to criminal justice proceedings.

Legal representation is a type of legal aid. Legal representation is the function typically, but not always, undertaken by trained and registered attorneys within the justice system. Legal representatives represent another party's interests within the justice system or in certain administrative procedures and can be attorneys, executors or court-appointed guardians for children or persons deemed incompetent under relevant laws.

Where initial assessments identify legal needs, referrals should be made to specialist organizations focused on the provision of legal aid or to law firms or lawyers offering services to migrants and able to provide more in-depth analyses of their legal needs and appropriate responses. Depending on the context and type of legal aid required, legal aid services can be provided by State institutions, United Nations agencies, international organizations, NGOs or civil society organizations. Vulnerable migrants charged with or convicted of a crime should be referred to an organization, law firm or lawyer able to offer legal representation and confidential advice.

Support to address immigration status

One of the most common legal needs of vulnerable migrants is support to determine and/or regularize their immigration status. Vulnerable migrants wishing to pursue channels to regularize their immigration status may benefit from specialist support for the relevant processes of application and decision.

Vulnerable migrants should be counselled on the procedures involved in applications for asylum, work permits, visas and so on, including required documentation and evidence, and on the timeline of the application and decision-making process. They should be given any known information about the likelihood that their application will be accepted and the means of recourse available to them if it is rejected. This may need to be done urgently if a vulnerable migrant is facing detention, deportation or immediate return because of his/her immigration status.

In some countries, victims of trafficking or other crimes may have access to temporary or permanent immigration pathways; if these apply and are a suitable option, vulnerable migrants should be helped to pursue them.

Vulnerable migrants may require support to access consular assistance from their country of origin for the replacement of passports or travel documents or the issuance of birth, adoption, death, marriage or other records to support an application related to their immigration status. Consular assistance should be provided for vulnerable migrants who have been victims of or witnessed a crime, have been accused, charged or convicted of a crime, or have been detained.

Consular assistance should also be provided to vulnerable migrants wishing to return to their place of origin and may include the provision of relevant travel documentation, grants or loans to pay for travel, assistance during the return process, and reintegration support upon return. For more information on returning to places of origin, see page 83.

Accessing justice

Access to justice is a basic principle of the rule of law. Without access to justice, people cannot exercise their rights and accountability is not possible. The Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels emphasizes the right of equal access to justice for all, including members of vulnerable groups, and reaffirms the commitment of States to take all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all.

Mediation

Mediation is a way of resolving legal disputes outside the courts of a criminal justice system. It involves an independent and neutral third party – the mediator – who guides the process with a view to having both parties reach agreement on a course of action.

Mediation is effective when the parties are willing to participate and the process remains confidential. It is often used to resolve disputes in communities and families, and between employers and employees.

Justice can be accessed via formal and informal systems. Formal justice systems extend to criminal and civil justice and often comprise law enforcement agencies (e.g. police forces and immigration agencies), the judiciary (e.g. courts and legal representation), correction systems (e.g. prisons and probation systems), human rights institutions (e.g. national human rights commissions, ombudspersons) and grievance mechanisms (e.g. labour grievance processes). Informal justice systems are those that are established and maintained by communities, including social norms and traditions derived from religious institutions and practices or indigenous governance systems.

If a vulnerable migrant wishes to report a crime, including a labour law violation, both the formal and informal justice systems available for doing so should be explored. Vulnerable migrants should be informed of the process for reporting a crime and any known benefits, such as the potential to obtain compensation or special protection, and risks, such as repercussions for disclosing irregular immigration status or having to be named publicly.

Vulnerable child migrants who are victims of or witnesses to a crime and who wish to access formal or informal justice mechanisms should be entitled to effective assistance, tailored to the personal circumstances of the child. Given that children are especially at risk of hardship when involved in the justice process, appropriate measures should be put in place to safeguard their right to participation and protection.

Vulnerable migrants should be informed of any judicial processes that are specifically relevant for them, such as procedures for seeking compensation from traffickers, or for the reporting of specific crimes, for instance specialized hotlines or reporting processes for gender-based violence or human trafficking that may be run by law enforcement agencies.

Vulnerable migrants should be helped when they wish to participate in mediation (see textbox on page 78) or other non-criminal responses to disputes and conflicts, such as restorative justice (see textbox above).

Civil remedies, which are designed to provide monetary compensation to a claimant for the harm suffered, may be accessible to vulnerable migrants. Vulnerable migrants wishing to pursue civil legal remedies through civil courts, tribunals or dispute resolution boards should be referred to appropriate legal representation for legal advice informed by the unique challenges that they face within the civil legal system. They should be helped to file appropriate summons or complaints individually or as part of a collective action, such as class action lawsuits, and to access available specialist services for support during the civil proceedings.

Legal frameworks for pursuing civil remedies may include laws against violence (including physical, sexual and emotional violence), abuse, exploitation and harassment, false imprisonment and unlawful detention, breach of contract, unfair recruitment and unlawful employment conditions. They may also include tenancy or residential laws.

Cooperation with the criminal justice system

Given that vulnerable migrants may be victims of crime, including of trafficking in persons, they and the agencies providing protection and assistance may be involved with law enforcement agencies. Where possible, such involvement should be guided by signed memoranda of understanding or formalized referral systems or protocols that set out the processes of cooperation, outline what cooperation entails, and ensure that protection of the vulnerable migrant and any others involved who could be at risk, including support workers and family members, is central to the cooperative relationship.

Victims of crime and the service providers supporting them may be required by national mandatory reporting laws to cooperate with the criminal justice system. If so, this should be done in a manner that considers the best interests of the vulnerable migrant. The mandatory reporting process and requirements should be fully explained to the vulnerable migrant, who should be informed before a mandatory report is filed. For more information on the dilemma that this may pose, see the text box on dual loyalty on page 53.

Involvement with law enforcement agencies may include pressing charges or filing a police report, providing information and intelligence to bolster cases against smugglers, traffickers or unlawful employers, providing information and intelligence that can be used to provide protection and assistance to other vulnerable migrants, participation as a witness in a criminal case, or compensation proceedings.

Restorative justice

Restorative justice is a model of justice that brings together those harmed by crime and those responsible for the crime to promote empowerment of the former and accountability of the latter.

The aim of restorative justice is to promote reconciliation by enabling everyone affected by a particular incident to work together to find a mutually agreed way forward in a controlled environment.

Vulnerable migrants choosing or required to participate in criminal cases as witnesses should be afforded all protection necessary to ensure their safety and security and to prevent any retribution. The protection should extend to their families and community members, including those in their home or other locations, as they may also be at risk of retribution. Risk assessments should be carried out and inform the support provided to vulnerable migrants as they decide whether and how to participate in investigations and court proceedings. Vulnerable migrants should be informed of the outcome of investigations and trials, in particular any convictions, for which they have provided information; they should also be told if or when the perpetrator is released following questioning or incarceration.

The identity and identifying information of vulnerable migrants choosing to participate in investigations or criminal proceedings against an individual or group should be kept confidential and not disclosed to those outside the criminal justice system, including the media or members of the public. Where permissible under law, efforts should be made to protect their identities in criminal proceedings, for example by enabling them to testify via video or with their faces obscured.

Vulnerable migrants should be able to obtain legal remedies, such as reparation payments, or other compensation, such as repayment of legal fees or unpaid wages. The compensation or special protection owed vulnerable migrants who are victims of a crime should not be contingent on the migrants' participation in criminal justice proceedings as witnesses or in any other role.

Vulnerable migrants wishing to rescind their consent and discontinue their participation in investigations or criminal proceedings against an individual or group should be permitted to do so without any negative effects, including changes to their immigration status, deductions or withdrawal of any compensation they are owed, or removal of special protection provided for their previous participation.

Involvement with the justice system

In some instances, vulnerable migrants will be implicated in, charged with or convicted of crimes. This could be linked to irregular entry into a country (including the use of smugglers to cross international borders), working without the appropriate permissions or permits, working in illegal industries, not having appropriate documentation, or other criminal behaviours.³¹ In the case of trafficking, this may include forced involvement in criminal activities, such as working without the appropriate permits or visas, or involvement in illegal trades, such as sex work or street begging.

In all instances, vulnerable migrants should be provided with legal aid without discrimination. Legal aid may consist of information and education on vulnerable migrants' rights and the relevant laws and institutions in their current location, and of legal representation in the judicial system, if required. (For definitions of legal aid and legal representation, see the textbox on page 77.)

Practical arrangements should be made to ensure that vulnerable migrants are treated fairly and without discrimination and are able to exercise their rights to the presumption of innocence and to a fair trial. These may include the use of interpreters, provision of information in a form commensurate with their education and literacy level and in a format that is understandable, and advocacy with the justice system, including any legal representation, for consideration of the unique needs and circumstances of vulnerable migrants.

In the case of vulnerable migrants who have been charged with or convicted of a relatively minor crime or in connection with their irregular immigration status, it might be appropriate to advocate for alternatives to custodial sentencing, such as court diversion programmes, mediation, or the use of restorative justice models, but only if this is in their best interests and the best interests of their family members and community.

The Convention on the Rights of the Child states that children in conflict with the law have the right to treatment that promotes their sense of dignity and worth, takes into account their age, and aims at their reintegration into society.

³¹ For more on non-criminalization of migrants based on their irregular entry into a State, see Human Rights Council, *Report of the Working Group on Arbitrary Detention*, January 2008 (A/HRC/7/4), February 2009 (A/HRC/10/21) and June 2010 (A/HRC/13/30).

Case closure

An important part of providing protection and assistance to vulnerable migrants is planning and preparing for the time when that support will come to an end. Cases can be considered closed when a vulnerable migrant completes the available assistance programmes, transitions out of them to another form of support, or exits voluntarily or involuntarily.

Ideally, programme completion, transition or exit will be planned, desired and in the best interests of vulnerable migrants and their families. However, there may be instances where programmes are ended against the will of the vulnerable migrant and/or the service provider.

There are various reasons support will end. Some programmes may be time-bound (for example, education or training programmes that have a set curriculum and duration). Others may have age limits (for instance, programmes specifically targeting children or adolescents, or designed for temporary conditions, such as pregnancy).

Vulnerable migrants may transition to longer-term, sustainable support options. This could include moving from an institutional shelter or transit centre to independent living in the community. It might be suitable for transitions between or out of programming to be gradual or staggered, for instance, cash distributions can be reduced as other livelihood options become available.

Vulnerable migrants may voluntarily exit services for various reasons, including that they no longer wish to receive protection and assistance, the protection and assistance provided are no longer desirable or suitable, or receiving support leads to real or perceived negative repercussions from State authorities, the community or family members, such as stigma for accessing services or the desire to conceal their irregular immigration status.

Where vulnerable migrants have said that they wish to discontinue their involvement in protection and assistance services, it can be useful to explore the reasons why and determine if any changes can be made to make those services more accessible and appropriate.

What if a vulnerable migrant dies while accessing case management services

In the event that a vulnerable migrant dies while accessing case management support, either through illness, accident or injury, or through a violent or deliberate act, the case manager has an important role to play.

The case manager should notify the relevant authorities, including the embassies and consulates of the migrant's country of origin, where safe and appropriate. Surviving family members, including those in the migrant's country of origin, will have to be notified, and the case manager, if involved in the notification, may be called on to share relevant information, where doing so is safe and respects the dignity of the deceased migrant. Other service providers should also be notified.

If the death prompts an investigation, including a criminal investigation by law enforcement agencies, the case manager may be required to share known information on the deceased migrant and the support provided. This should be done pursuant to agreed memoranda of understanding and data- and information-sharing protocols between law enforcement and case management agencies.

All files and information on the provision of case management and related assistance to the deceased migrant should be archived appropriately. For more information on data protection and information-sharing, see the section on principles of assistance on page 26.

The death of a vulnerable migrant is sure to distress those involved in his/her protection and assistance. Case managers and other service providers should be provided with support, including from supervisors and their employers, and encouraged to consider their own self-care.

If the reasons for exiting services are related to planned or sudden migration elsewhere, or returning to the home country, every effort should be made to support continued protection and assistance, which could include providing information on availability and accessibility of support and referrals to similar service providers at the intended destination, or offering remote support, if appropriate and possible.

In some instances, the termination of services will be involuntary or forced. This can happen if a vulnerable migrant is no longer eligible for services, a programme's intake criteria are changed, or the vulnerable migrant is detained or deported. Where service providers are dependent on external sources of funding, services may be terminated for want of budgetary support. Security or other contextual factors may also force services to close if the risks of providing protection and assistance to vulnerable migrants are deemed too high for the migrants, the wider community, or the staff or volunteers of service providers.

Other forms of involuntary or forced termination of programming occur when vulnerable migrants do not meet the requirements of protection and assistance programmes, which can include minimum levels of participation or standards of behaviour.

Vulnerable migrants may exit services because the factors that made them vulnerable are resolved and there is no longer a need for protection and assistance.

Wherever possible, planning for programme completion or exit should be done in advance, to ensure there is sufficient time to prepare for a smooth and non-disruptive transition. Ideally, vulnerable migrants should have an exit interview, which can help them successfully transition out of programming and give the service provider useful insights for improving future programming.

Before programme completion, transition or exit, future communication channels should be identified in case the vulnerable migrants wish to re-access services, and information should be provided on the resources accessible in an emergency. Any information on other relevant services or referrals to other programmes should be provided sufficiently early to prevent gaps in service delivery. This is particularly important when such gaps – for instance, in physical and mental health care, or children's education – could be detrimental to the health and well-being of a vulnerable migrant.

Return and reintegration, integration, third-country relocation or onward migration

Vulnerable migrants may transition or exit out of assistance programmes because they are returning to their country of origin (return and reintegration), are integrating into their current location, or are continuing to another location (third-country relocation or onward migration).

Under Article 13 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Civil and Political Rights, and Article 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination, all individuals have the right to reside in their country of origin. Under Article 18 of the Smuggling of Migrants Protocol and Article 8 of the Trafficking in Persons Protocol, States are obliged to accept returning nationals without undue or unreasonable delay.

All individuals have the right to leave any country, including their country of origin (or permanent residence for those who are stateless), the right to return to their country of origin (or permanent residence for those who are stateless), and the right to freedom of movement within a country in which they are lawfully located. These rights are set out in Article 12 of the International Covenant on Civil and Political Rights.

In addition, under Article 14 of the Universal Declaration of Human Rights all individuals have the right to seek and to enjoy asylum from persecution in other countries. The principle of non-refoulement, enshrined in Article 33(1) of the 1951 Refugee Convention, forbids returning asylum seekers or refugees to places where their lives or freedom are threatened on account of their race, religion, political opinion, nationality or membership of a particular social group. Furthermore, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that no person may be returned to a country or territory where they are at risk of torture, or cruel, inhuman or degrading treatment or punishment.

All support provided to vulnerable migrants should begin with case closure in mind. Assistance plans should therefore include strategies comprising long-term plans for return and reintegration, integration, third-country relocation or onward migration. In the case of unaccompanied or separated migrant children, decisions and planning regarding case closure will be implicit in the BIA/BID process. For more information on these processes, see the Annex to Part 2.

Vulnerable migrants should be involved in the decision to pursue their preferred option. They should be given all available information on opportunities and limitations to return and reintegration, integration, third-country relocation and onward migration. As each option will likely involve administrative processes and decisions, information on the duration of such processes, the likelihood of a favourable decision, and any challenges inherent in each option should be shared in an unbiased, timely and transparent manner. While the vulnerable migrant's preferred option should be pursued where possible, case managers should plan for the other possible options in consultation with the migrant.

Continuity of care should be the aim of any case closure process. Migrants who will be integrating into their current location should be referred to appropriate service providers in a timely manner. Migrants who will be engaging in onward or return migration should be helped to identify the services that will be available along the way or at destination, and provided with information on how to access them. Any transfer of information to other service providers on behalf of the migrants should only be made with their explicit consent and through secure communication channels.

All case closure support should be aligned with the principles of assistance outlined on page 26.

Return and reintegration

Whenever possible, voluntary migrants should return to their country of origin on a voluntary basis. In some cases, returning to a country of origin may be the only available option, especially when the vulnerable migrants have no option of obtaining regular immigration status in their current location, do not have channels for regular migration to a third country, and/or have been issued a deportation order. Vulnerable migrants must always be returned to their countries of origin in accordance with international law and with due process guarantees. In some cases, it is the migrants themselves who decide to return home. They may be eligible to receive assistance to return, for example through voluntary return and reintegration programmes, or they may choose to return home without support.

Vulnerable migrants should not be returned to places where there are substantial grounds to believe that they would be at risk of torture or other cruel, inhuman or degrading treatment or punishment, or other serious human rights violations or irreparable harm, including enforced disappearance, threats to the liberty and security of the person, risks to life (including absence of necessary medical care), living conditions contrary to human dignity (where a person cannot meet basic needs), serious forms of discrimination, arbitrary interference (as a result of the expulsion) with the right to a family and private life, or onward refoulement.³² Where such fears exist, vulnerable migrants should be referred to the national asylum authority or UNHCR.

Return: The act of going from a country of presence to the country of previous transit or origin. There are numerous subcategories of return, which can describe the way in which it takes place or is supported.

Spontaneous return: Individuals or a group initiate and proceed with their return plans without any outside assistance.

Voluntary return: Return based on a decision taken by a migrant free from any pressure or coercive measures and informed by all available information about the risks and benefits of return.

Forced return: Forcible returns to the migrants' country of origin or suspected country of origin by State(s).

Assisted voluntary return and reintegration: Organizational and financial assistance for the return and reintegration of migrant to their country of origin.

Reintegration assistance: Support provided to migrants having returned to their country of origin, to help them re-establish themselves.

³² For more information on the human rights of returning migrants in a situation of vulnerability, see OHCHR/Global Migration Group, op. cit., note 4.

When a decision has been made to return a vulnerable migrant to his/her country or origin, the return must be preceded by safety and security assessments to determine what, if any, risks it entails, and if and how they can be mitigated. If the assessment identifies a significant risk to the vulnerable migrant or the family that cannot be mitigated, integration or third-country relocation should be pursued and advocated to the relevant authorities.

Consular assistance should be provided for vulnerable migrants returning to their country of origin, including replacement or issuance of identity, nationality and travel documents, support for the pre-departure process, and help with international referrals for continuity of care in the country of origin.

Vulnerable migrants should be referred to assisted voluntary return and reintegration programmes offered by States, IOM or other organizations, where they exist. Participation in such programmes allows for preparation and support throughout the return and reintegration process and can provide continuity of protection and assistance services.

Support for return and reintegration should include pre-departure assistance, such as medical assessment of fitness to travel and preparation of relevant documents, including passports and visas. Other documents, including any generated by participation in protection and assistance services, should be prepared and originals or copies provided to the vulnerable migrant. This could include birth, adoption, marriage or death certificates; medical records, such as information on health or fit-to-travel assessments; diagnoses, prescriptions and treatment records; professional and educational certificates; proof of employment; and banking and financial documents. If the documents need to be translated into other languages, this should be done prior to return, to ensure smooth reintegration.

Vulnerable migrants wishing to be reconnected with family members before returning to their country of origin should be helped to trace and communicate with them prior to departure.

Vulnerable migrants returning to their country of origin should be offered travel assistance, such as planning and booking of travel and accommodation, escort during travel where necessary or desired, and reception and short-term accommodation on arrival. All modes of return transportation must be safe and dignified.

Support for return and reintegration should include information on services available in the country and community of origin; where possible, referrals should be made before return so as to ensure continuity of protection and assistance. Any information available on the return context should be shared with the vulnerable migrants, including information on the political, economic and social situation in their home countries and communities. This is particularly important for vulnerable migrants who have been outside their country of origin for an extended period of time or have had limited communication with their families or communities in their home country, or if there have been significant changes since their departure.

Reintegration assistance, which can be provided by government agencies, United Nations agencies, international organizations, NGOs, civil society organizations, or communities and families, should be adapted to the unique needs of the vulnerable migrant. A reintegration plan should be developed in consultation with the vulnerable migrant. It should take into account the guidance provided on individual assistance, including on:

- Shelter and accommodation (see page 38);
- Water and sanitation (see page 42);
- Food and nutrition (see page 43);
- Safety and security (see page 44);
- Health and well-being (see page 48);
- Education and training (see page 62);
- Livelihoods, employment and income generation (see page 66);
- Family tracing, assessments and reunification (see page 72);
- Access to justice (see page 76).

Vulnerable migrants who have been away from their country of origin for a long time and children who were born elsewhere may face specific challenges, and these should be identified and addressed appropriately. For instance, returnees may be stigmatized or discriminated against in their home communities or by family members, and may need support from a case manager or specialized service, if available, as a result.

Post-return, the reintegration process should be monitored regularly by a case manager and the reintegration plan adjusted accordingly.

Integration

Vulnerable migrants who have the option to remain in their current location and choose to do so may require help to regularize their immigration status, especially if they entered the country irregularly, have overstayed their visa or other permission to remain in the country, or wish to move out of a transit or specific migration area, such as a transit centre or border area. The help can comprise applying for visas, residency, citizenship, asylum, or other specialized temporary or permanent immigration status. Vulnerable migrants should be offered legal advice and representation throughout the process of applying for a change to their immigration status, including advice on cooperating with law enforcement and the justice system in exchange for temporary or permanent immigration status.

When making applications for temporary or permanent immigration status in their current location, vulnerable migrants may benefit from help to prepare applications and/or secure the appropriate documents, such as passports or other identity documents, birth, adoption, marriage or death certificates, banking or other financial statements, professional and educational certificates, proof of language proficiency, medical records such as proof of testing for specific diseases or other health conditions, and police reports or other legal documentation.

Vulnerable migrants who have been accessing support designed for short-term delivery or specifically for migrant populations should be referred to protection and assistance programmes that facilitate longer-term support and sustainable integration.

In some instances, specific programmes may exist to support the integration of vulnerable migrants into the local community. If they meet the intake criteria, vulnerable migrants should be referred to these programmes.

Longer-term assistance, which can be provided by government agencies, United Nations agencies, international organizations, NGOs or civil society organizations, should be adapted to the unique needs of the vulnerable migrant. An integration plan should be developed in consultation with the vulnerable migrant, taking into account the guidance provided on individual assistance, including on:

- Shelter and accommodation (see page 38);
- Water and sanitation (see page 42);
- Food and nutrition (see page 43);
- Safety and security (see page 44);
- Health and well-being (see page 48);
- Education and training (see page 62);
- Livelihoods, employment and income generation (see page 66);
- Family tracing, assessments and reunification (see page 72);
- Access to justice (see page 76).

In some cases, vulnerable migrants will choose to remain at their current location without regularizing their immigration status; this may mean that they can no longer receive case management support. In such instances, case managers should provide information on the risks involved, on any mandatory reporting requirements, and on emergency contacts that the vulnerable migrant can access if the risks materialize.

Third-country relocation

Third-country relocation includes securing permission for temporary or permanent immigration from a State other than the one in which the vulnerable migrant is present and other than the country of origin. While there are established processes and channels for third-country resettlement of refugees, there is no collective international system for permanent relocation of vulnerable migrants.

Those wishing to pursue third-country relocation should be helped to explore avenues to do so. Forms of third-country relocation that may be available include refugee resettlement, international family reunification or family sponsorship, temporary or permanent work permits, student or study visas, temporary or permanent protection visas or residency, and humanitarian or compassionate immigration admissions.

For each form of third-country relocation, vulnerable migrants will be required to submit applications and supporting documentation and may require help to prepare them. The documents needed could include passports or other

identity documents, birth, adoption, marriage or death certificates, bank or other financial statements, professional and educational certificates, proof of language proficiency, medical records such as proof of testing for specific diseases or other health conditions and fit-to-travel assessments, or police reports or other legal documents. Any information available on the length of the application processes and the likelihood of a favourable outcome should be communicated to the vulnerable migrant. An interim plan for continued protection and assistance at the current location should be developed in consultation with the vulnerable migrant, as application decisions and processes can be lengthy. Plans should also be made for the event that the application is unsuccessful, including information on appeals processes and alternative options.

As with return and reintegration, vulnerable migrants may require pre-departure assistance before relocating, for example to prepare documents such as passports and visas. Other documents, including any generated by participation in protection and assistance services, should be prepared and originals or copies provided to the vulnerable migrant. These should include any medical records, such as information on health assessments, diagnoses, prescriptions and treatments; professional and educational certificates; proof of employment; and bank and financial statements. If the documents need to be translated into other languages, this should be done prior to relocation, if possible.

Vulnerable migrants wishing to be reconnected with family members in the country of relocation should be helped to trace and communicate with them prior to their departure.

Vulnerable migrants relocating to a third country should be offered travel assistance, such as planning and booking of travel and accommodation, escort during travel where necessary or desired, and reception and short-term accommodation upon arrival. All modes of transportation used should be safe and dignified.

Pre-departure orientation on the third country will be very useful and may be offered by formal systems, such as IOM's pre-departure orientation programmes, or take the form of information compiled by a case manager. It should include information on:

- The country and community in general;
- Languages spoken;
- Communication, housing, education, health, legal and law enforcement systems;
- The labour market and employment opportunities;
- Banking systems and money management;
- Strategies for adjustment and integration;
- Known challenges and opportunities of relocation;
- Services available for migrants relocating.

Support for third-country relocation should include information on services available in the destination country and community; where possible, referrals should be made prior to relocation so as to ensure continuity of protection and assistance. Vulnerable migrants meeting the intake criteria should be referred to any specialized support agencies in the country of relocation.

Relocation assistance should be adapted to the unique needs of the vulnerable migrant. A relocation plan should be developed in consultation with the vulnerable migrant, taking into account the guidance provided on individual assistance, including on:

- Shelter and accommodation (see page 38);
- Water and sanitation (see page 42);
- Food and nutrition (see page 43);
- Safety and security (see page 44);
- Health and well-being (see page 48);
- Education and training (see page 62);
- Livelihoods, employment and income generation (see page 66);
- Family tracing, assessments and reunification (see page 72);
- Access to justice (see page 76).

Onward migration

Vulnerable migrants wishing to move on or return to another location on their migration pathway, whether through regular or irregular means, should be helped to do so safely before exiting assistance programmes. Reasons for onward migration may include a desire to reach an intended destination, reuniting with family members along the migration pathway, livelihood or employment opportunities, or improved protection.

Case managers can assist vulnerable migrants wishing to continue their migration journey by:

- Exploring the reasons for onward migration;
- Mapping the intended migration pathway;
- Providing evidence-based advice on the perceived benefits of onward migration;
- Providing information on the known risks of planned migration pathways;
- Mapping available services along the planned migration pathway, including known transit centres and refuge and assistance points;
- Providing referrals to service providers along the intended migration pathway;
- Engaging in safety and security planning to identify risks along the planned migration pathway and developing mitigation strategies;
- Establishing communication channels with remote service providers, where available, and community and family members;
- Providing emergency contact details for relevant embassies, consulates and local authorities along the planned migration pathway.

ADVANCE COPY

2.3 RESOURCES FOR PART 2

RESOURCES for shelter and accommodation; water, sanitation and hygiene; food and nutrition

- Camp Coordination and Camp Management Cluster, Camp Management Toolkit (2015)
<http://www.globalccmcluster.org/tools-and-guidance/publications/camp-management-toolkit-2015>
- Centre for Excellence in Universal Design
<http://universaldesign.ie/What-is-Universal-Design/>
- Forced Migration Review, Shelter in Displacement (June 2017)
<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/shelter.pdf>
- IASC, Gender-based violence, Guidelines on WASH and shelter programming
https://gbvguidelines.org/wp/wp-content/uploads/2015/09/2015-IASC-Gender-based-Violence-Guidelines_lo-res.pdf
- International Federation of Red Cross and Red Crescent Societies, All Under One Roof: Disability-inclusive shelter and settlements in emergencies (2015)
http://www.ifrc.org/Global/Documents/Secretariat/Shelter/All-under-one-roof_EN.pdf
- International Detention Coalition, Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention (June 2012)
<https://idcoalition.org/wp-content/uploads/2012/03/Captured-Childhood-FINAL-June-2012.pdf>
- International Detention Coalition, Online Training Toolkit
<http://toolkit.idcoalition.org>
- International Rescue Committee, A Toolkit for Integrating Menstrual Hygiene Management into Humanitarian Response
<http://menstrualhygieneday.org/mhm-in-emergencies/>
- IOM Guidelines for Border Management and Detention Procedures Involving Migrants: A public health perspective (2010)
<http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/health/Guidelines-Border-Management-and-Detention-Procedures-Public-Health-Perspective.pdf>
- IOM, World Migration Report 2015 – Migrants and Cities: New Partnerships to Manage Mobility
https://publications.iom.int/system/files/wmr2015_en.pdf
- IOM, The IOM Handbook on Direct Assistance for Victims of Trafficking
http://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf
- Norwegian Capacity, Dignified Reception Guidelines: Key essentials to dignified reception of refugees and asylum seekers in Europe (2016)
<https://www.nrc.no/globalassets/pdf/guidelines/dr-guidelines-2016.pdf>
- OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders (2014) http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf
- OHCHR and FAO (2010), The Right to Adequate Food (Fact Sheet 34) <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>
- OHCHR/Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations
<http://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>
- OHCHR and UN-Habitat, The Right to Adequate Housing (Fact Sheet 21 Rev1) (2014)
http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

OHCHR, UN-Habitat and WHO, The Right to Water (Fact Sheet 35) (2010)

<http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>

The Sphere Project, Minimum standards in water supply, sanitation and hygiene promotion

<http://www.spherehandbook.org/en/how-to-use-this-chapter-1/>

The Sphere Project, Minimum standards in food security and nutrition

<http://www.spherehandbook.org/en/how-to-use-this-chapter-3/>

The Sphere Project, Minimum standards in solid waste management

<http://www.spherehandbook.org/en/solid-waste-management/>

The Sphere Project, Minimum standards in shelter, settlement and non-food items

<http://www.spherehandbook.org/en/how-to-use-this-chapter-2/>

UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention

<http://www.refworld.org/pdfid/503489533b8.pdf>

UNHCR, Policy on Alternatives to Camps (2014)

<http://www.refworld.org/docid/5423ded84.html>

UNHCR, Policy on refugee protection and solutions in urban areas (September 2009)

<http://www.refworld.org/docid/4ab8e7f72.html>

UNICEF nutrition resource page

https://www.unicef.org/nutrition/index_resources.html

United Nations General Assembly, Guidelines on the Alternative Care of Children (resolution A/64/142 of 24 February 2010)

https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf

WHO guidelines on nutrition

<http://www.who.int/publications/guidelines/nutrition/en/>

RESOURCES for personal safety and security

Human Rights Council, Principles and practical guidance on the protection of the human rights of vulnerable migrants, Report of the United Nations High Commissioner for Human Rights (A/HRC/34/31, 26 January 2017)

https://digitallibrary.un.org/record/861007/files/A_HRC_34_31-EN.pdf

IOM, The IOM Handbook on Direct Assistance for Victims of Trafficking

http://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf

IOM and London School of Hygiene and Tropical Medicine, Caring for Trafficked Persons: Guidance for Health Professionals

http://publications.iom.int/system/files/pdf/ct_handbook.pdf

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OHCHR/Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations

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UNHCR, International Detention Coalition and Oak Foundation, Vulnerability Screening Tool – Identifying and addressing vulnerability: a tool for asylum and migration systems

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UNODC, Anti-Human Trafficking Manual for Criminal Justice Practitioners (Module 5: Risk assessment in trafficking in persons investigations) (2009)

<http://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>

UNODC, In-depth training manual on investigating and prosecuting the smuggling of migrants (2011)

<http://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/in-depth-training-manual-on-smuggling-of-migrants.html>

WHO, Ethical and Safety Recommendations for Interviewing Trafficked Women http://www.who.int/mip/2003/other_documents/en/Ethical_Safety-GWH.pdf

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Child Protection Working Group, Minimum Standards for Child Protection in Humanitarian Action (2012) <http://cpwg.net/?get=006914%7C2014/03/CP-Minimum-Standards-English-2013.pdf>

IASC, Gender-based violence, Guidelines on health programming (2015)

https://gbvguidelines.org/wp/wp-content/uploads/2015/09/2015-IASC-Gender-based-Violence-Guidelines_lo-res.pdf

IASC, Guidelines on Mental Health and Psychosocial Support in Emergency Settings (2007)

http://www.who.int/mental_health/emergencies/guidelines_iasc_mental_health_psychosocial_june_2007.pdf

Inter-Agency Working Group on Reproductive Health in Crises, Inter-Agency Field Manual on Reproductive Health in Humanitarian Settings (2010)

<http://iawg.net/resource/inter-agency-field-manual-on-reproductive-health-in-humanitarian-settings-2010/>

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<https://publications.iom.int/books/breaking-cycle-vulnerability-responding-health-needs-trafficked-women-east-and-southern-africa>

IOM, Guidelines for Border Management and Detention Procedures Involving Migrants: A public health perspective (2010)

<http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/health/Guidelines-Border-Management-and-Detention-Procedures-Public-Health-Perspective.pdf>

IOM, The IOM Handbook on Direct Assistance for Victims of Trafficking (2007)

http://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf

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<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

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<http://www.refworld.org/docid/503489533b8.html>

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GUIDANCE FOR
THE PROTECTION,
CARE AND ASSISTANCE OF
VULNERABLE CHILD MIGRANTS



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INTRODUCTION

Child migrants – whether accompanied (by family members, trusted adults, or a group of teenagers and young people with whom they have allied themselves along the way) or unaccompanied or separated from family and friends – are regarded as vulnerable. This vulnerability can be both situational – arising from their dependence on irregular migration routes, smugglers, etc. – and/or inherent in their status as children. At the same time, however, it is important for those responding to the needs of child migrants to recognize their agency and listen to them, as the children will often have clearly defined ideas of where they want to go and how they intend to travel.

While acknowledging the vulnerability of all child migrants, this Annex recognizes that unaccompanied or separated children are especially vulnerable and that the challenges they face require particular responses. It is difficult to obtain accurate global figures regarding the number of children who are travelling independently, but their numbers are increasing. Many unaccompanied or separated children do not register with the authorities, either because they are unable or afraid to do so or because they have been advised by family, peers or smugglers to keep on the move to another destination. Still others are not permitted to contact the authorities, as they are controlled by traffickers and are destined for sexual, labour or other exploitation.

The motives of child migrants for leaving their countries of origin vary and may be multiple. They may be fleeing persecution, armed conflict, exploitation or poverty, or a combination thereof. They may have left or been sent by members of their family to ensure their survival or to obtain an education and employment. Alternatively, they may have been separated from their family during flight and be trying to join parents or other family members, or moving to join family that initially left the country of origin many years previously.

All child migrants nevertheless share certain fundamental characteristics. They are children, and therefore often lack legal capacity and are likely to be economically and socially vulnerable. Consequently, they should be treated first and foremost as children and not as irregular migrants. If they are travelling alone, they should also be regarded as children temporarily or permanently deprived of their supportive family environment and as such entitled to special protection and assistance. Yet there are still no harmonized standards for the reception, care and protection of such children.

Additionally, many countries do not have any formal procedures for listening to children and ascertaining what would be in their best interests or what solutions would be most appropriate for them. Some countries admit migrant children on a temporary basis, until they reach the age of 18 – but this is not a sustainable solution, especially if the adult family members they are travelling with are denied similar treatment, nor necessarily in their best interests, as it leaves them in uncertainty about their future. Some children may leave reception centres, thus becoming homeless and destitute, and potentially vulnerable to exploitation and trafficking networks. There are also instances where children are referred – whether they ask for asylum or not – to a process to determine their international protection needs, resulting in a longer processing time of applications generally and consequently longer waiting periods for the child. Some children are also channelled into procedures that do not give appropriate weight to their age and their rights under the Convention on the Rights of the Child.

Despite recent steps in many countries to embed the best interests principle in policy and legislation, huge differences remain in the way countries recognize the rights of migrant children, with some – but not all – placing them in the charge of a wide array of officials, courts or NGOs. Additionally, the application and use of the best interests principle often varies greatly depending on whether the migrant children are accompanied by family or travelling alone. This can lead to critical child protection gaps within and between different States, and, in some cases, even within States. As a result, unaccompanied or separated children can go missing or be exploited in receiving countries, or end up moving from country to country, finding themselves at risk of abuse, trauma and destitution.

This Annex has been designed for use by any stakeholder implementing, or supporting the implementation of, the application of the best interests principle for a vulnerable migrant child. Depending on the national context, different entities may find themselves responsible for implementation of the best interests process, which consists of best interests assessments (BIAs), process planning and the best interests determination (BID) (see sections 2 and 3 of this Annex). However, it must be noted from the onset that the best interests principle set out in Article 3 of the Convention on the Rights of the Child applies to any State that has ratified the Convention.

Objectives

This Annex aims to provide guidance on how the best interests principle can be applied in practice to identify appropriate care, protection and long-term solutions for migrant children who are outside their countries of origin or habitual residence (in the case of stateless children) and are either travelling with their families and/or trusted adults or are unaccompanied or separated from their parents or those who previously cared for them.

It draws on authoritative legal and policy frameworks within which the BID can be linked to existing national child protection, asylum and immigration procedures, and aims to help develop a best interests process for such children, in order to ensure a solution is found for each individual child. It thus seeks to assist States and others to meet their obligations under the Convention on the Rights of the Child, other international human rights instruments and relevant regional and national legislation and policies.

The Annex includes practical tools such as diagrams explaining the best interests principle, which applies to vulnerable migrant children from the moment they are identified until a solution is found. It acknowledges that each country has different legal traditions, service provision capacities and experiences with migrant children. It therefore posits a process that will help each State meet its obligations under the Convention, but which can be tailored to fit in with its own child protection and asylum and immigration systems.

Given the broad understanding of the vulnerability of children engaged in migration, the underlying principles of the guidance should be applied to *all* children who are outside their country of origin or habitual residence, whether they have applied for international protection or not, and where certain risk factors are present. For example, in cases where the child may need international protection on grounds other than those relative to his/her parents, or where the child has developed strong ties to the receiving country, consideration should be given to which solution would be in the child's best interests. Based on the Convention and depending on the circumstances of the case, States and others should apply the procedural proposals set out here, such as child-friendly interviewing, to children who are in families but whose right to reside is not yet determined. These proposals may also be relevant for children born on the territory to parents who do not have regular status.

It is hoped that the guidance will be of assistance to the full range of professionals who encounter migrant children. These may include:

- *Policy makers*, who are responsible for developing and adopting the legislation, policies and procedures needed to ensure that BIAs and BIDs can be undertaken and a sustainable solution arrived at for any migrant child in the State;
- *Practitioners*, including but not limited to social workers, guardians, reception centre staff, designated caregivers, medical professionals, legal aid providers, persons responsible for family tracing and legal representatives, all of whom share responsibility for implementing the best interests process leading to a BID;
- *The judiciary*, members of which may find the guidance useful in interpreting the law as it applies to unaccompanied or separated children, including in the light of the Convention on the Rights of the Child and other relevant instruments;
- *Civil society and national human rights institutions*, which may play a role in monitoring and advocating for improvements in the treatment of migrant children.

Structure

The Annex is divided into three sections. The first contains the legal framework underpinning “best interests” as a legal concept. It also reviews the interrelationship of the concept with other international conventions and regional and national legislation and case law. The second explores the “best interests” principle in more detail, discussing both its substantive and its procedural implications. It also explains why a “best interests” process is necessary. Section 3 outlines key features of the BID and discusses the practical steps that may have to be taken and the structures that may have to be created to ensure that the BID will lead to a realistic and appropriate solution for each individual child.

1. THE LEGAL FRAMEWORK CREATED BY THE BEST INTERESTS PRINCIPLE

Summary: The legal framework created by the best interests principle

- States have sovereign power to control their own borders and devise their own immigration policies. However, they also have obligations under national, regional and international law to respect and protect the human rights of children when enacting and implementing national asylum and immigration legislation and policy.
- All States (except the United States of America) have signed and ratified the Convention on the Rights of the Child and are therefore obliged under international law to implement it, in line with its Article 4.
- The “best interests of the child” is a complex concept that is not defined in the Convention on the Rights of the Child.
- The Committee on the Rights of the Child has adopted general comment No. 14, on the right of the child to have his/her best interests taken as a primary consideration (Art. 3(1)), which explains the concept and related State obligations in more detail.
- The Committee underlines that it is through the interpretation and implementation of Article 3(1), in line with the Convention’s other provisions, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof.
- Full application of the concept of the child’s best interests involves the development of a rights-based approach engaging all stakeholders to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his/her human dignity.

1.1 Introduction

States have the sovereign power to control their own borders and devise their own immigration policies. However, they also have obligations under regional and international law to respect and protect the human rights of unaccompanied or separated children when enacting and implementing national asylum and immigration law and policy.

The Convention on the Rights of the Child, which was adopted by the United Nations General Assembly on 20 November 1989, has been ratified by all but one¹ United Nations Member State. This underscores its authority as a source of international norms that the States must respect when taking any action in relation to children in their territory. The Convention is unique in that it is the only binding human rights treaty protecting the full range of rights enshrined in the Universal Declaration of Human Rights, with the exception of freedom of movement.² It also incorporates the rights from which children benefit under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In addition, it sets out certain rights included in other international treaties, such as the right to an identity, to foster care and to adoption.

The Committee on the Rights of the Child issues general comments to assist States in the implementation of the Convention. Those of greatest relevance to vulnerable migrant children are general comments No. 6, on the treatment of unaccompanied or separated children outside their country of origin, No. 12, on the right of the child to be heard, and No. 14, on the best interests of the child.³ Additionally, the Committee on the Rights of the Child and the Committee on the Rights of All Migrant Workers and Members of Their Families (Committee on Migrant Workers) jointly adopted two general comments on the human rights of children in situations of international migration in September 2017: joint general comment No. 3 (2017) of the Committee on Migrant Workers and No. 22 (2017) of the Committee on the Rights of the Child, on the general principles regarding the human rights of

¹ The United States of America.

² “The United Nations Convention on the Rights of the Child: Implications for Change and Protection of Refugee Children”, *International Journal of Refugee Law*, 4(4) (1992), p. 680.

³ The full texts of the general comments can be downloaded from <http://www.refworld.org>.

children in the context of international migration⁴; and joint general comment No. 4 (2017) of the Committee on Migrant Workers and No. 23 (2017) of the Committee on the Rights of the Child, on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return⁵.

The Convention does not permit derogation from any of its provisions at any time. This means that children may be entitled to a wider range of rights than adults, since the International Convention on Civil and Political Rights contains a derogation clause permitting the suspension of certain obligations in times of officially proclaimed emergency threatening the life of the nation. This consideration is important when dealing with migrant children who travel with their families, as the de facto presumption of States is often to treat the family as a single case, which may mean that the particular and special rights of children are overlooked or downplayed.

Challenges to implementation in a national context

This guidance aims to support the creation of a national framework that reflects the obligations under Article 3 of the Convention on the Rights of the Child. Its utility is contingent on individual States creating or strengthening their own national structures to ensure that all those encountering an unaccompanied or separated child in their own State comply with the Convention and ensure that they treat the best interests of these children as a primary consideration, in line with the recommendations of the Committee on the Rights of the Child.

Countries in which very few of the constituent elements of the recommended procedures are in place may need time to plan and develop or integrate them into existing structures and procedures and to provide the necessary training to the participants; in such cases, other entities may be designated to implement elements of the BID process on behalf of the State.

The BID as part of a national child protection system

It is recommended that where this is not in place already, States ensure that they develop a comprehensive child protection and welfare system designed to meet their national and international obligations towards children, irrespective of their nationality, statelessness or immigration status. The system should coordinate the actions of any State official or employee of any organization who has a role to play in meeting the protection and welfare needs of any child within the State's jurisdiction. To prevent, respond to and counter the wide variety of risks a child may face, it is recommended that States develop:

- A national legal and policy framework for the system;
- A national database about children and their needs and circumstances;
- A national coordinating body for meeting the best interests of children;
- Capacity-building initiatives in relation to human and financial resources;
- Prevention and rapid response services; and
- Advocacy and awareness-raising projects.

Within this framework, States should recognize that unaccompanied or separated children may be at increased risk of abuse and ill-treatment and may have additional welfare needs because of the trauma they may have experienced in their country of origin or habitual residence and/or when leaving that country. All State agents working with or on matters pertaining to unaccompanied or separated children should undergo training and awareness-raising to ensure such recognition, which should also be reflected in organizational culture and messaging.

Countries should also ensure that they address any public misperceptions and stigmatization of migrant children that can lead to them being socially ostracized, discriminated against or targeted by racist and xenophobic abuse and attacks.

4 Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/22&Lang=en.

5 Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/23&Lang=en.

A child rights-based approach to international protection

The Committee on the Rights of the Child recommends the development of a comprehensive normative and institutional framework for protecting children's rights that effectively takes priority over immigration legislation and policy and is applied irrespective of a child's asylum or immigration status.⁶

Furthermore, in a refugee and protection context, human rights law can fill gaps and indicate directions. Some scholars have noted that correct implementation of the Convention on the Rights of the Child would require a realignment of protection for children, moving away from the formalities of a refugee status determination process, towards an approach guided by child's rights. Such an approach would suggest that countries should provide protection to vulnerable migrant children who are in need of protection for reasons related to them being children, which are not provided for in traditional international and regional human rights instruments but are contained in the Convention. This may mean that, even in cases in which a child is not found to be in need of traditional international protection, it may be appropriate for the child to be granted formal permission or leave to remain in the receiving country on a permanent basis.

Strengthening institutional accountability and capacity

Compliance with the requirements of Article 3 of the Convention on the Rights of the Child may be more successful and sustainable if countries ensure that a designated body, created at national level, carries responsibility for the Convention's implementation. The tasks of this body, or an existing institution fulfilling this role, with regard to Article 3 could include:

- Overseeing the drafting and dissemination of standard operating procedures for all those encountering vulnerable migrant children as part of their day-to-day employment, or as volunteers, after discussion and consultation with relevant departments or ministries;
- Establishing benchmarks to ensure that the procedures adopted conform with the due process principle;
- Designing and providing appropriate training courses on how BIAs and BIDs should be conducted;
- Recruiting, training and monitoring legal guardians for all unaccompanied or separated children;
- Recruiting, training and monitoring participants for BIDs;
- Collecting data on individual unaccompanied or separated children in the best interests process;
- Recording the outcomes of BIDs and keeping track of how BIDs affect (further) decision-making, including the implementation and sustainability of a solution;
- Establishing a dedicated monitoring system for BIDs;
- Coordinating the monitoring of BIAs with the departments or ministries employing the officials responsible for the relevant part of the best interests process;
- Liaising with children's ombudspersons, children's commissioners or others charged with protecting children's rights about any complaints, steps or actions undertaken in the BID process;
- Analysing the outcomes of its data-collection and monitoring processes (including the identification of gaps) and applying any lessons learned;
- Making recommendations for and designing or adjusting processes to ensure that a child's best interests are considered appropriately when a sustainable solution is identified for him/her.

1.2 The "best interests" principle defined

Article 3(1) of the Convention on the Rights of the Child states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

The Convention does not define "best interests," and the Committee has only recently adopted general comment No. 14 on the best interests of the child.

Article 3(1) is also a fundamental, interpretative legal principle: if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

⁶ Committee on the Rights of the Child, *The Rights of All Children in the Context of International Migration*, background paper for the 2012 Day of General Discussion (Geneva, August 2012).

Full application of the concept of the child's best interests requires the development of a rights-based approach engaging all stakeholders to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his/her human dignity. The word "primary" indicates that this consideration is pre-eminent or more important, but not paramount or the sole consideration for all actions affecting children. The Convention uses the word "primary" in relation to Article 3 and most other articles. The best interests of the child are only said to be a paramount consideration in Article 21, relating to the establishment by the State of a system of adoption, which, by its very nature, will sever a child's legal connection with his/her birth parents and provide him/her with a new identity and where best interests will become the determining factor when considering decisions on adoption.⁷

1.3 Identification and verification of unaccompanied or separated children

The discovery that a child is on the move alone or with someone who is not a family member or documented customary caregiver will normally raise questions about the child's safety. That said, not all children travelling alone meet the definition of an unaccompanied or separated child at risk, or raise any other child protection concerns. For example, teenagers travelling with verifiable documentation unaccompanied by their parents, and very obviously for holiday purposes or for documented study purposes, will very rarely raise protection concerns.

Such concerns are raised, however, when children arrive or are found at the border or within a State's territory alone or accompanied by someone who is not their parent or caregiver. A BIA will have to be rapidly conducted to ascertain whether there is cause for concern.

A BIA involves balancing the elements needed to decide in a specific situation for a specific child. At the point of entry, if a child exhibits indicators of risk factors, the main information required to make a simple assessment of whether it would be in the child's best interests to be referred to child protection services would normally be restricted to what is necessary to establish the child's identity, date of birth and/or age and, if relevant, nationality. At this point, lengthy interviews are normally not called for.

Identifying children who may be at risk can be highly challenging for those in first contact with the child. Some countries through which children transit will cite the tensions they face between providing access to their territory for the purpose of BIA/BID for children at risk and the need to provide effective border control. This applies especially when children are travelling as part of a larger group that contains adults who may or may not include their parents or customary caregivers.

Identifying and handling children at risk is difficult, but is critical for the children who find themselves in situations of vulnerability. Unaccompanied or separated children have probably already experienced trauma when crossing borders, and their encounters with border staff/law enforcement officials may in the best instance reassure the children, but in the worst, contribute to further traumatization. It is crucial to train border, law enforcement and migration staff in child-friendly interviewing techniques, and to provide the required back-up and access to child protection services, whether these are provided through State authorities or civil society, so as to ensure that vulnerable children are identified, but also that unaccompanied or separated children can be identified as soon as possible.

In many cases, no one in the group the child is travelling with will be able to provide documentation and/or proof that they are a family member or the child's caregiver. In such cases, professionals will need to rapidly assess the child's relationship to the individuals in question. In all such cases, immediate referral to child protection authorities is the preferred course of action. Where such a referral is not possible, provisions should be made for the child to be referred at the first possible instance to an agency or body specialized in dealing with children for assessment. In the meantime, the person who first identified the child will need to assess the quality of the relationship between the child and the adult(s) accompanying him/her, focusing on the safety of the child in gauging the need to provide alternative emergency placement if they believe that those adults are not the parent(s) or caregiver(s) and that the child is at risk.

⁷ See Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1) (29 May 2013, CRC /C/GC/14), para. 38. Available at: <http://www.refworld.org/docid/51a84b5e4.html>.

Age assessment procedures

Children arriving in a territory often have no valid documentation providing definitive proof of age. In the case of very young children, this usually presents no difficulties in terms of identifying that individual as a child and, as such, subject to special protection and assistance measures arising from that status. In the case of adolescents and older teenagers, however, it may prove difficult to ascertain who is or is not a child as legally defined in the Convention on the Rights of the Child, that is, a person below the age of 18. A simple visual assessment does not suffice to assess a person's probable age, and the difficulties are often compounded by the information that a child may have been instructed to give immigration authorities. Contrary to expectations, it is not always the case that older adolescents identify themselves as children; in many cases, older children apprehended or identified in transit will claim to be adults, in the belief that being identified as a child will impede their ability to move towards their intended destination.

Clearly, given the obligations that countries have to protect children – especially those who are without parental care, temporarily or permanently – under the Convention, it is in the authorities' interests to develop and implement procedures and guidelines for assessing the age of individuals who do not possess adequate proof of age and who may be children. Governments and other agencies that need to know the age of a person claiming to be a child are using a variety of assessment methodologies, including medical, physical and psychosocial forms of assessment, for that purpose. Age assessments are typically undertaken only when the children have no documentation and/or the authorities doubt that they are under 18, although some countries apply them as a matter of routine to all unaccompanied or separated children. Practices vary from country to country, but the assessments are usually performed shortly after arrival.

While there is no prescription for a “definitive” or “perfect” age assessment procedure, standards and guidelines do exist to assist countries in defining what elements an age assessment procedure might comprise, how it should be conducted, and how countries should deal with cases in which, even after age assessment, the child's age remains in question. Detailed guidance on these matters and an analysis of existing procedures and frameworks is available in two papers produced (through a consultative process with United Nations entities, civil society and national governments) by UNICEF: *Age Assessment, A Technical Note*⁸, which lists 10 overriding standards and principles recommended for the operation of age assessment procedures, and *Age assessment practices: a literature review & annotated bibliography*⁹, which contains case studies, an analysis of different practices and further reading suggestions.

In summary, these papers recommend that age assessments conducted in cases when a child's age is in doubt need to be part of a comprehensive assessment that considers both the physical appearance and the psychological maturity of the individual. It is important that such assessments be conducted in a safe, child- and gender-sensitive manner with due respect for human dignity. The margin of appreciation inherent to all age-assessment methods needs to be applied in such a manner that, in case of uncertainty, the individual will be considered a child. As age is not calculated in the same way or given the same degree of importance universally, caution needs to be exercised in making adverse inferences of credibility where cultural or country standards appear to lower or raise a child's age. Children need to be given clear information about the purpose and process of the age assessment procedure in a language they understand. Before an age assessment procedure is carried out, it is important that a qualified independent guardian be appointed to advise the child.

1.4 Basic needs

Vulnerable migrant children need first and foremost to be given access to the procedures established for having their best interests assessed. The ability to provide the protection the children may need is dependent on their prompt referral and identification as children, on the basis of which they should be allowed to enter the territory. As laid out in general comment No. 6 of the Committee on the Rights of the Child, State obligations under the Convention on the Rights of the Child apply within the borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory.

The presumption of protection should also apply to children who have been in the country for a period of time, but have never been formally recognized as having access to/entered the territory but are later detected or present themselves to protection, immigration or other authorities.

⁸ Available at: [https://www.unicef.org/protection/files/Age_Assessment_Note_final_version_\(English\).pdf](https://www.unicef.org/protection/files/Age_Assessment_Note_final_version_(English).pdf).

⁹ Available at: https://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf.

Distinguishing between the various protection needs of migrant and non-national children is difficult. Traffickers in persons are developing ever more ingenious ways to instruct their victims, sometimes exploiting asylum procedures to access territory, making the task for border police and officials increasingly challenging. However, as far as the child is concerned, the paramount concern of adults should be to ensure that child's safety and basic needs, on the understanding that the specifics of protection and care, and a more detailed examination of status, will be determined once that is achieved.

Trafficked children are often forced to commit illegal activities either as a direct result of the purpose they are exploited for, or because of the trafficking process (illegal border crossing, etc.). While the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, does not specifically address this issue, the body established to provide recommendations on the Protocol's implementation suggests a non-criminalization approach.¹⁰ Similarly, children who have entered a territory using the services of people smugglers should not be subject to prosecution or criminal sanctions. When it is suspected that a child has been trafficked, or has entered a territory through irregular means, the authorities should bear in mind that the child exhibiting risk factors will need immediate and exceptional protection, especially from her/his traffickers. Protective measures – including secure accommodation – in these circumstances will therefore entail careful safeguarding of the child's rights, including to freedom of movement, while addressing the potential security and personal safety risks facing the child.

Registration and documentation

Having obtained access to the territory, the at-risk unaccompanied or separated child will now have the opportunity to explain her/his specific circumstances. Countries recognize the specific vulnerabilities and psychological distress of unaccompanied children in interviewing and investigation processes, as reflected in the policies and practices put in place, for example, in the Netherlands, Norway and the United Kingdom, where screening interviews of children at risk are scheduled to allow for a recovery period before the children progress through the immigration or asylum system.

General comment No. 6 calls for initial interviews to be conducted in an age-appropriate and gender-sensitive manner, in a language the child understands and by professionally qualified persons, to collect bio-data and a social history to ascertain the identity of the child.

In recognition of the greater protection needs of unaccompanied or separated children, States should put in place safeguards for such children as soon as they are discovered.

1.5 Safety, security and shelter

Many migrant children, whether travelling independently (unaccompanied and separated children) or with their families, will be accommodated in some form of reception facility at some point. It is worth repeating here that the Convention on the Rights of the Child recognizes the right of every child to a standard of living appropriate for the child's physical, mental, spiritual, moral and social development, in which the right to protection from exploitation, abuse and violence, regardless of the child's migration status, is also guaranteed.

In whichever form of accommodation and/or facility children are held, the State and any other entities charged with their care and oversight are obliged to provide them with a protective and supportive environment in which they can receive a basic package of assistance and supportive measures. From the outset, in addition to protection from violence, children and adolescents must have guaranteed access to learning, play and recreational activities, medical care and psychosocial support.

¹⁰ Recommendations adopted by the meeting of the Open-ended Interim Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, annexed to *Trafficking in Women and Girls, Report of the Secretary-General* (4 August 2008, A/63/215), para. 11. See also OHCHR/Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of vulnerable migrants* (Geneva, 2017). Available at: <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.

1.6 Non-detention of migrant children and alternatives to detention

In 2005, the Committee on the Rights of the Child stated, in general comment No. 6, that children should not, as a general rule, be detained on the basis of their or their parent's migration status. Detention cannot be justified solely based on the child's unaccompanied or separated status, or on the basis of migratory or residence status, or lack thereof.

In 2012, following its Day of General Discussion on “the rights of all children in the context of international migration”, the Committee noted unequivocally that the detention of children because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children based on their immigration status. This position has since been echoed by virtually every relevant United Nations institution and by regional human rights experts, including IOM, OHCHR, UNHCR, UNICEF, the Working Group on Arbitrary Detention, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights and the Council of Europe, to name but a few.

Alternatives to detention are well documented and have proven to be effective, more humane and cheaper. However, they tend to be poorly understood by, and even unknown to, the authorities, including immigration officials. They are inexistent or too few in number for current needs. Where they are available, immigration officials at the frontlines may not be aware of their existence or may not be equipped to take them into account when applying best interests in their decisions, and these officials often have a great deal of discretionary power in placing individuals – including children – in detention.

The International Detention Coalition and UNHCR have both documented a range of good practices – applicable in different national contexts – that can be applied as alternatives to detention and that allow for supervision of migrant children and their families.

International Detention Coalition, 2012, *Captured Childhood: Voices of children who have gone through immigration detention*, a useful advocacy document. Available here: <http://idcoalition.org/publication/captured-childhood/>;

UNICEF, 2011, *Administrative Detention of Children: a Global Report*. Provides an overview of types of immigration detention and case studies. Available here: https://www.unicef.org/protection/Administrative_detention_discussion_paper_April2011.pdf;

UNHCR, 2012, *Detention Guidelines – Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, Available here: <http://www.unhcr.org/505b10ee9.html>;

International Detention Coalition, 2015, *There are Alternatives*: Describes a range of models of alternatives to detention for children and families. Available here: <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>.

When it is in the child's best interests to keep the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and/or guardian, and requires the authorities to choose alternative measures to detention for the entire family.

As stated by the Committee on the Rights of the Child, “legislation, policy and practices should allow children to remain with family members and/or guardians if they are present in the transit and/ or destination countries and be accommodated as a family in non-custodial, community-based contexts while their immigration status is being resolved”.¹¹ The documents listed above indicate a range of alternatives to the immigration detention of children and their families. They vary from alternatives implying certain restrictions or obligations (e.g. regular reporting to the authorities, deposit of a financial guarantee, obligation to stay at an assigned residence, deposit of passport, etc.) to various forms of accommodation without conditions or restrictions.

¹¹ Committee on the Rights of the Child, op. cit., note 56.

1.7 Adequate housing and/or accommodation

The right to adequate housing is recognized in international law as part of the right to an adequate standard of living. Although the right to housing is not an absolute right, it still translates into several concrete obligations for States that are relevant to the current situation of vulnerable migrant children. Such obligations include preventing homelessness, addressing discrimination, protecting against forced eviction, ensuring security of tenure to all, and guaranteeing that housing standards are correct.

Reception facilities and accommodations for newly arrived and/or detected migrant children – travelling with their families or as unaccompanied or separated children – can be named as or understood by national authorities under a variety of terms: transit centres, accommodation centres, reception camps, and so on.

The term “centre” refers to any place used for collective accommodation. Many States make use of collective facilities, which are in principle open facilities. Some States establish initial or so-called “transit” centres to accommodate asylum seekers pending an admissibility decision. Others do not make any difference between such initial/transit centres and other accommodation centres. Migrants in transit centres usually have less access to community services, including education and health. This is of concern for children, who, under the Convention on the Rights of the Child, should have access to such services on the same basis as children who are nationals of the territory. Many States also make use of private homes (including hotels and apartments), particularly when attempting to manage large movements of individuals into their territory.

With such a wide variety of practices and standards, the health, dignity and safety of vulnerable migrant children is at risk. It is thus crucial for States to improve the accommodation standards pertaining to children and families and to sure that they meet international and national requirements. The composition and dimensions of the facilities should be adequate and respect the right to privacy, safety and family life. The minimum standards for the protection of children in migrant accommodation centres are meant to protect children and adolescents from violence and provide them with support. They should include the following at a minimum: sufficient surface area per person and family, with openings and ventilation; separated safe spaces for women and girls; access to appropriate facilities for hygiene and sanitary needs that are separated by gender; access to water supplies, gas and electricity; and secure storage space for personal belongings. The facilities should be accessible for persons with disabilities. Health and safety standards should always be interpreted considering the best interests of the child, and not be used to justify any action that may cause further harm to children (i.e. dismantling informal camps without offering alternatives or placing children in closed centres). When clear national guidelines are missing, international standards should apply.¹²

Child safeguarding or protection rules are another important consideration, since adequate housing does not limit itself to the physical conditions of the building. All entities and individuals engaged in providing accommodation and services for migrants should be duly authorized to do so by the competent authorities. Recruitment screening procedures and codes of conduct should be mandatory for all staff, including police, immigration authorities, contractors and volunteers, as part of general child safeguarding policies. Staff in contact with children should have clear responsibilities, access to regular training focusing on the skills required for their work, and managerial support and supervision. There should be clear rules of accountability, reporting mechanisms for any child protection concern and adequate follow-up procedures. Children and their families should receive information about complaint mechanisms and be able to use them without interference. Regular monitoring and review should be conducted by State agencies, including ombudspersons, and children’s opinions given due weight in such processes.

For a more thorough explanation of the development and implementation of minimum safeguarding techniques and standards for migrant and refugee accommodation centres, specifically designed to provide protection for children and adolescents, see the minimum standards¹³ developed by UNICEF and the Government of Germany.

12 See The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response*, Minimum standards in shelter, settlement and non-food items. Available at: <http://www.spherehandbook.org/en/how-to-use-this-chapter-2/>.

13 UNICEF/ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, *Minimum Standards for the Protection of Children, Adolescents and Women in Refugee Accommodation Centres* (2016). Available at: <https://www.unicef.de/blob/133656/7de7042ecd24cde82d0c49a875bcd374/minimum-standards-for-the-protection-of-children--adolescents-and-women-in-refugee-accommodation-centres-data.pdf>.

In addition to minimum standards, and as resources allow, other conditions should be met, including availability of services, materials, facilities and infrastructure such as child-friendly spaces providing opportunities for recreational activities and for religious and spiritual life. Access to Wi-Fi, which facilitates access to information and helps maintain contacts with family members, friends and social support networks, is also an important consideration.

1.8 Access to essential basic services, including health and education

For many migrant children, migration may have a positive impact because of the greater possibilities they have to access health and nutrition, education, and social and child protection services in the destination community. However, these benefits are not universal, and many migrant children face legal, procedural, financial, cultural and social barriers to accessing services at destination and while in transit.

One of the main bottlenecks preventing migrant children from accessing services is the overall deficiency in services for all children within a territory, for want of prioritization, capacity and funding. Where service providers are not equipped to provide quality health, education, protection and social welfare services to nationals, they are unlikely to absorb the additional demands of children on the move. Where services do exist, they are often not adapted to the specific needs of families and children on the move or returned children; this includes the mode of delivery, where highly mobile or transiting populations have to be reached, the type of support, such as catering for language and cultural barriers, and addressing specific needs such as those of unaccompanied and separated children or children who have suffered from violence and exploitation on their journey. In many cases, the accessibility of services is explicitly linked to migratory status, citizenship or residency, either in law or in practice. Children migrating internally may also be affected, where access to services is linked to registration in the locality (and the registration often difficult to obtain).

The complexity of policies and guidelines and the growing responsibility of service providers, linked with inadequate and insufficient training for staff, often create confusion, which might ultimately lead to refusal of entitlements to migrant children and their families. In addition, access to services is often within the sphere of competence of regional or local authorities, adding another layer of complexity and potentially generating inequities in access to services even within the same country.

The Principles and Guidelines on the human rights protection of vulnerable migrants¹⁴ also stress the importance of providing non-discriminatory, culturally appropriate and gender-sensitive health care and access to shelter and housing. They urge countries to include migrants in national plans of action on housing and to develop procedures and mechanisms to ensure the access of all school-aged migrant children, including separated and unaccompanied children, as well as undocumented children, to adequate and appropriate education, on the basis of equality of treatment with nationals and with primary education free of charge for all.

However, particularly in transit countries, child migrants and their families often face the risk of human rights violations and abuse, and may be denied access to quality services, as transit countries may not be willing to provide those services or question their obligation to provide them to migrants who are only in transit on their territory. Article 2 of the Convention on the Rights of the Child clearly stipulates that all countries must "... respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind". All persons under the age of 18 involved in or directly affected by international migration are entitled to the full enjoyment of their rights and access to quality services, and States are obliged to treat children first and foremost – and without exception – as children.

States should place the best interests of the child before any administrative requirements and ensure that all children on their territory have equal access to quality services, regardless of whether the child is a national or resident of the country, in transit or at destination, or a regular or irregular migrant.

¹⁴ OHCHR/Global Migration Group, op. cit., note 10.

2. APPLICATION OF THE BEST INTERESTS PRINCIPLE IN PRACTICE

Summary: Application of the best interests principle in practice

- The State must determine and implement a solution for each child at risk/vulnerable child and give primary consideration to the child's best interests in the process.
- Possible solutions include, but may not be limited to, return, local integration or a solution in a third country.
- In order to implement the substantive and procedural actions and obligations flowing from the Convention on the Rights of the Child, it is recommended that each State establish a best interests process, consisting of BIAs, process planning and a BID. That being said, resource constraints will often dictate that this process is simplified or limited in application.
- Safeguards to consider include the provision of a trained interpreter, an independent guardian or representative, legal representation, child-friendly procedures, multi-disciplinary independent decision-making and appropriate procedures to ensure the right of the child to participate, file a complaint and appeal as relevant at any stage of the best interests process.
- Those involved in the BID are encouraged to explore a full range of possible solutions, ensuring that the final outcome clearly explains and justifies which solution would be in the individual child's best interests.
- It is further recommended that States ensure that every child is provided with a temporary residence permit as soon as possible, and that the permit be renewed for the duration of the process and until such time as the BID is implemented.

2.1 Introduction

When considering what mechanism would give best effect to the best interests principle, it is recommended that States adopt a rights-based approach whereby children are recognized as active subjects of rights and the Convention on the Rights of the Child as the appropriate legal and normative framework. When applying Article 4 of the Convention to unaccompanied and separated children in particular, their vulnerability must be taken into account and will result in making the assignment of available resources to such children a priority.

This is best done through a best interests process, which can, depending on the national context, combine all or some of the following elements: BIAs, a best interests process planning meeting and a BID.

The best interests process addresses both substantive and procedural actions in relation to any child on the State's territory and may, depending on the individual case, result in the identification of a sustainable solution that is in that child's best interests and does no further harm to the child.

The length of time the process takes depends on the complexities of the individual child's needs, his/her physical and psychological health and any need for expert and home study reports (see *Home study report* on page 130). However, as a matter of principle, it is not in a child's best interests for decisions to be delayed unnecessarily or for them to be taken before the child has had the opportunity to recover from any trauma preventing him/her from disclosing information indicative of future risks and needs. In addition, care should be taken to ensure that an older child's case is not permitted to drift so that no sustainable solution is in place as s/he approaches 18. Generally, States are encouraged to complete the BID as soon as possible, observing the safeguards referred to in section 3 on page 124, unless it is exceptionally determined to be in that child's best interests to delay the process.

Diagram 1 describes a possible approach to operationalizing the best interests principle in practice. It sets out general actions for all children and specific actions for individual unaccompanied or separated children, which should both be informed by the best interests principle. It also sets out procedural safeguards for the best interests process in general and for the BID in particular.



Diagram 1

A possible approach to applying the best interests principle:
 From theory to practice

2.2 Substantive implications of the best interests principle

The best interests principle for vulnerable migrant children who are with their families and/or caregivers

When vulnerable migrant children are determined to be travelling with their parents or caregivers, a trusted and reliable family member or a responsible adult – in other words, when they are satisfactorily identified by a competent body as NOT being unaccompanied or separated – the de facto assumption is that they are to be cared for and protected by their parents or caregiver and that the latter are responsible, in the first instance, for protecting the child's best interests. However, this does not relieve the State of the obligation to undertake a BIA when considering solutions for the child, especially in terms of the right to remain on the territory and/or removal or return to the country of origin. The child should be treated as an individual rights holder, who has an individual case for consideration in asylum and migration status procedures.

Appropriate protection and care

Unaccompanied or separated children have the same substantive rights as all other children within the State's jurisdiction who can no longer rely on a parent, other relative or guardian to care for and protect them. The State is therefore responsible for providing such children with appropriate protection and assistance, an adequate standard of living, access to health services and recreational activities, and the same educational opportunities as all other children on its territory. It is also obliged not to detain unaccompanied or separated children merely because they have entered the State irregularly or have no permission to remain. Where unaccompanied or separated children are in a need of a solution, generally States will meet this substantive right by referring them to existing child protection and welfare systems. In situations where the local and/or national child protection system is weak or unable to assume care of unaccompanied or separated children for whatever reason, others – such as civil society organizations or NGOs – may step in. Such situations should nevertheless be regarded as the exception and should always be subject to a high degree of scrutiny and oversight.

Timely and proper referrals

The fact that an unaccompanied or separated child is outside his/her country of origin or habitual place of residence may also indicate that s/he has suffered torture or some other form of serious harm or exploitation or has been a victim of human trafficking. Some unaccompanied or separated children may have been neglected by their families, in which case it may not be in their best interests to be returned to the family's care. A State can best address these possible risks by ensuring that unaccompanied or separated children are referred to a best interests process and any appropriate immigration/asylum procedures as soon as possible, where this would be in that child's best interests and in order to avoid further exposure to risks.

It may be in the unaccompanied or separated child's best interests to be returned to his/her parents, relatives or adults who previously cared for him/her, whom the State is therefore under an obligation to trace. If they are located and the relationship verified, the State may undertake or commission a home study report to evaluate if it would be in the child's best interests to be returned to the parents or caregivers. The procedure for restoring family links and, where possible, working with family members and the child to explore when reunification might be in the best interests of the child is a crucial first step in this process. These actions are all part of BIAs.

The obligation to find a solution

The obligation to find a solution for unaccompanied or separated children is based on the acknowledgement that it is usually in the best interests of such children to be reunited with their families or provided with alternative permanent care by other adults able and willing to do so in an appropriate manner. At the same time, it is in children's best interests to be provided with a nationality, if they do not have one, or to have their nationalities confirmed by appropriate documents, or to be granted immigration status permitting them to live in a country where they will not be at risk of harm or ill-treatment and where their rights under the Convention on the Rights of the Child can be respected.

Definition of a solution

Sustainable solutions are those that ensure that unaccompanied or separated children are able to **develop into adulthood** in their country of origin or habitual residence, in the receiving country or in a third country, in an environment that meets their needs and fulfils their rights, as defined by the Convention on the Rights of the Child, and does not put the children at risk of persecution or serious harm.

Solutions should not presume that age is the only risk factor in a vulnerable migrant child's case. Merely permitting a child to remain in the State until s/he turns 18, potentially or because s/he has no passport to confirm his/her nationality or because the State has not been able to trace the family or previous guardian, is not a meaningful solution for either the State or the child. It can lead to the child experiencing prolonged detention and/or homelessness, going missing or being vulnerable to trafficking networks when s/he turns 18 and is no longer entitled to support and accommodation or leave to remain in the receiving State as a child.

Further, States should not postpone decisions on children's right to international protection or conclusions in the BID process until unaccompanied or separated children become adults. Nor should they delay consideration of children's international protection concerns indefinitely in hope that family tracing will identify a family member in the country of origin who can take the child and thus allow for his/her removal or return. Any delay not necessitated by an unaccompanied or separated child's individual circumstances is likely to exacerbate the child's anxiety about his/her future and, consequently, may lead to psychological and emotional harm.

2.3 Examples of possible solutions

Integration in the receiving country

In some circumstances, integration into society in the receiving country is likely to be the solution that is in the child's best interests. This is more likely to be the case for children who have been granted international protection on the basis that they will be at risk in their country of origin. It will also be more common where return is not possible on either legal or factual grounds, e.g. where there is no re-admission agreement with the country concerned or the child is stateless.

Integration in the receiving country must be based on a secure legal status, including residence status, and be governed by the rights under the Convention on the Rights of the Child that are fully applicable to all children who remain in the country, irrespective of whether this is due to their recognition as refugees, because they have been accorded some other form of international protection or there are other legal obstacles to return, or whether the BID has recommended against return and the children have another right to remain in the receiving State, in circumstances where respect for their rights under the Convention and/or any other applicable legal instruments cannot be guaranteed in their country of origin or habitual residence.

Family reunification in the receiving country

If a child has been granted refugee status or another form of national or international protection, it may also be appropriate to grant the child's parents, other relatives or the adults who previously cared for him/her permission to enter the State for the purposes of family reunification, if this is in the child's best interests. Any such application should be dealt with in a positive, humane and expeditious manner and in the context of children's right not to be separated from their parents against their will unless this is in their best interests.

Where it is believed that an unaccompanied or separated child's parents or relatives or an adult who had previously taken responsibility for him/her has travelled to the receiving country and been granted permission to remain, sufficient time should be allowed for them to be located in-country and a home study report completed.

Return to the child's country of origin

Should return be considered the most appropriate solution, it should not be carried out unless a suitable caregiver, such as a parent, other relative, other adult caretaker, or a child-care agency in the country of origin, has first agreed and is able to take responsibility for the child and provide him/her with appropriate protection and care.

States are encouraged to inform children of the availability of any assisted voluntary return and reintegration programmes and assist them to access any such schemes, before any decision is taken on forced return.

Return to the child's family

Children's right to be brought up by their parents is one of the fundamental principles of international human rights law, and it is generally acknowledged that the family is the natural and fundamental unit of society and that it should be protected by the State. Furthermore, to ensure the full and harmonious development of their personalities, children should grow up in a family environment, in an atmosphere of happiness, love and understanding,¹⁵ and States should take all appropriate steps to ensure that unaccompanied or separated children are reunited with their parents except where further separation is necessary for the best interests of the child. Children are thus helped to preserve their identity and family ties, and to retain their ethnic, religious, cultural and linguistic background.

That being said, full account should be taken of children's right to express their views about any proposed return, and any reluctance to be reunited with their families should be carefully assessed. It should not be automatically presumed that it is always in children's best interests to be returned to the care of their parents or other relatives in their country of origin.

When unaccompanied or separated children have previously been abused, exploited or neglected by their parents in breach of the rights enshrined in the Convention on the Rights of the Child, it is very unlikely that it would be in their best interests to be returned to the care of their parents in a country of origin or a third country. This is an issue that the BID should address as a priority.

Practical examples of such situations include cases of children being sold to human traffickers by a parent, or left to fend for themselves on the streets because of a parent's addiction or new relationship or marriage. Further, attention must be paid to the risk of stigmatization and social exclusion that trafficked children, especially those exploited in the sex industry, may experience upon return to their country of origin or arrival in a third country. Finally, the risk of possible exclusion or punishment by family or the community that await the returning child, for instance, for failing to pay off debts owed to smugglers, may also need to be considered and assessed.

States should also analyse the precise circumstances which led to the unaccompanied or separated child being separated from or abandoned by his/her parents. Any factors which could potentially lead to a further separation should be assessed, such as:

- Local patterns of violence and displacement;
- Food shortages;
- Lack of security;
- Lack of access to basic services; and
- The possible recruitment of children into the armed forces.

Return to an appointed legal guardian

If an unaccompanied or separated child's parents or other family members cannot be traced or are known to have died, the child should only be returned to his/her country of origin if appropriate arrangements have been put in place for his/her accommodation and care. Provision should be made for an adult to acquire legal responsibility for the unaccompanied or separated child on return and for this responsibility to continue until the child becomes an adult or a later date, if the child suffers from a physical or other disability or is particularly vulnerable. It is not generally understood to be in a child's best interests to be returned to an institution, orphanage or residential children's home, which does not provide such individualized guardianship. Return to a child welfare institution in the

¹⁵ The Preamble to the Convention on the Rights of the Child recognizes "that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding".

country of origin or a third country should be considered the least preferred option, to be taken only if it is part of an agreed plan to reunite with family in a timely fashion or there are exceptional reasons for believing such return to be in the child's best interests.

Solution in a third country

Relocation to a third country may be in children's best interests when they cannot return to their country of origin and there are no other options in the receiving State. For example, if an unaccompanied or separated child has parents or close relatives who have a right to remain in a third country and a home study report has confirmed that they are capable of and willing to care for the child, it is likely to be in the child's best interests to be reunited with them in that third country.

2.4 Family tracing and restoring family links

The search for a solution should start with an analysis or assessment of the possibility of restoring family links and family reunification. States therefore need to take proactive steps to trace children's parents, if doing so is in the child's best interests.

However, as national child protection systems recognize, some children may be at risk from members of their own family. States should therefore recognize that it may not be in an individual child's best interests to be returned to the care of his/her family or even to resume contact with them. This will particularly be the case when the child has previously been abused, exploited or neglected by a parent or legal or customary guardian.

Other children may have been put under pressure by smugglers or their families not to reveal the families' whereabouts. It is vital that they be informed about the initial objective of family tracing, which is to restore family links. A guardian, or person in a similar position, could play a key role in counselling the child on the process and help build the necessary trust, thereby encouraging truthful disclosure. If a child refuses to consent to family tracing, but family tracing is nevertheless assessed to be in the child's best interests (for instance, where process planning finds that the child does not have any international protection needs), a guardian could consent to tracing.

Unaccompanied or separated children should not be expected to consent to family tracing on their behalf if they believe that this would place them or members of their family at risk. It will usually be inappropriate to initiate family tracing before a child's entitlement to international protection has been determined, especially if the child faces a risk of persecution by State agents. Care should be taken to ensure that any information about children and their families is collected, processed and distributed confidentially, to avoid placing them at risk.

Before commencing family tracing, it is recommended to assess:

- Whether and when it would be safe to trace the child's family;
- Whether and when it would be in the child's best interests for family members to be traced;
- Which, if any, organizations may be able to facilitate family tracing in the child's country of origin or a third country;
- Whether the child is old and/or mature enough to provide reliable information about his/her family and its whereabouts;
- Whether the information being provided by the child is accurate or whether it is designed to protect the child's family or any agents/smugglers who helped him/her come to the receiving country;
- Whether there are any conflicts of interest between the child and the parents or any other family members;
- Whether the child is still too afraid of or influenced by any agents/smugglers or traffickers to provide a true account of his/her origins;
- Whether the child is fully informed and understands his/her rights and the possible implications of tracing;
- Whether the child is giving informed consent to the family being traced at that point of time;
- Whether the child's guardian has consented to family tracing having assessed that it would be in the child's best interests.

If tracing is in an unaccompanied or separated child's best interests and does not place him/her or the family at risk, those involved should, with the child's or the guardian's consent, implement procedures to search for and find

the family as soon as possible. Where necessary, it may be useful to work with United Nations organizations, the ICRC, the National Red Cross or Red Crescent Society in the country, IOM, UNICEF or the ISS network of national branches, affiliated bureaux and correspondents. At the same time, the child should be regularly informed about any progress made and provided with any support needed to re-establish sustainable contact with the family.

2.5 The components of the best interests process

Diagram 2 on the following page sets out possible components of a best interests process from the moment an unaccompanied or separated child arrives or is detected in the territory of a State until a sustainable solution is found. It describes the safeguards and actions that need to be in place throughout the process, building on international and regional legal instruments and on authoritative guidance, notably the general comments of the Committee on the Rights of the Child. Systems and procedures vary considerably among and even within States. Consequently, this diagram is very general in its conception and aims to simply indicate the elements that may be drawn from to strengthen national child protection and asylum and migration systems and procedures where needed.

2.6 Procedural safeguards, including guardianship

States are required to put in place procedural safeguards flowing from the Convention on the Rights of the Child, which ensure that migrant children can access the same child protection and welfare provisions as all other children on the territory of the State. These safeguards should ensure that the child's best interests are treated as a primary consideration in BIAs and the BID; they help ensure that the child has the physical, psychological and emotional stability to participate in the status determination and best interests process.

To ensure that children's best interests will be treated as a primary consideration, children should be provided with a professional interpreter, ideally trained specifically to interpret for children; a guardian or a professional exercising a similar role; and a child-friendly interview. Steps should be taken to ensure that children can exercise their right to participate, file a complaint and appeal, as applicable under national law.

Legal capacity and the appointment of a guardian

Being under 18, children are generally speaking not legally competent to make their own decisions about the services offered or to appreciate the legal and practical consequences of processes in which they are asked to participate.¹⁶ In the case of migrant children travelling with their parents or a recognized caregiver, the parent or caregiver is to be recognized as being competent to take such decisions on behalf of the child, unless the relevant child protection authorities have ascertained it is not in the child's best interests for this to happen and have undertaken the necessary processes under national law to remove the child from the care of the parent/caregiver. In the case of unaccompanied or separated children, or migrant children who have been removed from the care of a parent or caregiver, this warrants the appointment of a guardian and a legal representative, and/ or other persons who can support and ensure the child's best interests as soon as practicable. In particular, States should take steps to ensure that a guardian represents and assists an unaccompanied or separated child to obtain access to and benefit from reception and care provisions and procedures.

The importance of a qualified, independent guardian

Every guardian should have sufficient expertise in the field of childcare to be able to ascertain whether the best interests of the child are being safeguarded and his/her legal, social, health, psychological, material and educational needs are being appropriately met. As such, a guardian should have the necessary training and experience in child protection and child welfare, and, ideally, specific knowledge of international human rights law relating to unaccompanied or separated children.

National systems of guardianship vary significantly throughout the world. States have different understandings of the functions of guardians, with some countries seeing them primarily as legal representatives and counsellors of the

¹⁶ In some countries, legal capacity is attained at a younger age than at 18. For the purposes of ensuring child protection safeguards are maintained and obligations under the Convention on the Rights of the Child met, child-friendly procedural safeguards should be put in place and followed for all children under 18.

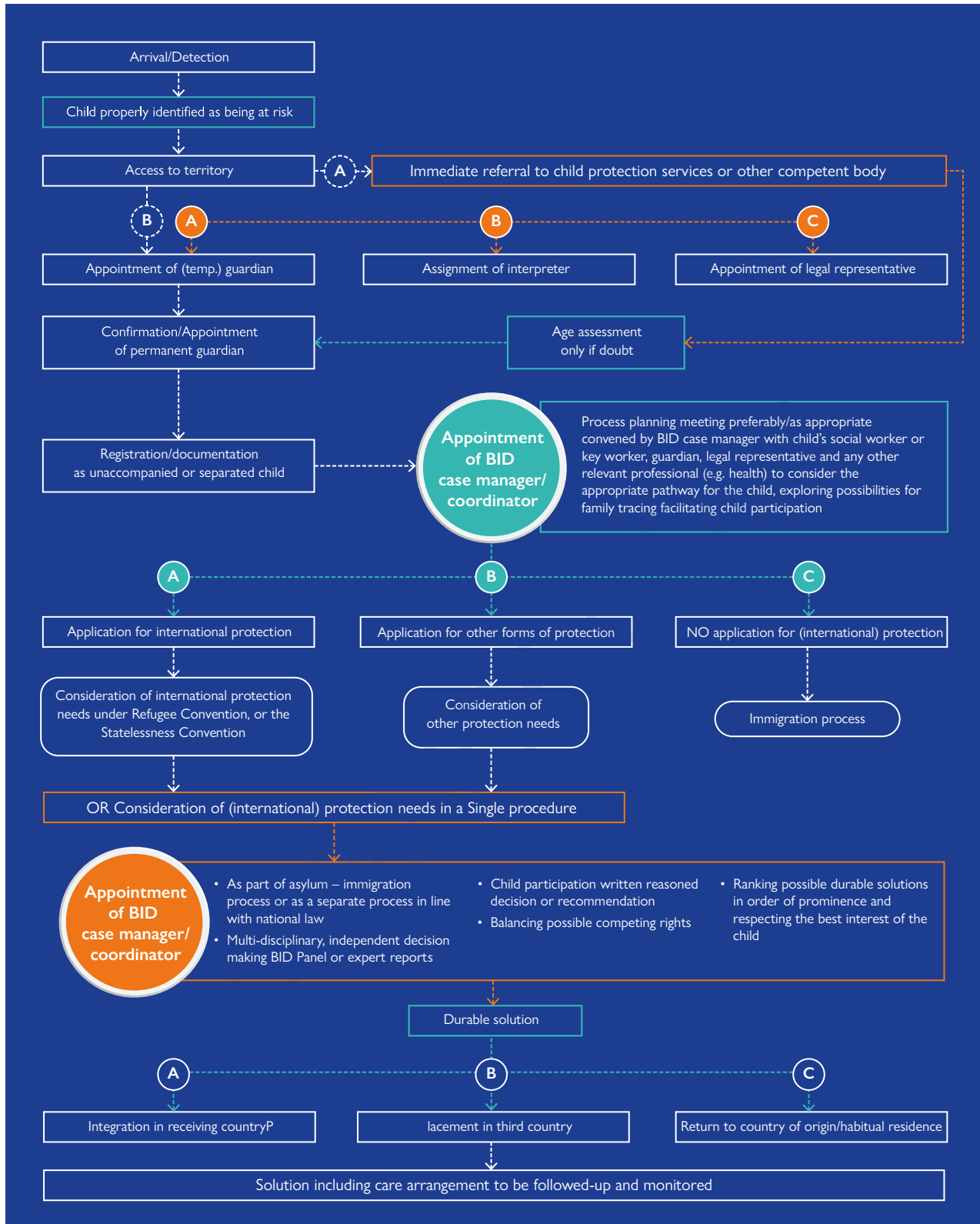


Diagram 2

Possible components of a best interests process

children in their care, whose main responsibility is to assist their wards in asylum applications and procedures during the process of migratory status determination. In some countries, these guardians are also expected to arrange for the child's education, accommodation and health-care needs. However, in many States, guardians – as the main adults in the child's life – are expected primarily to ensure the child's physical and psychosocial well-being, and have little or no substantive input into the asylum/migration process. In many countries, it is not uncommon for a legal representative to be expected to ensure appropriate schooling for the child, or for a social worker to assist the child legally in the asylum procedure. Both guardians and other social workers can, in some States, participate in the BID, identifying sustainable solutions and integration support.

A further challenge is that of differentiating between professionalized, as opposed to benevolent or voluntary, guardianship systems. In a few countries, both types of systems exist in parallel. Professionalized guardians are employees of government agencies and NGOs who work in the social and legal sectors and have undergone formally recognized training to an agreed standard that may comprise licencing requirements. Benevolent and voluntary guardians are private persons who volunteer to become guardians. Depending on the country's system, capacities and potential conflicts of interest will have to be considered from different angles. In such cases, professionals trained in child protection – such as the ISS or UNICEF – can provide invaluable input.

The guardian as a bridge between the unaccompanied or separated child and other professionals

In some States, migrant children are also likely to be in contact with a very wide range of professionals, such as border and immigration officials, social workers and foster carers, employees in residential accommodation, lawyers and the judiciary, health-care workers, teachers and interpreters; they may have a limited understanding of the different roles that these people can play in their lives. Migrant children travelling in a family can generally rely on a parent or relative to mediate between them and other adults and ensure that their rights are protected. Unaccompanied or separated children cannot. Guardians can act as the link between children and existing specialist agencies and individuals who provide care and other services, explaining the children's views and advising them whether any services proposed are in their best interests.

Possible role and tasks of guardians

Child guardians should help children to participate throughout the best interests process. They should act in the child's best interests and play a variety of roles throughout the process, for example:

- Supporting and advising the child based on a relationship of trust;
- Facilitating the child's participation;
- Monitoring and coordinating the child's interaction with other professionals and any NGO advocates;
- Using their expertise to advise other professionals involved with the child;
- Ensuring that the child's health, educational, accommodation and support needs are met;
- Ensuring that the child obtains suitably trained and experienced legal representation;
- Making sure that the child has access to procedures to determine his/her needs for international protection if s/he wishes to apply for it or it was proposed as a result of the process planning meeting;
- Obtaining any necessary expert advice on behalf of the child;
- Advising the child early on about the possibility to restore family contacts through family tracing and its possible consequences, if the child is not or no longer in contact with the family;
- Acting on the child's behalf in relation to status determination decisions and the BID;
- Assisting the child to appeal against or complain about any decisions which appear to be unlawful and/or unreasonable, in accordance with established rules and procedures.

Responsibility for a child should preferably not be transferred between different guardians unless this is necessary in order to provide the child with specialist representation or support and is in the child's best interests. Children for whom it is necessary to provide a different guardian should be fully informed of the proposed change and the reasons for it. A child's request for a transfer to an alternative guardian should be facilitated if the request is reasonable and in the child's best interests. Children may request such transfers because they are looking for a guardian they can trust and to whom they can disclose their history, needs and families' whereabouts.

2.7 How to consider best interests

This section provides an overview of the possible components of a best interests process, i.e. a BIA, process planning and a BID.

Best interests assessment

A **BIA** is part of the overall best interests process and an assessment tool for protection of individual children. It generally results in an assessment of the child's situation and recommendations for protection and care. It can take place at various points throughout the best interests process, whenever an action is planned or taken that may have a direct impact on the unaccompanied or separated child's best interests. Moreover, an initial BIA is a fundamental first step to engaging the best interests process and may, depending on whether the child is in need of a sustainable solution, lead to a BID.

In many States, BIAs are most appropriately carried out by the competent child protection services. To reach the most informed conclusion, they should involve expert professionals from other disciplines, as relevant. Those involved in BIAs should have the necessary training, skills and expertise. The unaccompanied or separated child and the guardian should also participate, to enhance credibility and comprehensiveness.

BIAs may be needed in relation to, among other things, decisions to:

- Place a child in accommodation and decide on immediate care arrangements which are appropriate to meet his/her individual needs;
- Determine whether tracing of the child's family would be in the child's best interests and not put the child or family at risk, in the case of unaccompanied or separated children;
- Provide a child with health, educational or recreational services;
- Apply or not apply for international or other forms of protection;
- Decide whether a formal BID is needed;
- Collect the information needed for a BID.

Any later formal BID is likely to benefit from BIAs that are properly supported and documented and included in the BI(D) dossier.

First-line referrals and process planning

In most cases, the immediate welfare needs of unaccompanied or separated children are met after they have been referred to the competent child protection system and services. Immigration status may also need to be resolved.

Identification of unaccompanied or separated children at risk

When a child is found at the border

When a child arrives or is found at the border alone or accompanied by someone who is not the child's caregiver, it is recommended that a BIA be undertaken without delay, to assess whether the child is at risk.

Children travelling alone and arriving at a State border will in general immediately raise questions about their situation. Equally, children arriving with certain adults or even family members may raise alarms due to their behaviour and demeanour or other child protection risk indicators.

Of course, older children or adolescents travelling alone may have passports, visas and other relevant documents, and they may be arriving in the country for a holiday, meeting their parents or travelling as a group with their parents' permission. Many children travel alone in circumstances which have been planned by the family and which do not meet the definition of unaccompanied or separated child, or raise any other child protection concerns.

However, to ensure that no child falls between the cracks, and given that in some instances information which might otherwise lead to a BID may not immediately be proffered by the child or available otherwise on first contact, it is recommended that a simple BIA be done, for example by contacting child protection services, in order to assess whether a more formal BID or risk assessment is required.

Unaccompanied or separated children can be most effectively identified by reference to the following non-exhaustive list of risk factors:

- Fraudulent documents (which may indicate smuggling, persecution, and/or human trafficking);
- No documents, or invalid documents (e.g. no/expired visa);
- Demeanour (behaviour possibly caused by pressure from a smuggler or trafficker or, indirectly, parents);
- The child states that s/he does not want to return home (reluctance to join parents or previous caregiver);
- The child indicates that s/he wants to apply for international protection or another status.

When a child is found on the territory

In this case, additional factors may be relevant, including, for example, when the child is unable or unwilling to give the address or name of a caregiver or accommodation facility in the receiving country (indicating the child may be a runaway or victim of human trafficking, have been involved/forced into organized begging, pickpocketing and/or child prostitution, be on the move to another destination, or have absconded from care to avoid return).

Potential actions/responses include:

- Granting access to the territory (in case of identification at the border);
- The quickest possible referral to child protection services or a court, as applicable under the national system;
- The appointment of a guardian, interpreter, legal representative, etc.

Temporary residence permit

For the duration of any procedure the child may need to go through, s/he should benefit from a temporary resident permit.

Main aim of the process planning meeting

It is recommended that the best interests process comprise a process planning meeting, to ensure that unaccompanied or separated children are channelled in a timely manner in the appropriate procedure, and allowed to seek international protection if needed.

Process planning is intended to bring efficiency both for the children and for the adults appointed to assist them, and to help avoid situations where (especially older) unaccompanied or separated children are left to “drift” and given leave to remain or some other form of temporary residence status until they are 18, after having been rejected in an asylum procedure or where no examination of their application for international protection would otherwise take place. It would also prevent situations where unaccompanied or separated children are channelled into the asylum procedure regardless of potential international protection needs, clogging the system and resulting in longer waiting periods; this would be in the best interests of neither the child nor the relevant authorities.

More specifically, process planning may be used to:

- Share the contents of the best interests dossier (on the child's circumstances, needs and wishes), while respecting any applicable data protection laws, as compiled to date;
- Take note of any request for, or wish to request, international protection that a child may have expressed to that point;
- Where no such request has been made, ascertain whether an application for international protection should be made on behalf of the child and, if so, whether s/he can give informed consent or whether the guardian will have to decide on his/her behalf;
- Discuss whether it is necessary to obtain any further medical, expert or country evidence for the status determination process;

- Consider what steps must be taken for a BID;
- Decide on a target date for the BID, considering that it may be preceded by, or run concurrent to, a status determination procedure, and that any disability or trauma from which the child may be suffering, and any special educational needs, may mean that a longer period will be needed to complete the BID process;
- Discuss whether and when family tracing should be initiated. If relevant, this discussion should consider whether the child has given, or can give, informed consent to such tracing or whether the child's guardian may have to be asked to consent on his/her behalf.

Who participates in the process planning meeting?

It is recommended that the child's guardian, legal representative and designated social worker (as relevant) participate in the process planning meeting. Appropriate experts may also be invited to attend or prepare reports. They may be invited by a professional responsible for managing the BID process, such as the child's guardian or legal representative, or a BID case manager, as suggested in this Handbook. It would also be appropriate to invite the child to attend part of the meeting, if s/he is sufficiently mature and attendance would not exacerbate any emotional or psychological trauma. Alternatively, the guardian could represent the child's views and best interests.

The best interests determination

Decisions regarding sustainable solutions for unaccompanied or separated children have long-term implications for their safety and welfare and should not be made lightly. It is therefore recommended that a formal BID procedure or mechanism be created, with clear procedural safeguards and documentation requirements, designed to find solutions for individual unaccompanied or separated children that are in their best interests.

The BID should be devised so that the child can participate in the process and involve participants with relevant expertise who can identify and balance all factors relevant to recommending the best available option for that child, which will be both sustainable and conclusive (for further details, see section 3 on page 124).

Every child displaying risk factors, whether in need of international protection or not, has the right to a BID to identify a sustainable solution. Even if an unaccompanied or separated child is found to be entitled to international protection, it is recommended that the State conduct a BID to ensure that the child's best interests are met in relation to other aspects of his/her life, as it cannot be assumed that a defined immigration status alone will achieve this. Similarly, if a child is found not to need international protection, it is important to undertake a BID, which may reveal that it is not in the child's best interests under the Convention on the Rights of the Child to return him/her to the country of origin or place him/her in a third country.

Section 3 on page 124 describes a suggested formal BID procedure and its main features in greater detail. States may wish to draw on all or some of the elements, as applicable and where there is no system in place or where current systems require strengthening. Admittedly, in many States it will not be possible to institute a formal BID procedure as outlined in this Handbook – or the State will ask an organization other than the national child protection and/or immigration authorities to conduct the BID. In such cases, the organization concerned must have clearly defined responsibilities and authorizations attributed by the State, and must proceed with extreme caution. Wherever possible, it should decline to conduct the BID without the participation of State participants, especially if the BID is likely to include decisions related to return to the country of origin or removal from the territory.

3. FEATURES OF A BEST INTERESTS DETERMINATION

Summary: Features of a best interests determination

- Countries should set up a BID procedure or mechanism, which is a holistic assessment of all possible sustainable solutions that could meet the best interests of children in need of such solutions and address their rights and needs, particularly any need for international protection and adequate care arrangements.
- As national systems vary greatly, there may be different ways to embed and to develop a BID procedure in existing systems. These may include out-sourcing elements of the BID process to civil society or intergovernmental organizations, for example, but in such cases, extreme caution must be exercised.
- As it involves a particularly important decision affecting the unaccompanied or separated child's future, it is recommended that the BID be a formal process with specific procedural safeguards, involving participants with expertise in child protection, and preferably the protection of migrant children in particular.
- Steps should be taken to ensure that the child can participate in a meaningful way throughout the BID process.
- Those responsible for the BID should consider criteria such as the child's individual characteristics and identity; his/her (international) protection needs; the ability and willingness of family members to care for the child; and the current political, social and economic situation in the child's country of origin.
- If an unaccompanied or separated child and/or his/her guardian and/or legal representative disagree with the BID outcome, the child should have the right to seek review by a court of law or to appeal, if possible under national law.

3.1 Introduction

There is no single way to reach a BID. Where no existing process provides for best interests to be given primary consideration in the circumstances where it is needed, namely to determine which sustainable solution is in the best interests of a child, there are several potential ways to strengthen existing systems and procedures. These are described in the paragraphs below.

3.2 The best interests determination in practice

The BID addresses key questions, including:

- Where it is in the child's best interests to live;
- With whom it is in the child's best interests to live;
- Who is best placed to have parental and/or legal responsibility for the child in the future;
- How the child feels about the options identified and proposed;
- What resources will have to be deployed and what services provided to sustain the solution recommended in the BID.

Preparatory actions and prior conditions

Where it has been determined that a formal BID is needed, certain conditions need to be in place and preparatory actions taken, such as ensuring that the child is:

- Given access to the State's territory (as a child at risk);
- Identified as an unaccompanied or separated child;
- Registered and provided with any necessary documentation;
- Referred to competent child protection services;
- Provided with safe accommodation and appropriate support by such services (and not detained);

- Provided with a temporary residence permit;
- Appointed a guardian;
- Provided with appropriate health and educational services;
- Provided with assistance to trace and make contact with family members, if such contact had been lost and if restoring contact is (deemed) in the child's best interests and will not put the child's family at risk

Key features of the best interests determination

It is recommended that the BID be designed to consider a range of solutions and to recommend the one which has the most positive impact on the child in question, in the light of relevant legal and other considerations. It is further recommended that the BID:

- Be holistic, look at all the circumstances and ensure that a picture of the child's general circumstances is established, including what is known and not known, and what is required to explore "options" and identify possible outcomes;
- Be multidisciplinary (Participants should have relevant expertise and be capable of identifying and balancing all relevant factors in order to recommend the optimum option for the child. Such experience and knowledge are essential, as BID participants will be required to predict results and consequences. They can only do so accurately if they have all the information required);
- Ensures child participation through child-friendly procedures and proper information and support from both the child's guardian and legal representative or adviser;
- Be informed by the Convention on the Rights of the Child, i.e. examined in light of a specific protection/immigration regime but also more generally examine rights under the Convention;
- Ideally, feed into a determination process that is independent and has all due process safeguards;
- Demonstrate and document that the child's best interests have been a primary consideration;
- Be rigorous, flexible, transparent and accountable;
- Be carried out in a timely manner;
- Consider the short-, medium- and long-term options.

Child participation

The BID process needs to permit and facilitate participation by the child whose future is being considered, in line with Article 12 of the Convention on the Rights of the Child. The manner in which the child participates in the BID process will depend upon:

- His/her age, maturity and intellectual capability;
- The child's experience, environment, social and cultural expectations, and available support, all of which contribute to the development of his/her ability to form and express a view, given that a child's level of understanding is not uniformly linked to his/her biological age;
- Cultural and developmental factors, which may mean that young children are able to make cogent and well-informed decisions about serious matters affecting their lives;
- The information made available to the child and his/her guardian and legal representative;
- Any previous traumatic experiences which may prevent or hinder the child from fully disclosing his/her experience or fears, or the recounting of which may have a re-traumatizing effect.

Timing

The BID should be scheduled as soon as the BID case manager and the unaccompanied or separated child's guardian and legal representative have agreed that there is sufficient information in the child's best interests dossier (see *The best interests dossier* on page 126) for a sustainable and conclusive BID.

In the event that a return or third-country solution is being considered, it may not be possible to decide on a solution without a psychological, expert or home study report being provided. In that event, any delay would be purposeful and appropriate, but should be kept to the minimum time needed to obtain the missing information. In addition, it may become apparent during the BID that there is insufficient evidence and information on which to base a recommendation on which sustainable solution is in the unaccompanied or separated child's best interests. In that

case, it may be necessary to adjourn the BID so that the child's social worker, guardian or legal representative can obtain the required information and/or evidence.

Managing the best interests determination

As soon as an unaccompanied or separated child has come or been brought to the attention of the authorities and is considered a child at risk, the child should be referred either to the appropriate child protection services or another competent body within the country's child protection system, as appropriate. The child protection services then appoint an official to coordinate and manage the process – the BID case manager – as appropriate and resources allowing. In some countries, this may be an NGO, a civil society organization, or even an international organization; if so, there should exist a formal and recognized mechanism for documenting and recording such referrals, with adequate documentary proof that the organization's appointed BID case manager is an experienced social worker, childcare professional or other professional with appropriate expertise. S/he should have previously obtained the training and gained the experience required to understand the varying needs of unaccompanied or separated children and the way the BID process should be managed.

The need for an independent manager or coordinator

In order to avoid a possible conflict of interest, it is recommended that BID case managers not be the guardian or social worker assigned to the child, as they may be tasked to recommend a solution for the child and this may affect the relationship of trust between the child and the guardian/social worker.

The introduction of BID case managers may be a gradual process involving limited resources. Parts of the information-gathering and dossier compilation process may need to be (initially) undertaken by guardians or social workers.

Depending on how the BID is or may be linked to or integrated into existing national asylum and immigration processes, BID case managers can be given primary responsibility for compiling and updating the best interests dossier, convening a process planning meeting (see section 2 above) and drafting a BID report (see *Data collection and protection* on page 128). They can also be responsible for pursuing tracing efforts and obtaining information on the family or previous caregivers in the child's country of origin or habitual residence, if this is in the child's best interests (see *Information-gathering* on page 129); for commissioning medical or other expert reports, which may be needed before a solution can be identified; and for arranging a BID that takes the form of a panel meeting or includes expert input (orally or in writing) in existing procedures at national level, provided such input is given appropriate weight, i.e. primary consideration.

The best interests dossier

It is recommended that the best interests dossier be opened by the BID case manager or other competent person as soon as s/he has been appointed to work with an unaccompanied or separated child. The dossier should be updated regularly until the BID has been made. Any data collected in the process leading up to the BID and included in the dossier should comply with national and regional data protection legislation and be gathered in the light of the best interests of the child (see *Data collection and protection* on page 128 for further details).

Criteria for determining best interests

The primary consideration of the BID should be whether there is an option that would better secure the child's rights and needs in the short, medium and long term. This can only be determined by considering the individual unaccompanied or separated child's needs and circumstances, the indivisible nature of the Convention on the Rights of the Child and the interdependency of its various articles. As such, a BID on a sustainable solution in the child's best interests can rarely be reached by reference to a single factor, even if it is an important one. It is vital that each BID focus on the specific child in question: his/her individual characteristics, including age, sex, gender identity and sexual orientation; upbringing; level of physical and intellectual maturity; nationality (or lack thereof); cultural, spiritual and linguistic background; family ties and other relationships; physical, psychological and emotional vulnerabilities; and particular (wider) protection needs.

The criteria which BID participants are recommended to consider include, but are not restricted to, those listed below.

Safe environment

Safety is normally the priority. Exposure or likely exposure to harm usually outweighs other factors. It is recommended that those involved in the BID examine:

- Safety in the geographical locations under consideration, e.g. violence, recruitment of children into armed forces, and so on;
- Safety in the society, e.g. laws and policies in place to protect children if unaccompanied;
- Safety in the community, e.g. community attitudes may stigmatize certain children;
- Safety in the family/household;
- Past harm (frequency, patterns, trends and continued risk of harm);
- The capability to monitor the child's safety, e.g. child protection services present in the country to safeguard the child in the family;
- The availability of life-saving medical treatment for sick children.

Family and close relationships

Except when there are issues of safety, children's best interests are generally best met when they are with their own families. Family bonds and other close relationships are a key factor in determining a child's best interests. It is recommended that those involved in the BID:

- Consider what have been and are now the child's significant relationships;
- Look at the quality and duration of all the child's close relationships (parents, caregivers, siblings, other family members, other adults, children in the cultural community);
- Consider the child's attachment to them (length of any separation, age at separation, etc.);
- Consider the effect of separation from any significant relationship (past and future);
- Consider the potential effect of change in caregivers on the child;
- Assess the capacity of parents, caregivers and those with close relationships;
- Obtain the views of caregivers and those close to the child;
- Consider the possibility of family reunification (after tracing, verification and assessment of the relationship).

If family reunification is not practically possible but would otherwise be in the child's best interests, all necessary steps should be taken to enable the child to maintain contact with his/her parents so as not to undermine the possibility of family reunification in the future.

Identity rights and development rights

Children's developmental needs are generally best met by remaining in or maintaining close contact with not just their families, but also social and cultural networks. It is therefore recommended that those involved in the BID:

- Look at any child-specific considerations based on age, sex, gender identity, sexual orientation, ability, or other characteristics;
- Consider how best to preserve the child's identity, including nationality, name and family ties;
- Consider how best to continue the child's upbringing (cultural and community network);
- Consider how best to maintain the child's ethnic, religious, cultural and linguistic background, e.g. really understand the child's culture and traditions (Children who have spent a long period outside their country of origin may have had different experiences. Any possible conflicts may need to be explored and resolved before reunification.);
- Consider that continuity (of people and places) is vital to a child's feelings of security and stability;
- Consider how best to secure a standard of living adequate for the child's physical, mental, spiritual, moral and social development, e.g. systems in place to provide adequate access to services;
- Consider how rest and leisure, play and recreational activities appropriate to the child's age can best be realized;
- Consider what action will meet the child's right to physical and mental health;
- Consider how the child's educational needs can best be met;
- Weigh how to best secure successful transitions to adulthood (employment, marriage, own family).

Active consideration of the child's views

In order to respect the child's right to be heard (Article 12 of the Convention on the Rights of the Child), those involved in the BID need to:

- Inform the child about the process, the options being considered and the relevant considerations and consequences;
- Obtain the child's views, wishes and feelings about each of the above factors (in the past, present, and for the future regarding all possible sustainable solutions);
- Assess the child's understanding and maturity, i.e. the child's ability to comprehend and assess the implications of the options;
- Actively consider and determine what weight to place on the child's views (in light of above understanding).

Data collection and protection

Data should be collected in compliance with national and regional data protection legislation. There may be instances when the confidentiality of some reports means that only limited disclosure will be appropriate. In addition, if the best interests dossier contains information that may cause the unaccompanied or separated child psychological or emotional harm, his/her guardian and legal representative should consider whether they should take any action commensurate with their professional duties to limit its disclosure to the child. Generally, information should not be used for purposes which are contrary to a child's best interests.

The sustainability of any solution recommended in the BID will be contingent on the quality and breadth of the information obtained during the entire best interests process. A comprehensive best interests dossier is therefore an essential component of the BID. As part of this, it will be important to give due weight to any expert and country reports that address the particular needs of the individual unaccompanied or separated child.

The best interests dossier may contain any or all of the following:

- The record of any interview with the child on arrival or after identification in the territory, but only if this took place in the presence of the child's guardian and after the child had been provided with legal advice and representation (conditions that would need to be fulfilled for the information's use in a status determination procedure);
- Any police, prosecution service or criminal court records in relation to any illegal entry or human trafficking offences relating to the child or persons associated with the child;
- Any records of previous visa applications made on the child's behalf before arrival, and any evidence to indicate that these had been made by an adult who was planning to traffic or smuggle the child to the receiving State;
- Information relating to any age assessment and/or detention of the child, including on the basis that it was asserted that the child was an adult;
- Any application for (international) protection made by or on behalf of the unaccompanied or separated child;
- Any reasoned decision on such application made by an appropriate administrative body, court or tribunal, depending on where the BID fits into the national system;
- Any medical, psychiatric or psychological records and reports relating to the child, access to which is not restricted by confidentiality concerns;
- Any assessments and reports relating to the child prepared by child protection services or a manager or employee of a residential placement where the child may have lived or be living;
- Any report on tracing efforts;
- Any home study report from the country of origin or habitual residence or from other countries in which the child has close family members;
- Any report on the child's significant relationships in the receiving country;
- Reports on the general conditions in the child's country of origin or habitual residence or third country, including more specific conditions that would affect the child;
- Any other documents deemed to be relevant to that individual unaccompanied or separated child's case;
- Any identity or other official documents relating to the child from his/her country of origin or habitual residence, if the child is stateless, and if their authenticity is disputed, any expert evidence in that regard;
- Any records of BIAs and/or court proceedings.

Information-gathering

The BID case manager or other relevant professional may be tasked to ensure that the information and expert reports needed to inform a sustainable and conclusive BID outcome are obtained beforehand.

It is important to draw on the widest possible variety of sources, as it is unlikely that the individual unaccompanied or separated child will have the necessary documentary evidence on which to reach a sustainable BID.

In order to ensure that the information-gathering process respects the best interests of the child, in particular the principles of confidentiality and privacy, and in order for it to be in line with the principles of necessity and proportionality, it is recommended that States explore possibilities for developing information-sharing protocols between relevant services and participants.

Child participation in the context of a BID

It would not generally be appropriate to interview an unaccompanied or separated child solely to obtain information for the BID recommendation as such. Children should not be interviewed more often than necessary when the events being explored may have caused them harm. However, unaccompanied or separated children should be permitted to submit further statements if they wish to do so, or to instruct their guardians to make representations on their behalf to ensure that their views on the content of the BID report are made clear to any BID participants.

Evidence assessment

It is vital to place the child's evidence and other supporting documentation in context by obtaining reports from experts familiar with the history, culture and socioeconomic circumstances in the child's country of origin or a third country under consideration. It is further recommended that experts also be asked to comment on the likely effect of the child's age, maturity, gender, gender identity, sexual orientation, clan or ethnic origin, religion and any disability or special educational needs or any treatment s/he may receive, on his/her treatment or living conditions if s/he were to be returned to his/her country of origin or moved to a third country.

In order to review the situation of an individual unaccompanied or separated child in its proper context, BID case managers are advised to consult information sources and child-specific reports by relevant international human rights organizations, to ensure that there is sufficient child-specific material available to identify any particular issues relating to the treatment of children in the event of their return to their country of origin or move to a third country.

Potential sources of information

Past life and current conditions in the country of origin/habitual residence

- Country reports (experts)
- Home study
- Tracing results
- Medical report
- Report from mental health professionals
- Reasoned decision of asylum/immigration authorities
- Reasoned decision of any asylum/immigration, youth, juvenile or family court
- Statement by the child

Journey to the receiving country

- Country experts
- Border police
- Prosecution services
- Statement by the child

Past exploitation

- Police
- Prosecution services
- Expert in human trafficking
- Representative of relevant NGOs
- Country information on prevalence and forms of exploitation
- Statement by the child

Medical and psychological needs

- Medical, psychiatric and psychological reports
- Child's social worker or key worker
- Statement by the child

The child's current stage of development

- Foster carer
- Key worker
- Social worker
- Child welfare assessment
- Treating physicians
- Psychologist and/or (spiritual) counsellor
- Teacher
- NGO worker
- Guardian
- Statement by the child

The child's preferred sustainable solution

- Guardian
- Legal representative
- Foster carer
- Key worker
- Social worker
- The child's social and friendship network
- Statement by the child

Optimum sustainable solution for the child

- Guardian
- Legal representative
- Country experts
- Expert in human trafficking
- Other experts
- Home study in the country of origin
- Home study in a third country

Home study report

A home study report is a crucial source of information for any BID, as it considers the child's safety, permanency and well-being and the parents' or caregiver's ability to ensure the child's safety. It will ideally also assess the parents' or caregiver's ability to provide the child with appropriate accommodation, financial support, health care, and educational and recreational opportunities. The home study may also consider whether the child will be provided with an environment in which s/he can realize his/her potential as s/he develops into adulthood.

An integration report may be required if one of the options being considered is long-term placement with a foster family and/or in the event of adoption in the receiving country. There is long-standing international practice in home studies.¹⁷ A home study report considers the situation and suitability of the family/parent(s) or previous caregiver(s) in the child's country of origin or habitual residence or in a third country, as may be relevant.¹⁸

Timing of the home study

A home study is carried out to inform the BID and to explore all the available options for the child. It usually follows successful tracing of family members or other relatives of the unaccompanied or separated child at the process planning stage, but may also be carried out during the best interests process.

A home study can be commissioned or initiated by the BID case manager or another suitable professional, including the child's social worker or guardian. It is recommended that the home study be carried out by relevant professionals from the child protection or social services in the country to which the child may be returned or transferred. In some cases, it would be inappropriate to contact national authorities, for example if there is a claim of persecution by the State.

Possible elements of a home study report

In order for the BID to be properly informed, it is recommended that the home study report contain information regarding:

- The composition of the family and patterns of social interaction of the parent(s) or former caregiver(s), including the nature of contact and involvement with others, the presence or absence of social support networks and relationships;
- The background and history of parents/caregivers, including a possible history of abuse and neglect by them;
- Information on the reasons and circumstances of the separation between the child and the family/caregiver;
- Suggestions, thoughts and difficulties (mentioned by the parents/caregivers), and problems of access to necessities such as income, employment, adequate housing, childcare, and needed services and supports (including schooling), in view of the child's eventual return and reintegration;
- The hopes and wishes of the parents/caregivers for the child's future;
- Parenting/caring practices, methods of discipline, patterns of supervision, understanding of child development and/or of emotional needs;
- Other behaviours and conditions, such as domestic violence, mental illness, physical health, physical, intellectual and cognitive disabilities, alcohol and drug abuse;
- Professional observations and possible recommendations from the relevant professional/assessor.

In order to facilitate home studies, States are encouraged to design appropriate procedures that respect the best interests of the child through transnational cooperation with relevant child protection or social services in countries of origin or habitual residence or third countries. Every effort should be made and resources invested, to the extent possible, to carry out a home study.

In the event a home study cannot be undertaken, it is recommended that the BID be conducted based on the best information available. No matter what the circumstances, the solution identified should ensure appropriate protection and care arrangements are in place for the child. In the absence of reliable home study information, it is important to recognise that any decision to return the child to his/her country of origin is being based on limited information, and as such, may not be in the child's best interests.

¹⁷ The ISS, for example, carries out family assessments in countries of origin.

¹⁸ The ISS Family Assessment Form contains a list of basic indicators for family type, parents' ages, siblings, living standard, income, level of education and occupation of both parents, type of accommodation, family health situation and children's clothing and hygiene, among others. It assesses resources and needs in respect inter alia of basic care, nutritional status, safety, psychoemotional security, stability, social integration, and enlarged family and community resources, and it proposes measures and attributes responsibilities.

The BID report

The BID case manager, as appropriate, may be put in charge of drafting the BID report, which refers to the key documents in the best interests dossier, sets out one or more possible solutions and assesses the level of risk attached to each. The BID report is sent by the BID case manager to those involved in/responsible for the BID at national level. The unaccompanied or separated child's guardian and legal representative also receive the report, all within a reasonable time frame, before the BID is finalized.

If the unaccompanied or separated child and his/her guardian and/or legal representative are not satisfied that the BID report or dossier contains the necessary information or recommendations to identify a sustainable solution, or that the child's best interests have not been given primary consideration, they must be able to submit further information or reports.

Possible participants

There is no single model or way for conducting a BID, and the people involved in the BID may vary depending on the child's needs and background. This section discusses the participants who are generally best placed to make a BID.

Unaccompanied or separated children will in many cases have experienced persecution, ill-treatment and trauma in the countries from which they arrive and/or on their journeys to the receiving country. Consequently, a wide range of issues are likely to arise in relation to their identity, nationality, possible statelessness, ethnicity, gender and the social, economic and political circumstances in their countries of origin. Some may also have been victims of human trafficking. This is likely to influence their present and future physical, psychological and emotional health and well-being.

There are therefore clear advantages to the State and to the child if the BID is conducted by a range of independent experts, who can draw on their experience and diverse qualifications to identify and balance the relevant factors. It is recommended that those responsible for or involved in a BID be drawn from a variety of backgrounds. They could be medical and psychiatric professionals, academics (e.g. in the field of children's rights), social workers, civil servants, NGO employees or legal professionals.

Impartiality

All BID participants should maintain strict impartiality and confidentiality at all times. It is recommended that they sign a confidentiality agreement, which is kept on record, when they are appointed to the list of possible BID participants.

In order to ensure the necessary objectivity, BID participants should ideally not have managerial or other responsibility for the child, or be accountable to child protection services or the State's immigration authorities. They should bring any professional or personal conflict of interest to the attention of the BID case manager, and should be replaced by another person from the BID expert list.

Advisers potentially able to provide input for the BID

BID case managers can provide guidance on the BID process to those involved in the BID and be responsible for producing a written record of the BID outcome and the reason therefor. Where a panel is the chosen format/arrangement for the BID, the BID case manager should be present at the panel meeting, in order to advise panel members about the best interests process and answer any procedural queries. The unaccompanied or separated child's social worker can also be present at the panel meeting or present his/her views in writing or orally, depending on the BID procedure at the national level, to clarify any issues that may arise about the child's current needs and vulnerabilities.

In addition, the unaccompanied or separated child's guardian should be present and able to participate in the panel discussion, or present his/her views otherwise. While the BID is not in and of itself a legal process, but rather part of an existing national process or (legal) procedure, it is recommended that the unaccompanied or separated child's legal representative also be involved, to protect the child's legal rights and to provide a legal perspective on any possible recommendations.

If relevant, an adult in whom the child has confidence, for instance a teacher, spiritual counsellor or foster carer, may also be invited to provide input about the child's day-to-day needs, abilities and progress. It may also be appropriate to invite law enforcement officers or State prosecution officials to contribute to or provide input for the BID, if they have relevant evidence about crimes perpetrated against the individual unaccompanied or separated child, or, more exceptionally, if the child has a criminal record that needs clarification that is not obtainable from the best interests dossier. Immigration officers can also be asked to give input, in order to clarify any points relating to the child's entry into the country, immigration status or process, as might be appropriate.

One designated authority to ensure quality

It is further recommended that a designated national authority (e.g. child protection services) be responsible for recruiting, training and providing experts with remuneration, resources permitting, if they are appointed to sit on a BID panel or contribute to a BID. A roster of suitable candidates/panel members can be drawn up for that purpose. The BID case manager, or other authority with final responsibility for the BID under the national system in question, can then be responsible for selecting suitable BID participants for each BID.

Whereas a panel constitutes good practice for a BID, independent experts who can identify, discuss and balance the different factors and options can also make meaningful contributions, for example by submitting reports or making oral statements/contributions in other procedures.

The outcome of a best interests determination

To be of maximum use and impact, and to give proper weight to the best interests principle, the outcome of a BID should go beyond simply stating that the child should remain in the receiving State, be returned to a country of origin or habitual residence, or move to a third country. It should also outline how this conclusion was reached, which factors were considered and how they were balanced or weighed against other possibly competing rights arising from the Convention on the Rights of the Child or other treaties.

The outcome should be based on the totality of the evidence available to the participants in the BID process, and should give priority to ensuring that an unaccompanied or separated child will be safe, be it in the country of origin or habitual residence, the receiving country or a third country. It should outline how it can best be implemented, so that this information can be passed to those with parental or legal responsibility for the child in the future. It is therefore recommended that the BID also result in the formulation of a plan, together with the child and the child's guardian, to implement the recommended sustainable solution. Any necessary timelines and the entities/persons responsible for implementing the plan should also be identified.

Weighing best interests against “other” interests

The BID should give appropriate weight to the rights and obligations under the Convention on the Rights of the Child and other human rights instruments. It is only after a sustainable solution is identified using the BID that “other interests” can be weighed alongside best interests, although with best interests being given “primary consideration”. The Convention does not exclude other considerations, which, if rights-based, may in certain rare circumstances override best interests considerations.

The *travaux préparatoires* for the Convention clearly reflect, however, that the drafters intended that the best interests of the child could only be overridden by other interests in extremely compelling circumstances. Whereas the Convention remains silent as to when such extremely compelling circumstances may arise, general comment No. 6 of the Committee on the Rights of the Child mentions situations in which the child constitutes a serious risk to the security of the State or to society, adding that “non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations”¹⁹.

As further explained by the Committee on the Rights of the Child, if, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand,

¹⁹ Committee on the Rights of the Child, *Treatment of unaccompanied and separated children outside their country of origin*, General comment No. 6 (2005) (CRC/GC/2005/6), para. 86.

and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a credible way, why the best interests of the child were not strong enough to outweigh the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration.

3.3 Right to seek review or appeal

Written reasons for the BID should be presented to the unaccompanied or separated child and his/her guardian and legal representative as soon as is practicable, whether they were in attendance when the BID was made or not. An informed decision can then be made with or on behalf of the child as to whether there are any grounds to appeal or seek review of any legal decision informed by the BID, and as to whether it would be in the child's best interests to do so where such right is governed by national law.

3.4 Reopening a best interests determination

A BID can be reopened if:

- There have been changes in circumstances, such as successful tracing of family members or the emergence of new evidence, that could alter the original decision;
- The initial BID (decision) could not be implemented within a reasonable time frame.

If such changes occur, the child's guardian and/or the child's legal representative should have the right to contact the child's previous BID case manager (or other authority overseeing the BID process) and request the reopening of the BID process.

The decision to do so may depend on the existence of new or further evidence that was not previously taken into account or available.

3.5 Monitoring and data collection

A variety of monitoring and evaluation measures may need to be strengthened to assess capacity-building efforts, evolving procedures and outcomes for the children concerned. It is therefore recommended that the department or ministry responsible for the BID consider establishing its own internal monitoring process to assess whether the training it is providing is appropriate and whether the policies and procedures it has put in place are capable of protecting unaccompanied or separated children's best interests.

One very important aspect of both departmental and national monitoring processes, such as those carried out by ombudspersons for children, should be an assessment of the extent to which an individual unaccompanied or separated child is or was able to participate in a meaningful way in both the BIA and the BID. Countries should also assess whether the child was provided in a timely manner with a guardian and/or legal representative who was sufficiently expert, experienced and motivated to ensure that the child's case was presented accurately and fully in the overall best interests process. Another important focus of the monitoring process could be the extent to which child-appropriate procedures have been adopted to reflect the objectives of the best interests process.

It may also be necessary for countries to improve their methods of collecting data, as the accuracy of information in relation to children in migration movements is often uneven. This may particularly be the case if unaccompanied or separated children are being cared for by different institutions and authorities and if they have not applied for asylum. If this is the case, countries could consider working with academic institutions or NGOs to strengthen their data-collection and analysis capability.

In particular, data should be collected on the number of unaccompanied or separated children granted residence permits for reasons other than the recognition of refugee status or another international protection status. Data should also be collected on the children's sex, gender identity, sexual orientation, age, nationality, ethnic group and socioeconomic status, and on any disability they may suffer, so that the success or failure of the best interests process for all groups of children can be meaningfully analysed. Finally, it is recommended that States strengthen cooperation with countries of origin and establish measures to monitor and assess the outcomes for children who have been returned.



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