

OHCHR “Draft Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations”

Comments of the Government of the United Kingdom of Great Britain and Northern Ireland

1. The Government of the United Kingdom thanks the Office of the High Commissioner for Human Rights for its draft Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations. The UK welcomes this opportunity to provide comments on the draft and looks forward to an ongoing dialogue on this important topic as the draft progresses.

2. As a general observation, we note that in some places the guidelines are drafted rather loosely in ways that do not accurately reflect international law or the sovereign rights of States to decide and implement their own immigration policy. The guidelines should reflect migrants’ responsibilities as well as their right. On the basis of this draft, the UK is not convinced of the additional value of these guidelines as is concerned they may confuse rather than clarify.

Specific observations

Part 1

Section A, Tired 1

3. We recognise that there are various drivers of migration, but the UK calls for migration that is safe, legal and orderly, in line with the Sustainable Development Goals. We propose that the Guidelines focus on internationally agreed concepts and instruments. The UK treats vulnerability first, regardless of migratory status, but it is important that national immigration systems are respected and upheld. Further, whilst the UK accepts that those who are compelled to move irregularly may be exposed to vulnerabilities, there needs to be greater recognition of the responsibility of migrants to migrate lawfully to avoid exposure to the aforementioned vulnerabilities.

Section A, Tired 3

4. We agree that some migrants are at greater risk than others due to various vulnerabilities, although such risks should be assessed on a case-by-case basis rather than with blanket assessments.

Part 2 (‘Glossary’)

5. The definition given for an asylum seeker is inaccurate, as the definition of a refugee under the 1951 Refugee Convention is very narrow. As an alternative, we suggest the following, which is in line with EU and UK legislation: “An asylum seeker is any person seeking international protection, but whose claim has not been finally determined”.

6. The second paragraph under the definition of ‘regularisation’ does not relate to regularisation. The text confuses those with no legal right to remain (but who have been resident for longer than permitted) with protection mechanisms given to those who apply for a protected status when they do not meet the criteria for refugee status. The former are illegal immigrants, the latter those seeking protection. We propose deletion of this paragraph to avoid this confusion.

Part 3 (‘The Principles’)

7. The UK agrees with the general principle here that human rights are important and need to be respected. However, the scope of the section goes beyond this. The UK considers that this section should focus on the main principle.

Principle 1, guideline 2

8. The guidance on policy development is too prescriptive. We propose deletion of the phrase “and consult migrants and relevant stakeholders” and replace with “and consult partners and stakeholders”. The UK would expect this to include organisations representing migrants.

Principle 1, guideline 3

9. As the Global Compact on Migration will be non-binding, formal parliamentary scrutiny is not necessary. We could not commit to publishing bilateral agreements and MOUs. We propose deletion of these references so that the paragraph reads: “Ensure that national, regional and international policy making on migration is subject to sufficient oversight, which may or may not include parliamentary scrutiny and the publication of agreements related to migration. Ensure that international cooperation consistently complies with the obligation to respect, protect and fulfil human rights, including migrants’ rights, and that such cooperation is never made conditional on measures that unlawfully or disproportionately restrict or penalize migration or migrants”.

Principle 1, guideline 4

10. We propose adding “Where assessed proportionate” to the beginning of this guideline.

Principle 1, guideline 5

11. The activities outlined in this guideline are criminal offences under UK law. We cannot accept this guideline and therefore propose deletion.

Principle 2, guideline 4

12. The reference to taxation and investment should clarify that this is in relation to legal migrants, not illegal.

Principle 2, guideline 6

13. Whilst accurate and sensitive reporting of migration issues by the media is desirable and a noble goal, this guideline suggests restricting the freedom of the press by mandating what they are, and are not, allowed to say. This would have an overall adverse effect and send the wrong message regarding the importance of freedom of the press.

Principle 2, guideline 7

14. Including migration in the mandates of ombudspersons should be highlighted as an example of best practice, rather than mandated. We propose addition of “among others” at the end of the first sentence.

Principle 3, guideline 2

15. We propose the addition of “where appropriate” to this guideline. Migrants should be treated on the same basis as citizens and there should not be beneficial treatment for one group.

Principle 3, guideline 4

16. As above, migrants should be treated on the same basis as citizens. We reserve the right to determine who qualifies for legal aid, which is currently available for asylum seekers in certain circumstances. We propose deletion of “good quality” as this is a subjective reference which is impossible to measure or operationalise.

Principle 3, guideline 5

17. Whilst migrants in these circumstances would be permitted to engage in legal proceedings as set out in these guidelines, once the proceedings are completed, they could still be returned if they have no leave to remain.

Principle 3, guideline 6

18. We cannot accept this proposal. It is important that all agencies cooperate to uphold the rule of law. We propose the removal of all references to firewalls at this stage, we have complex systems in place regarding how various state agencies communicate, including – in some cases – on immigration issues. For these reasons, we propose deletion of this guideline.

Principle 4

19. We agree with this principle in general, however it should include a reference to those arriving having the option to return to their country of origin in safety, with countries of origin making it possible to do so.

20. We suggest including a final guideline on ensuring migrants can safely return home after having made a dangerous journey. States should not pose an obstacle to safe and dignified returns.

Principle 5, guideline 1

21. We propose addition of “through legal routes” at the end of the first sentence.

Principle 5, guideline 2

22. We cannot accept this language and propose deletion.

Principle 5, guideline 4

23. We propose inclusion of “where appropriate” at the end of sentence two. Humanitarian assistance should not automatically be provided to people waiting at a border unless it is appropriate.

Principle 5, guideline 6

24. We cannot accept the proposal to create new mechanisms so propose the paragraph is redrafted as follows: “Facilitate the assessment of human rights claims as set out in international law. As necessary, such assessment can take place prior to, alongside or at the same time as interviews to establish asylum claims.”

Principle 6, guideline 1

25. Counter-smuggling measures are not linked to refoulement, and we will continue to act to stop smuggling as an illegal practice.

Principle 6, guideline 3

26. In cases where an illegal migrant is non-compliant with a removal order, and refuses to return to their country of origin, we will enforce the return through legal means.

Principle 6, guideline 6

27. The best interests of the child should be **a** primary consideration, not **the** primary consideration. We therefore propose deletion of the following text. “This means that children should only be returned when it has been determined that it is in their best interests. Considerations such as those relating to general migration control, cannot override best interests considerations such as, *inter alia*, family unity, survival and development”.

Principle 6, guideline 8

28. We should avoid a blanket reintegration offer, and propose inclusion of “where appropriate” after “Provide effective and tailored reintegration programmes”. Many people issued with a removal notice do not require a reintegration programme as they have overstayed their visa rather than being unable to return. We also propose the substitution of “proportionate” for “all possible” in the second sentence.

Principle 6, guideline 10

29. This is a complex area, which should be caveated to more adequately reflect that all returns must be dealt with in respect of national legislation. Whilst in some cases we cannot return someone as their country of origin will not accept them back, we would neither refoule them nor grant them resident status. We propose the addition of “Recommend to States to” at the beginning of this guideline, and “where possible and in line with national legislation” at the end of the penultimate sentence.

Principle 7, guideline 5

30. We cannot accept the reference to firewalls, and propose its deletion. We propose changing this reference to “establish confidential mechanisms for migrants to report crimes and give statements”.

Principle 8, guideline 1

31. We cannot accept this guideline and propose its deletion. It is the State’s right to detain those without legal right to be in the country in line with international standards and respecting human rights.

Principle 8, guideline 2

32. We propose changing “Prioritize” to “Explore”.

Principle 8, guideline 3

33. We propose the addition of “could” after “such people” in the last sentence.

Principle 8, guideline 4

34. This guideline conflates two separate concepts, the detention of children and the detention of children due to their parents’ immigration status. We reserve the right to detain children if we deem it to be in their best interests, for example to not separate them from family members or to protect them.

Principle 8, guideline 5

35. We propose deletion of the final tiret. Detention must be in accordance with national law, whether or not this requires an order of the court.

Principle 9, guideline 2

36. Family reunification must be carried out in accordance with domestic law and its criteria. As above, migrants should be treated the same as citizens, including with respect to family reunification. We propose deletion of “Strengthen” at the beginning of the second sentence, and “these” halfway through the same sentence.

Principle 9, guideline 3

37. We have various routes for family reunification, although do not permit children to sponsor their parents under our refugee family reunion policy. This risks parents sending their children on dangerous journeys alone, which we do not want to encourage. We therefore propose that this should be deleted.

Principle 10, guideline 1, tirect 2

38. We propose the tirect be redrafted to read as follows: "The child's best interests should be a primary consideration. Children in the context of migration must be treated first and foremost as children. All children, regardless of age, should enjoy equal standards of protection".

Principle 10, guideline 1, tirect 3

39. We propose deletion of "including the right to qualified legal representation".

Principle 10, guideline 3

40. We propose deletion of "Never detain children based on their migration status or that of their parents".

Principle 10, guideline 5

41. We propose replacing "must" with "should" in the final sentence of this guideline.

Principle 10, guideline 6

42. We do not implement a guardianship system, and will not implement one. Local authorities and social services care for children and are the 'responsible adult' in immigration processes. We therefore propose deletion of this guideline apart from the first sentence.

Principle 10, guideline 7

43. We propose addition of "where eligible" at the end of this guideline.

Principle 12, guideline 1

44. We propose deletion of "Make clear in explicit terms that migrants cannot be denied access to public healthcare services because of their migration status.

Principle 12, guideline 3

45. We propose deletion of "at all stages of their journey, along migratory routes, at reception points, and". Whilst migrants must be provided this information once they have arrived in their country of destination, providing it en route would constitute a pull factor, which could encourage more people to undertake dangerous journeys.

Principle 12, guideline 8

46. As above, we have complex data sharing mechanisms in place, including on immigration status. This is not related to human rights, and we have seen no reduction in the use of healthcare services due to these data sharing mechanisms. We cannot accept this guideline and propose its deletion.

Principle 13, guideline 2

47. We propose deletion of “regardless of their status”. It is for States to decide their national housing action plans.

Principle 13, guideline 4

48. We propose deletion of this guideline except for the final sentence. We have very specific national legislation regarding landlords and this guideline goes beyond the protection of human rights.

Principle 13, guideline 5

49. We propose deletion of the first sentence. This goes against States’ right to detain those in the country illegally and defies the purpose of detention. We also propose the inclusion of “if functioning reporting mechanisms are available” to the second sentence.

Principle 14, guideline 1

50. We cannot accept the first sentence and propose its deletion. The right to work is bound to specific visa conditions. If a person is in a country illegally, they have no right to work.

Principle 14, guideline 2

51. We propose the deletion of “recognition of skills and qualifications”. This recognition is based on bilateral or multilateral agreements and is outside the mandate of these Guidelines.

Principle 14, guideline 3

52. As stated above, we cannot accept references to firewalls, and propose the deletion of the final sentence of this guideline.

Principle 14, guideline 4

53. We propose the inclusion of “if in the country legally” at the end of the penultimate sentence and following “All migrants” at the beginning of the final sentence. As referenced above, migrants who are in the country illegally have no right to work or to workplace protections.

Principle 15, guideline 1

54. We propose the deletion of “and higher education”. UK nationals have to pay for higher education, and migrants should be treated the same. Compulsory education ends at age 16 in the UK, regardless of whether a pupil is a UK national or a migrant.

Principle 15, guideline 2

55. As stated above, we cannot accept the reference to firewalls and so propose deletion of this guideline.

Principle 17, guideline 4

56. We cannot accept the first sentence and propose its deletion.

Principle 18, guideline 1

57. Whether or not assistance provided to migrants should be penalised is dependent on the assistance given. For example, people smuggling is a criminal offence and should be treated as such.

Principle 19, guideline 4

58. We propose deletion of “Information should be permanently and irreversibly anonymised both to protect privacy rights and to ensure that it cannot be used for immigration enforcement purposes”. Whilst third parties would receive anonymised information, we reserve the right to use such information for immigration enforcement purposes and so cannot accept this sentence.

Principle 20, guideline 4

59. We propose deletion of the first sentence. We also propose inclusion of “or similar” after “humanitarian pathways” in the final sentence.

Principle 20, guideline 5

60. We cannot accept this guideline and therefore propose its deletion. There are pathways to citizenship, however this is dependent on specific conditions. Regularisation also forms a perverse incentive to remain undetected or to abscond for as long as is necessary to become regularised, which could lead illegal migrants to endanger themselves by not accessing necessary services. Regularisation also does not equal citizenship so the two should not be conflated.

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