

Training course on Human Rights at International Borders

Session 1

Introduction to human rights

Session 1 content

- 1.1. Human rights
- 1.2. Gender, migration and human rights
- 1.3. Human rights at international borders
- 1.4. Key human rights principles at international borders
- 1.5. Human rights of border officials and institutional accountability

Session 1 learning objectives

After this session, learners will be able to:

- Describe the nature of States' obligations under human rights law
- Describe the concept of gender and how it is relevant to border governance
- Identify some human rights potentially at risk at international borders
- Describe three key human rights principles in the area of border governance
- Identify the human rights of border authorities and their obligations in respecting and protecting human rights

1.1. Human rights

1.1.1. What do we need to flourish as human beings?

In your groups, briefly discuss the question and write your ideas – using **keywords** – on the flip chart.

Tip: Think about yourselves and your families:

What do you need to lead dignified and fulfilled lives?

You have 5 minutes for the discussion.

1.1.2. What are human rights?

- Expressions of human dignity
- A set of agreed values/norms reflecting the principles of dignity, equality and freedom
- Legal standards and agreements –international and regional
- Inherent to individuals, and primarily define the relationship between the individual and the State

1.1.3. Universal Declaration of Human Rights

Affirms:

- The inherent dignity and the equal and inalienable rights of all members of the human family (Preamble)
- All human beings are born free and equal in dignity and rights (Article 1)
- Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind (Article 2)

© United Nations, 2021 – These presentation slides form part of the OHCHR-Office of Counter-Terrorism Human Rights at International Borders training package

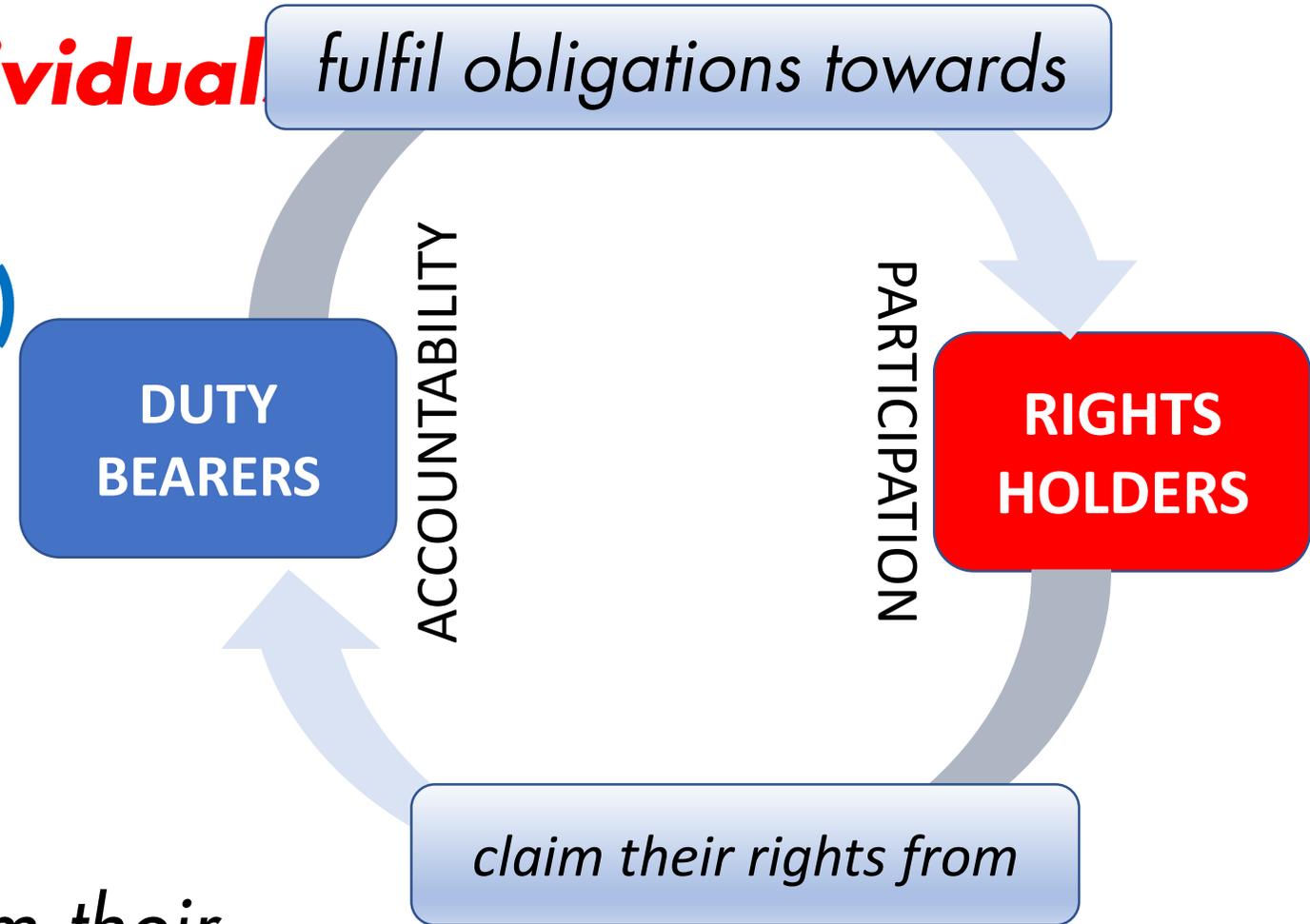


1.1.4. Duty bearers and rights-holders

- **RIGHTS HOLDERS** (*individuals*)
- and
- **DUTY BEARERS** (*States*)

→ **DUTY BEARERS** fulfil a responsibility towards **RIGHTS HOLDERS**

→ **RIGHTS HOLDERS** claim their rights from **DUTY BEARERS**



1.1.5. Nature of States' human rights obligations

Human rights law establishes States' obligations towards *every person, including:*

- non-citizens,
- irregular and smuggled migrants,
- refugees,
- asylum seekers,
- trafficked persons,
- suspected terrorists,
- stateless persons
- ...



Human rights law obligates the whole of Government to protect human rights

- Executive, legislative and judicial branches
- National, regional, provincial and local levels

Including at international borders:

- Border authorities – border police, border guards, customs officers, immigration officers, coast guards;
- Health/medical personnel, child protection services;
- Other law enforcement officials involved in border management.

Human rights law obligates States to protect all persons under their territorial jurisdiction and effective control

States are accountable for fulfilling the human rights of **all persons under their jurisdiction, power or effective control**, even if they are outside the territory. That is:

- wherever the State exercises authority or control extraterritorially, and
- regardless of their migration or residency status.

The privatization of border governance functions does not defer, avoid or diminish the human rights obligations of the State.

Human rights law holds States responsible for human rights abuses committed by private actors

- States have a legal duty to protect the population from human rights violations by non-State actors, including business entities.
- States are responsible for ensuring that non-State actors, including private companies or humanitarian organizations – including those involved in border security and management – deliver contracted services in line with States' human rights obligations.
- States must hold corporate actors accountable for human rights abuses.

1.1.6. Legal human rights sources

- Charter of the United Nations (1945)
- Universal Declaration of Human Rights (1948)
- Core international human rights treaties
- Regional human rights treaties
- Other relevant treaties
- Customary international law
- Human rights treaty bodies

Other areas of law that are relevant at international borders

Laws	Applicable to
International refugee law	Refugees
Conventions on statelessness	Stateless individuals
International humanitarian law	Situations of armed conflict
Law of the sea	Rescue and assistance at sea
International labour law	Migrant workers
International criminal law	Smuggling of migrants, trafficking in persons, corruption, deportation

1.1.7. States can restrict certain human rights

– *only if certain requirements are met*

e.g., the right to work — States can limit access to certain sectors of the labour market to their citizens.

Requirements:

- Is it **lawful**?
- Is it justified to achieve a **legitimate** aim?
- Is it **necessary**?
- Is it **proportionate** to the aim?
- Is it **non-discriminatory**?

1.1.8. The right to due process

- Requires States to ensure that: **every individual** is treated fairly and reasonably; arbitrariness is avoided; any limitation imposed on an individual's rights meets the tests of necessity and proportionality so that **administration of justice is independent and effective**.
- Requires that appropriate laws, legal processes and other measures are in place to ensure the right to due process.
- Applies across all border contexts, including screening, interviewing, detention and expulsion of a person.

The right to due process in the context of border governance

Encompasses the rights:

- To be informed of any decision concerning oneself (e.g., detention, denial of admission, expulsion) in a language that is understandable;
- To submit reasons against expulsion;
- To have one's case reviewed by a competent authority;
- To be represented in such a review.

Questions?

1.2.

Gender, migration and human rights

1.2.1. What is meant by gender?

- **Not** another word for *women*, nor a synonym of sex
- Refers to **socially constructed roles, functions and responsibilities** assigned to women and men – including in relation to sexual orientation and gender identity
- Several **diverse factors** within any gender category contribute to individuals' experiences:
 - race, ethnicity, culture, religion, social class – which interact with and inform gender-based discrimination
- Is not static; is **changeable** over time and across contexts

1.2.2. Gender in a human rights-based approach

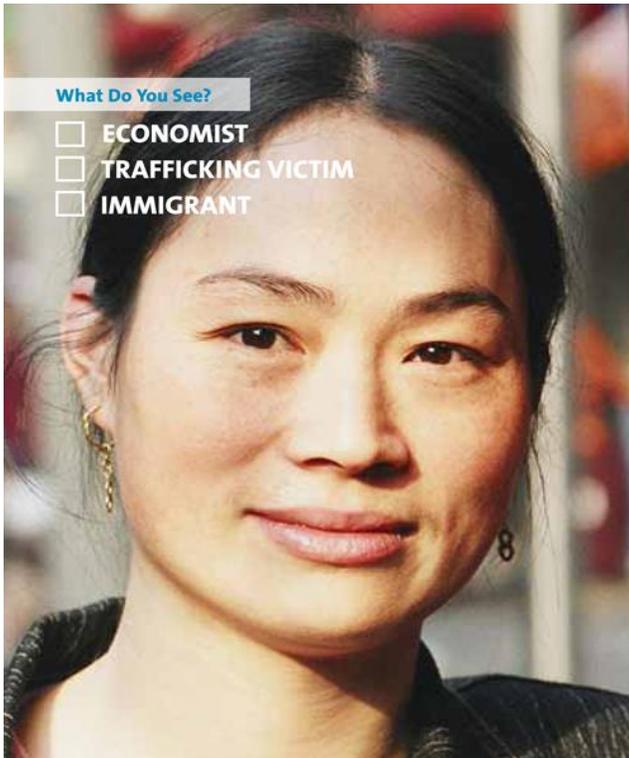
- *Gender* affects how people experience life and human rights issues.
- *Gender analysis* may help us to understand the individuals with whom we engage — it is important to understand the role of social norms, power relations, resource distribution and entitlements in their lives and decision-making.
- May determine specific, *gender-responsive* measures necessary to protect and promote everyone's human rights.

1.2.3. Gender in the context of migration: check your assumptions

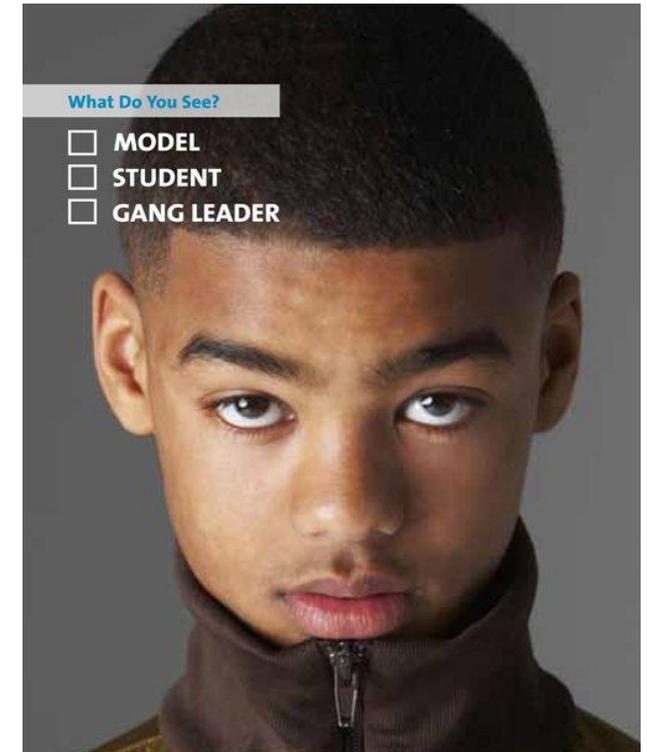
It is important to be aware of one's own biases and stereotypes regarding:

- Gender
- How gender intersects with other factors such as age, race, migration status, etc.

and to address them so that they do not negatively affect one's work.



MORE THAN MEETS THE EYE



MORE THAN MEETS THE EYE

1.2.4. Migration is not gender-neutral

- Need to consider:
 - Gender (and other) inequalities and discriminations
 - Harmful gender stereotypes and traditional gender roles and social norms
 - Gendered labour markets
 - Universal prevalence of gender-based violence
- The “vulnerability” stereotype

1.2.5. Gender and counter-terrorism at international borders

- Assumptions may **affect border officials' approach to migrants** at the border:
 - A young man may be subjected to stricter security checks
 - Women may be assumed to never participate voluntarily in any terrorist actwhich can have implications for the individual's enjoyment of human rights and for counter-terrorism efforts

Questions?

1.3.

Human rights at international borders

1.3.1. What are international borders?

- a) Politically defined boundaries separating territory or maritime zones between States
- b) Areas where States exercise border governance measures on their territory or extraterritorially

Including: land checkpoints; border posts at train stations, ports and airports; immigration and transit zones; the high seas; so-called “no-man’s land” between border posts, embassies and consulates

Borders are NOT zones of exemption of human rights

1.3.2. Exercise: What human rights could be at risk at international borders?

Read the case assigned to your group, briefly discuss and write your responses to the following questions on the flip chart.

1. What human rights issues can you identify in the case?
List at least four.
2. What gender-specific concerns can you identify in the case?
3. Do you think these individuals would/should be treated differently depending on their gender?
4. What can border officials do to protect the rights identified?

CASE A

Kai, 17 years old, and Sammy, 22 years old

- Kai and Sammy are cousins who left their country together. They are poor and there is a lot of violence in their country. Kai liked school, but gang members told him that “real men” should work. Kai’s mother was killed as a bystander in a shoot-out a year ago.
- Kai and Sammy are crossing several countries, travelling on buses and by foot, to Syldavia where Kai’s father is living.
- One night, border security officials raided the place where they were sleeping; Kai escaped but Sammy was arrested, detained and forced to work. Sammy escaped after paying a bribe to a guard.

→ continued

CASE A continued

Kai, 17 years old and Sammy, 22 years old

- At the border town, Kai is working to earn money to pay the expensive fees the smugglers are demanding to take them to Syldavia. It is too dangerous to cross on their own; people have been kidnapped and some have died in the desert.
- Kai has been working long hours in a restaurant and has been injured at work several times. He has not sought treatment for his wounds for fear of being reported to immigration officials and deported. Sammy is depressed and has been unable to work.

CASE B

Amodita, 20 years old, and Ichanga, 23 years old

- Amodita's village had been experiencing a drought for decades; her family's harvests had steadily decreased and could not sustain and feed everyone. Her father was ill and his medical treatment was very expensive. Amodita and her husband, Ichanga, saved up so as to migrate and support her family.
- A friend of the family knew an agent who arranged documents for them to get to Elbonia. They left for Elbonia by bus when Amodita was five months pregnant. The journey was supposed to take three days through the neighbouring country of Liberto.

→ continued

CASE B continued

Amodita, 20 years old, and Ichanga, 23 years old

- After crossing into Liberto, their bus was stopped by immigration officers who ordered Ichanga and another man off the bus. Amodita, who was seated in front, was prevented from getting off the bus; she was very distressed and started shouting and protesting, but could not speak the language. She started to get severe cramps.
- There were no women officers on duty at the border of Elbonia. The male border guards denied Amodita entry because she did not have the right papers. She was in unbearable pain, but was not permitted to see a doctor because the authorities said she had tried to enter Elbonia irregularly.

1.3.3. Human rights particularly at risk at international borders

- (a) Right to life
- (b) Right to freedom from torture and other forms of cruel, inhuman or degrading treatment
- (c) Right to liberty and security of person
- (d) Right to freedom of movement
- (e) Right to privacy
- (f) Right to freedom of expression
- (g) Right to family life (unification)
- (h) Best interests of the child
- (i) Right to due process and fair trial guarantees
- (j) Right to health
- (k) Right to food
- (l) Right to water and sanitation
- (m) Right to an effective remedy

1.3.4. Discussion: If human rights apply to everyone, everywhere ...

What about:

- If the person is in “no man’s land”?
- If the person is suspected of terrorism or on a watch-list?
- If the person was smuggled across the border or does not have any papers?
- In situations of large movements of migrants or mixed migrations?

Any other examples?

Questions?

1.4.

Key human rights principles at International borders

1.4.1. Recommended principles and guidelines on human rights at international borders



RECOMMENDED
PRINCIPLES and GUIDELINES
on HUMAN RIGHTS
at INTERNATIONAL BORDERS



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

- Support States in fulfilling their obligations to **govern their borders in accordance with international human rights law** and other relevant standards;
- Underpinned by the belief that **respecting the human rights of all migrants**, regardless of their nationality, migration status or other circumstances, facilitates effective border governance.

1.4.2. Key principles to uphold at borders

Principle A: The primacy of human rights

The primacy of human rights calls for rights to be at the centre of all border governance measures

- Derives from States' fundamental obligation to effectively promote and protect the human rights of all migrants, *regardless of their immigration status.*
- Encourages the implementation of policies that are non-discriminatory, gender responsive and child sensitive.

Principle A: The primacy of human rights (contd.)

Border governance measures to:

- **address cross-border crimes**, such as trafficking in persons, smuggling of migrants and trafficking of drugs or other contraband
- **prevent irregular border crossings**
- **prevent** movement of **suspected terrorists**

should not adversely affect the human rights and dignity of persons at international borders.

Principle B: Non-discrimination

The non-discrimination principle requires migrants to be protected against any form of discrimination at borders

- Human rights law provides that **every person** must enjoy their rights *without any form of discrimination*.
- Prohibited grounds include race, colour, sex, language, religion, political or other opinion, national or ethnic origin, property, birth, nationality, migration status, age, disability, marital or family status, sexual orientation, gender identity, health status, economic or social situation.

Principle B: Non-discrimination (contd.)

Legitimate differential treatment vs. discrimination

Differential treatment is legitimate if:

- It is **justified**
- In lawful pursuit of a **legitimate State objective**
- Using **proportionate means**

It is discrimination if:

- It is **unlawful differential treatment**
- It makes distinctions on **prohibited grounds**

Principle C: Assistance and protection from harm

This principle means that human rights obligations must take precedence over law enforcement and migration management objectives

- Protection and assistance obligations should be **prioritized** over law enforcement and migration management objectives.

Principle C: Assistance and protection from harm (contd.)

Protection and assistance obligations:

- Are the **basis of all contacts between border officials and individuals at borders** – initial detection, rescue, interception, screening, interviewing, identification, referral, also any necessary and exceptional detention or return.
- Require border officials to treat everyone with respect for their dignity, and systems in place to **identify migrants in vulnerable situations** and refer them to the appropriate protection and services.

1.4.3. Exercise (true/false): Perceptions and misperceptions of migrants

Answer **YES/TRUE** or **NO/FALSE**

- Are migrants who cross borders or stay in a country without proper permission committing a crime in international law? **NO/FALSE**
- Do irregular migrants pay taxes? **YES/TRUE**
- Are expats and migrants different? **NO/FALSE**

1.4.4. Impacts of harmful language

Language matters because it informs our views and how we treat people; it also shapes our perception and thinking.

- *Avoid* using **gendered** language;
- *Avoid* using the term “**illegal**” to refer to migrants or migration → *use* migrants in an “irregular situation”, with “irregular status”, “irregular migration”, “undocumented” migrants.

Crossing a border is **an administrative matter**.

→ Unauthorized entry, the attempt to enter a country in an irregular manner or irregular stay, in general, **should not be considered a criminal offence**.

Questions?

1.5. Human rights of border officials and institutional accountability

1.5.1. Discussion: Human rights of border officials

What human rights do border officials have?

Border officials have all human rights

- Including the rights to life, to health, to an adequate standard of living, to just and favourable conditions of work, freedom from discrimination, among others.
- The State is obliged to protect and fulfil the rights of border officials, including ensuring a safe working environment and adequate facilities.

1.5.2. Exercise: Reality check – challenges faced by border officials

Discuss the following questions in your group:

1. What are some of the challenges you face in your (current or previous) day-to-day work in the context of migration or working with migrants?
2. Do border officials face different or additional challenges on the basis of their gender?
3. How do you think human rights can help improve your situation?

Prioritize no more than 2 or 3 points to share in the debriefing.

1.5.3. A gender-responsive working environment

- Increased representation of women among border personnel:
 - Address stereotypical roles and responsibilities
 - Address marginalization and discrimination
 - Address sexual harassment and misogyny
- Gender-responsive policies, protocols and procedures
- Internal gender-responsive oversight and accountability mechanisms, including effective gender-responsive remedies
- Participation of women's organizations and human rights defenders in border management, reforms, capacity-building

1.5.4. Accountability

- A human rights-based approach seeks to establish accountability between duty bearers and rights holders, through codes of conduct, monitoring mechanisms, etc.
- Requires the creation of **effective and independent gender-responsive mechanisms** to:
 - Oversee the enforcement of rights
 - Hold perpetrators of human rights violations accountable
 - Provide effective remedies for anyone whose rights have been violated

Questions?