

MANUAL ON human rights MONITORING

Chapter 26

MONITORING AND PROTECTING HUMAN RIGHTS IN THE CONTEXT OF MIGRATION

Chapter 26 Monitoring and protecting human rights in the context of migration



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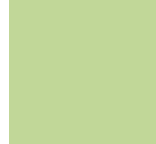
MONITORING AND PROTECTING HUMAN RIGHTS IN THE CONTEXT OF MIGRATION



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A. Key concepts



- Migration is a complex and enduring phenomenon. A wide range of intersecting factors motivate migration and each individual's migration experience is marked by varying degrees of coercion and voluntariness.
- Regardless of their migration status or why, how or where they move, all migrants are entitled to the protections provided by international human rights law as contained in all nine core international human rights treaties, without discrimination.
- In the context of migration, human rights monitoring improves transparency, oversight and accountability. It is especially relevant because the rights of migrants are frequently violated and abused, and few actors may be able to access migrants or carry out independent monitoring. In addition, migrants are rarely able to obtain effective remedies. Monitoring strategies should seek to promote and protect the human rights of migrants and address protection gaps in law, policy and practice.
- Monitoring should consider all stages of the migration cycle. Migrants may need protection because of the situations and violations that drove them to migrate, the circumstances in which they travel, the conditions they face on arrival – or all of these. They may also need protection because of their age, gender identity, disability, health status, or a combination of such personal characteristics. Human rights monitoring in the context of migration should pay particular attention to migrants whose situation makes them vulnerable or puts them at risk of violations or abuse.
- There is no agreed legal definition of “migrant”. As used in this chapter, “migrant” is an umbrella term that encompasses several well-defined legal categories. If migrants classify as refugees, stateless persons, unaccompanied or separated children, migrant workers, victims of trafficking, etc., they are eligible for specific protection under the terms of refugee, labour and criminal law and other bodies of international law.
- To monitor the human rights of migrants it is necessary to understand the legal, political, social, economic and cultural context in which they move. It is also necessary to map stakeholders who work on migration and related issues. Partnerships with those stakeholders can increase access to migrants, improve migrants' access to safe spaces, facilitate their referral to gender-responsive, child-sensitive and non-discriminatory assistance and follow-up, and strengthen accountability.
- Migration is not a gender-neutral phenomenon. Monitoring should integrate an intersectional analysis, including a gender perspective, throughout the monitoring cycle. Human rights officers (HROs) should give equal weight and consideration to the situations, views and experiences of all individuals, acknowledging their diversity, and give attention to gender-based inequalities and multiple and intersecting forms of discrimination.

B. Introduction

Contemporary migration is complex. People move within countries and across borders for many reasons, using a wide variety of means and routes that are associated with different kinds of risk. It is important to remember that varying degrees of coercion and voluntariness mark each individual's migration experience. Their situations are inherently dynamic and may change several times as their journey proceeds. Although there are many different legally recognized categories of people on the move, it is also true that they often face common human rights challenges and situations of vulnerability.¹ Moreover, those who are not recognized as qualifying for a specific category of legal protection (as a refugee, unaccompanied child, trafficked person, etc.) are nevertheless entitled to human rights protection. The international human rights framework offers protection to *all* persons on the move without discrimination, while providing the tools to ensure those disproportionately affected by discrimination and marginalization are not left behind.

This chapter sets out some of the key substantive and methodological issues that need to be considered when designing and carrying out human rights monitoring in the broader context of migration and displacement. It seeks to support monitoring activities that take place on a regular basis or as part of ongoing work, and also monitoring as a single event. Where relevant, it refers to other chapters in this *Manual*.

The chapter does not provide a comprehensive guide to the human rights of migrants. It outlines approaches to monitoring a selection of human rights at various points in the migration cycle. It provides sample questions for some monitoring situations, which can be adapted to context. Examples are drawn from monitoring experiences that have been publicly reported.

HROs must pay special attention to the conditions of migration and the situations of vulnerability that migrants face, because these may make violations and abuse more likely and prevent migrants from enjoying their rights. As a group, migrants are particularly exposed to risk because of the situations that led them to leave, the circumstances in which they travel or the conditions they face on arrival, or because of their age, gender identity, disability, health status or other personal characteristics. Migrants in an irregular situation are especially exposed to discrimination, exploitation, violence and abuse.

All persons, regardless of their migration status or circumstance, are protected under international and regional human rights law. In addition, refugees and asylum seekers are entitled to specific protection under international and regional refugee law. Other international instruments recognize the specific needs of persons who can be classified legally as, *inter alia*, children, women, trafficked persons, migrant workers, stateless persons, internally displaced persons or persons with disabilities. States are obliged to provide specific protections to such persons. Migrants may simultaneously qualify to be in more than one category, or may change from one category to another in the course of their journey.

The purpose of human rights monitoring is not to determine the specific legal status and entitlements of individuals – determining their refugee status or identifying victims of trafficking, for instance. Monitors nevertheless need to know the legal protections to which migrants may be entitled in order to ascertain

¹ New York Declaration for Refugees and Migrants, General Assembly resolution 71/1, para. 6.



whether individuals or groups of individuals face protection gaps and what laws, policies and practices can be invoked to protect them and secure their rights.

In this chapter, the umbrella term “migrant” generally refers to any person who is outside a State or location of which they are a citizen or national or that is their place of birth or habitual residence. Where the chapter refers to people with specific legal entitlements (such as refugees, trafficked persons, internally displaced persons or migrant workers), this will be made clear.

Human rights monitoring is key to ensuring that migrants’ rights are protected and that States meet their international obligations. Although many agencies and stakeholders work on migration or on behalf of migrants, HROs can often fill data gaps, gain access where others cannot, or increase understanding of migrant situations in other ways. OHCHR’s broad human rights mandate entitles it to monitor and follow up the human rights situation of all persons on the move and fill gaps in their protection. It often does this work in cooperation with other United Nations agencies.

C. Glossary

Asylum seeker: Any person who is seeking protection as a refugee but whose claim has not been finally determined. No universal definition under international law has been agreed.

International border: The politically defined boundaries that separate the territories or maritime zones of adjoining political entities/States; the areas where political entities exercise territorial or extraterritorial border governance/border control. Such areas include land checkpoints; border posts at train stations, ports and airports; immigration and transit zones; the high seas and neutral, buffer or disputed areas (so-called no-man’s-land) between border posts; and embassies and consulates.²

Internally displaced person(s): A person or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized State border.³ As citizens or residents of a particular country, internally displaced persons are entitled to the same rights as others under international law and under domestic law, as applicable to their specific circumstances. Because of their displacement, they may have specific vulnerabilities and needs and require protection and assistance.⁴

Migrant: No universal definition of “migrant” has been agreed in international law. OHCHR defines an international migrant as any person who is outside a State of which they are a citizen or national or, in the case of a stateless person, their State of birth or habitual residence. The term includes migrants who intend to move permanently or temporarily, and those who move in a regular or documented manner

2 OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (Geneva, 2014), para. 10 (b), available at www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

3 “Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission: human rights, mass exoduses and displaced persons: report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39”, addendum, “Guiding principles on internal displacement” (E/CN.4/1998/53/Add.2), annex, para. 2.

4 See Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 38 (2008) (Washington, D.C., American Society of International Law and the Brookings Institution), pp. 19–22.

as well as migrants in irregular situations.⁵ An internal migrant is any person who moves within the boundaries of a State for the purpose of establishing a new temporary or permanent residence. This includes internally displaced persons. In this chapter, “migrant” is used as an umbrella term and also covers those who fall into well-defined legal categories, such as migrant workers, refugees and victims of human trafficking.

Migrant in an irregular situation, undocumented migrant: A person who, owing to undocumented entry or the expiry of their visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country’s admission rules and any other person not authorized to remain in a host country.⁶

Migrants in vulnerable situations: Migrants are in vulnerable situations when they are unable to effectively enjoy their human rights and are at increased risk of human rights violations or abuse.⁷ There is no legal definition of “vulnerable situations”, or of the term “vulnerability”, although it is widely used across human rights, criminal justice, human security and other areas. Vulnerability can be understood as referring to the multiple and intersecting forms of discrimination, inequality and structural and societal dynamics that lead to diminished and unequal levels of power, choice and enjoyment of human rights and increase the risk of an individual being subjected to human rights violations.⁸ Migrants in vulnerable situations may need specific human rights protection because of the situations they left behind, the circumstances in which they travel or the conditions they face on arrival, or because of discrimination based on personal characteristics, such as age, gender identity, disability or health status.

Migrant worker: A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which they are not a national.⁹

Mixed migration: The cross-border or internal movement of people who have a variety of protection profiles, reasons for moving and needs, but who move along the same routes, use the same forms of transport or means of travel and often travel irregularly.¹⁰

Non-refoulement: Under international human rights law, the prohibition of refoulement entails an obligation not to extradite, deport, expel, return or otherwise remove a person, whatever their status, when there are substantial grounds for believing that the individual would be at risk of being subjected

5 OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*.

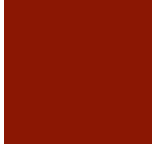
6 Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights* (2008), p. 7.

7 OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* (2018), p. 5, available at www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf. The term “migrants in vulnerable situations” does not include refugees, and is without prejudice to the protection regimes that exist under international law for specific legal categories of non-nationals, including refugees, asylum seekers, stateless persons, trafficked persons and migrant workers. States have endorsed this framing. See, for example, Human Rights Council resolution 35/17, “Protection of the human rights of migrants: the global compact for safe, orderly and regular migration” (A/HRC/RES/35/17); and the Global Compact for Safe, Orderly and Regular Migration, Objective 7, para. 23, in particular para. 23 (l).

8 OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, p. 6.

9 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 2. See also article 11 of the Migration for Employment Convention (Revised), 1949 (No. 97) and article 2 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

10 OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, p. 15.



to torture or cruel, inhuman and degrading treatment or punishment, or other serious human rights violations or other irreparable harm, in the place to which they are to be transferred or removed, or of further transfer to a third State where there would be a real risk of such violations.¹¹ Human rights mechanisms have underlined that, under international human rights law, the prohibition of refoulement is absolute.¹²

Under international refugee law, “no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹³

Refugee: A person outside their country of origin or nationality who is in need of international protection because of a well-founded threat to their life, physical integrity or freedom in the country of origin as a result of persecution, armed conflict, violence or serious public disorder against which the authorities in the home country cannot or will not protect them.¹⁴

Return: An umbrella term, “return” refers to all the various forms, methods and processes by which migrants are returned or compelled to return to their country of origin or of habitual residence, or a third country. Returns may thus include deportation, expulsion, removal, extradition, pushback, handover, transfer or any other return arrangement. “Return” can also refer to the different ways in which internally displaced persons may return or be returned to their place of habitual residence. The use of the term “return” provides no determination as to the degree of voluntariness or compulsion in the decision to return or the lawfulness or arbitrariness of the return.¹⁵ Internally displaced persons cease to be displaced once a durable solution is achieved and they can enjoy their human rights without discrimination on account of their displacement.

Separated child: A child who has been separated from both parents or from the legal or customary primary caregiver but not necessarily from other relatives, and who is not being cared for by an adult who, by law or custom, is responsible for its care. Children may become separated at any point during their migration.¹⁶

Smuggling of migrants: Smuggling occurs when an individual (the smuggler) obtains the entry into a country of a person who is not a national or permanent resident of that country through irregular channels, and does so intentionally and for the purpose of obtaining a financial or other material benefit.¹⁷

11 See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3; and Human Rights Committee, general comment No. 31 (2004), para. 12.

12 See Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/70/303), paras. 38 and 41; Human Rights Committee, *Israil v. Kazakhstan* (CCPR/C/103/D/2024/2011), para 9.4; and *Valetov v. Kazakhstan* (CCPR/C/110/D/2104/2011).

13 Convention relating to the Status of Refugees, article 33 (1).

14 This description draws on the Convention relating to the Status of Refugees, article 1, as amended by the Protocol relating to the Status of Refugees; United Nations High Commissioner for Refugees, “Note on international protection” (A/AC.96/830), and related regional instruments.

15 OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, pp. 16–17.

16 Committee on the Rights of the Child, general comment No. 6 (2005), para. 8.

17 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Smuggling of Migrants Protocol), article 3 (a).

Stateless person: A person who is not considered a national by any State under the operation of its law.¹⁸

Trafficking in persons: The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, 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.¹⁹ The consent of a victim of trafficking in persons is irrelevant where any of these means have been used.²⁰ In the case of a child, trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation; the means mentioned above are not required.²¹

Transit: No authoritative definition of “transit migration” has been agreed; the term is commonly taken to mean the temporary stay of migrants in one or more countries with the objective of reaching a further and final destination.²²

Unaccompanied child: A child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for their care. Children may start their journey as unaccompanied children or may become unaccompanied at any point in their migration.²³

Xenophobia: Attitudes, prejudices and behaviours that reject, exclude or vilify persons based on the fact or the perception that they are outsiders or foreigners with respect to a community, society or national identity. No universal legal definition of “xenophobia” has been agreed.²⁴

D. Human rights standards: migrants’ rights are human rights

All people, regardless of migration status, are in general entitled to the same human rights. The International Bill of Human Rights permits a distinction to be made between nationals and non-nationals in respect of only two rights, and only in certain circumstances: the right to vote and participate in public affairs, and the right to freedom of movement within a country.²⁵ Apart from those narrow exceptions, the entire international human rights framework, which includes the core international human rights treaties and their optional protocols, applies to all migrants who move within or across international borders, whether or not they have regular migration status, and whether or not they are

18 Convention relating to the Status of Stateless Persons, article 1.

19 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol), article 3 (a).

20 Ibid., article 3 (b).

21 Ibid., article 3 (c).


22 “Situation of migrants in transit: report of the Office of the United Nations High Commissioner for Human Rights” (A/HRC/31/35), para. 5.

23 Committee on the Rights of the Child, general comment No. 6 (2005), para. 7.

24 OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, p. 18.

25 Article 25 of the International Covenant on Civil and Political Rights reserves to citizens the right to vote and take part in public affairs, and article 12 limits the right of non-citizens to freedom of movement in a country to foreigners who are lawfully present in that country. However, the Human Rights Committee has stated that a foreigner may enjoy the protection of article 12, even in relation to entry or residence, for example, when to act otherwise would amount to discrimination or inhuman treatment or undermine family life. See Human Rights Committee, general comment No. 15 (1986), para. 2.

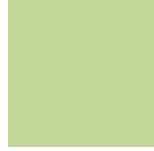


entitled to refugee or other specific protection. Furthermore, international human rights treaties provide legal protection to everyone, regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, or other status (see chapter on the [Applicable international human rights and humanitarian law framework](#) .

Other obligations exist in international law and customary international law more broadly, for example, in international labour, refugee and humanitarian law, the law of the sea and international criminal law. Regional human rights instruments and mechanisms are also relevant to migration and human rights. They include the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the Arab Charter on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Social Charter, and the Association of Southeast Asian Nations Human Rights Declaration.



OHCHR has developed guidance, based on international human rights law and related standards, on how to implement and operationalize the legal obligations States have to migrants. The [Recommended Principles and Guidelines on Human Rights at International Borders](#) (2014) explain how to address the complex human rights issues that arise at international land, sea and air borders. The [Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations](#) (2018), developed by OHCHR and United Nations partners, focuses specifically on migrants in vulnerable situations, who are unable to effectively enjoy their human rights and are at increased risk of human rights violations or abuse, and for whom the State therefore has a heightened duty of care (see box).



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Migrants in vulnerable situations

The legal obligation of States to respect, protect and fulfil human rights rests on the requirement to uphold human dignity and the duty to recognize and address vulnerability to human rights abuses. States have a heightened duty of care to migrants in vulnerable situations because they are unable to effectively enjoy their human rights and are at increased risk of violations and abuse. The risks they face may be due to the situations they left behind, the circumstances in which they travel, the conditions they face on arrival, or discrimination on grounds of their age, gender identity, disability or health status. However, it is important to recognize that no migrant is inherently vulnerable or lacks resiliency or agency. Every migrant is entitled to an individual assessment of their circumstances.

While all people, including all migrants, are protected by international human rights law, certain people fall within legal categories that entitle them to specific forms of protection, as migrant workers, refugees, unaccompanied or separated children, victims of trafficking or internally displaced persons. Refugees and asylum seekers are entitled to protection under international and regional refugee law. Other international instruments afford specific protections to, *inter alia*, children, women, trafficked persons, migrant workers, stateless persons, internally displaced persons²⁶ and persons with disabilities. International humanitarian law may help to protect migrants in contexts of war or armed conflict.

In the complex reality of contemporary mobility it can be difficult to neatly separate people into distinct categories, because in many contexts human mobility has numerous causes and people may simultaneously fit into several categories, or change from one category to another in the course of their migration.²⁷ Under international human rights law, States have obligations towards all persons subject to their jurisdiction, which includes those persons under the effective control of State officials, regardless of how or why they move.²⁸

Acknowledging the complexity of migration, in 2018 the General Assembly endorsed the Global Compact for Safe, Orderly and Regular Migration (Global Compact for Migration).²⁹ This sets out a comprehensive road map for human rights-based cooperation on migration in all its dimensions. States have committed to fulfil the Compact's vision, guiding principles and 23 objectives in a manner consistent with their human rights obligations. For instance, they have undertaken to:

- Place the dignity and human rights of migrants and societies at the centre of all migration governance measures;
- Mitigate the adverse drivers and structural factors that compel people to migrate;
- Reduce the risks and vulnerabilities that migrants face at different stages of migration;
- Enhance the availability of safe, dignified and regular pathways for migration, to save migrant lives;
- Limit use of immigration detention and manage borders in compliance with human rights law;
- Eliminate discrimination in all forms;
- Facilitate social inclusion and access to services for migrants.

26 See "Guiding principles on internal displacement" (E/CN.4/1998/53/Add.2). Although this is not a legally binding document, it reflects applicable norms of international human rights law and international humanitarian law, and similar standards at regional level.

27 For example, migrant workers may become undocumented when they leave an abusive employer if their papers are tied to their employment contract, or migrants may become internally displaced persons on returning to their country of origin.

28 OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, para. 2.

29 General Assembly resolution 73/195, annex.



E. Monitoring the human rights of migrants: challenges

Monitoring the human rights of migrants presents inherent methodological challenges. First of all, access is often difficult. Migrants may be in vulnerable situations. They may be moving across or between jurisdictions, and through dangerous or inaccessible parts of the world. Particularly if they are undocumented, migrants may be invisible, sometimes deliberately. For their part, the authorities may limit access to reception and immigration detention centres, to border areas and camps or to return proceedings, for instance. Access may also be closed off for safety reasons or by the geographical “mandate” of field presences.

Other forms of challenge arise. Monitors may need to accompany people on the move, including across borders, and to try to follow their progress wherever they end up. To some extent they can monitor the situation in countries of transit by interviewing migrants who have left those countries. It is clearly difficult to achieve monitoring objectives, however, in conflict settings or when land, air and sea borders are closed and travel restricted, as during health or other emergencies.³⁰ Forms of remote monitoring can sometimes be used (see section K.4 on *Remote monitoring*).



An understanding and analysis of the multiple contexts and problems migrants experience is required. To be effective, monitors need a detailed grasp of the violations that migrants may face in their countries of origin but also in countries of transit, destination and return. This information must also be analysed to understand gender specificities and the impact of other factors such as age, migration status, disability, ethnicity, sexual orientation and gender identity. Finally, migration-specific concerns may not be considered by other human rights monitoring processes: HROs may need to make sure that such concerns are included in wider human rights interventions and analysis.

Migrants are not constantly on the move. For a range of reasons, and particularly when they are not able to make use of regular migration channels, they sometimes spend months if not years in transit; transit countries may even inadvertently become their destination. It can be difficult to understand their situation (and that of internally displaced persons) if they have dispersed and do not live in camps, shelters or specific settlements. When migrants are in movement, they are evidently difficult to locate and interview; in addition, it can be hard to establish trust in the course of brief encounters and hard to maintain contact when migrants journey on. All these monitoring challenges become more acute when migrants are undocumented.

A further general problem is that the narratives and experiences of migrants who are moving from place to place cannot usually be corroborated easily. This is true of human rights abuses or persecution in countries of origin, or of violations that took place in transit countries that migrants have left, which they could not report or of which no documentation exists. Secondary sources may help to corroborate allegations but are likely to do so in unspecific terms.

³⁰ See OHCHR, “COVID-19 and the human rights of migrants: Guidance”, 7 April 2020, available at www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf.


Monitors are likely to face obstacles themselves. They may need visas to move between countries, and paperwork to take a rental car across borders. Problems of security may also make movement difficult inside countries. In addition to physical risks, authorization may be required from the authorities, checkpoints may need to be negotiated, and movement in some areas may simply be prohibited.

Finally, it may be necessary to liaise with partners and obtain funds to move migrants at risk to places of safety. Publicity about individual cases and the involvement of human rights defenders, who assist and advocate for migrants, can provide some protection (see chapter on [Using presence and visibility](#) ) , but it can bring unwanted attention and create security risks as well. It is an ethical imperative both to protect migrants at risk and to prevent harm to individuals whose cases have been made public (see chapter on [Protection of victims, witnesses and other cooperating persons](#) ) .

F. Understanding the context and defining a strategy


On the basis of a thorough and specific understanding of context, HROs and OHCHR can put in place a targeted monitoring strategy that throws light on migration-related trends and problems and helps to protect individual migrants. A well-informed monitoring strategy can be used to achieve maximum impact with limited resources and institute necessary change.

1 Understanding the context

The first steps are to collect information on the legal and political context, analyse it and map key actors (see chapter on [Gathering contextual information](#) ) . HROs should gather information from a range of sources, and aim to obtain an up-to-date analysis of migration and human rights trends in the area of operation, including in past and present discrimination.

HROs should explore the following information sources:

- International and regional legal frameworks;
- Relevant bilateral, regional and sub-regional policies and agreements on migration, including policies on labour migration, anti-trafficking initiatives and programmes to control smuggling and irregular migration;
- National asylum and migration policies and practice;
- Relevant domestic laws and policies, for instance labour and gender policies, resilience frameworks, counter-terrorism legislation and national action plans on development, health, housing, discrimination, etc.;
- National policies, strategies and action plans to implement the Global Compact for Migration.




In addition, HROs should map local, national, regional and international actors who are in a position to influence migration and other human rights matters (see actor mapping in the chapter on [Analysis](#) ) .



Possible key actors		
International	Regional	National and local
United Nations Network on Migration	African Commission on Human and Peoples' Rights	Relevant government offices and ministries
United Nations human rights mechanisms	Inter-American Commission on Human Rights; Inter-American Court of Human Rights	National human rights institutions
United Nations entities	Council of Europe (Commissioner for Human Rights, European Court of Human Rights, Parliamentary Assembly)	National preventive mechanisms
International organizations	Regional United Nations migration networks	Gender equality and other commissions
Donor countries		United Nations country teams
		United Nations migration networks or working groups
		United Nations protection clusters
		United Nations entities
		International Federation of Red Cross and Red Crescent Societies (IFRC) / International Committee of the Red Cross (ICRC)
		Civil society organizations

HROs need to understand the political context in the country and region for many reasons, not least of which is because they may need to seek approval from the authorities to monitor, to gain access and to coordinate follow-up measures. In terms of analysis, it will be helpful to have a clear picture of the Government's political attitude to migration, how the Government positions itself on the issue in the region and internationally, and the character of national debate and opinion. HROs should seek to identify trends.

With respect to content, HROs should seek information on arrivals, rescues, apprehensions, detentions, deportations, etc. As far as possible, data should be anonymized and disaggregated by sex, age, nationality, migration status and other relevant factors (religion, ethnic origin, disability, etc.). Analysis of disaggregated data can generate important insights, notably through comparing discrepancies and sources. If disaggregated data are not available or are not public, this gap should be highlighted. It is important to cross-check migration-related statistics and compare different sources both to strengthen the final analysis and to identify gaps and discrepancies.

HROs should do a gender analysis that includes relevant laws and policies. Trends in migration and violations of migrants' rights cannot be monitored adequately without reference to gender. For information on the inclusion of gender and women's rights in monitoring, see chapters on *Integrating gender into human rights monitoring*  and on *Monitoring and protecting the human rights of women* , and *Integrating a Gender Perspective into Human Rights Investigations* .

The context analysis should draw on the work of UN human rights mechanisms. Their findings and recommendations can inform the initial analysis, provide a context for discussions with State authorities and give shape and direction to the planning and implementation of follow-up activities.

Other issues that the initial analysis should consider include:

- Criminalization of irregular entry, re-entry, stay and/or exit;
- Criminalization of human rights defenders who assist or advocate on behalf of migrants;
- The presence/absence of firewalls between immigration enforcement authorities and service providers, labour inspectorates and the criminal justice system;
- The presence/absence of a presumption against immigration detention in law;
- Prohibiting the immigration detention of children;
- Safeguards for returns, including the presence/absence of due process guarantees (the right to effective remedy, prohibition of pushbacks and other forms of collective and arbitrary expulsion, individual assessments of human rights and refugee protection needs, etc.);
- Bilateral and regional cooperation agreements related to border governance, data sharing, readmission agreements, etc.

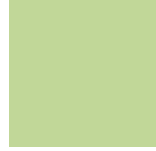


Australia

In **Australia**, background research indicated that a range of visa options existed to facilitate regular, safe and affordable pathways for migration into Australia. When monitoring was done, however, it revealed that the temporary nature of some of these visas increased the vulnerability of migrants. In particular, migrants were often reluctant to report abuse or protest and mobilize against it, because they were afraid that their visas would be cancelled and that they would be placed in immigration detention or deported.³¹

The contextual analysis should make use of any monitoring that has been or is being reported on the situation of migrants. It should include a description and preliminary analysis of legislative and policy frameworks, identify potential protection gaps and key actors and take into account recent and upcoming reviews of the country by human rights mechanisms. HROs should organize the information and analysis that has been gathered into a briefing document, which can be regularly updated.

31 OHCHR, "Australia's human rights record blemished by punitive approach to migrants", 18 November 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20889&LangID=E.


*i*

Checklist: Understanding the context

- Review general contextual information, including the political climate with respect to migration and asylum, and applicable international and regional legal frameworks.
- Review the country's migration and asylum system and laws, policies and practices that have an impact on migrants.
- Review information on migration trends, including internal or cross-border movement, rescues, apprehensions, detention, deportations, disappearances, etc. Use statistical data where possible.
- Analyse information for protection gaps. Include a gender analysis. Make use of previous human rights reviews of the context.
- Map local, national, regional and international actors.
- Take note of recent and upcoming reviews of the country by treaty bodies, other human rights mechanisms or other review mechanisms (such as the Global Compact for Migration).
- Prepare a background document that reflects the above information and analysis.

2 Defining the strategy and scope of monitoring

It has been noted that a wide range of human rights violations and abuses occur in the context of migration. Because OHCHR's mandate does not distinguish between migrants based on their legal status, HROs are able to consider all the human rights issues that arise. Given the potential scale of this task, it is important to decide where human rights monitoring will have the most impact. This implies, first, asking where monitoring can add significant value to broader strategies for achieving change; and second, defining a strategy that makes clear the purposes and scope of the monitoring that is proposed, and possible follow-up activities and advocacy. In making this plan, it is important to decide what success will look like, how success might be achieved and what resources will be required.

Information on defining a strategy is provided in the chapter on *Strategic planning for human rights impact* .³² When setting their strategic priorities and defining their scope, HROs should consider the following factors:

- The types of violation that are occurring;
- The likelihood that violations will occur in the future or continue to occur;
- Information gaps on the incidence of violations;
- Protection gaps;
- The persons and groups who are most affected by violations and protection gaps;
- The authorities that have responsibility (duty bearers);
- Other actors who play a role, either in the protection of migrants or in their abuse and exploitation;
- Laws, policies and practices that can be influenced or changed;
- Possible advocacy goals; and
- The potential to improve migrants' lives and respect for their human rights.

³² Chapter forthcoming.

When setting monitoring priorities and defining the scope of monitoring, HROs should carefully consider what is being done already, gaps in coverage and OHCHR's comparative advantage. For example, they should look closely at gaps in human rights protection and monitoring, and aspects of migration that other actors are unable or unwilling to address. When HROs map actors, they should identify organizations whose monitoring might be complementary, that are natural allies in monitoring, advocacy or follow-up work – or that may seek to obstruct the changes that OHCHR supports. Many organizations have mandates that restrict the activities they can undertake. Some, including those in the United Nations system, may be less well versed with a human rights-based approach or unable to speak out on human rights violations. Organizations that focus on service delivery, immediate assistance or legal assistance may be unable or unwilling to engage in advocacy or human rights work on behalf of migrants. HROs should therefore plan to engage with a variety of stakeholders, knowing their capacities and expertise. The aim should be neither to recruit organizations to human rights work nor to confine OHCHR's remit: it is to build forms of cooperation that can assist and support human rights monitoring effectively and protect migrants who are at risk.

In some instances, monitoring will address cross-border, regional or even cross-regional concerns. In these cases, HROs should seek to collaborate with headquarters and with other field-based HROs to overcome mandate restrictions. Its international and transborder capacity gives OHCHR a unique advantage.

Once the strategic priorities of a monitoring initiative have been agreed, HROs need to define its scope. It is vital to define the scope clearly, because it determines the kinds of information that will be collected. It is equally important to work tightly to the agreed scope, because monitoring all the human rights issues that arise in the context of migration will not be manageable.




Assessing where to monitor returns

In one regional office, OHCHR ran a comparative analysis of countries under its mandate to decide where it would monitor returns. It analysed:

- Return rates, including forced and voluntary returns;
- The legal and policy framework regulating return, including voluntary return, readmission and other agreements, and foreseen potential changes to the regulatory framework;
- Implementation of returns in practice, and key associated human rights issues;
- Good practices;
- Other actors doing independent monitoring on the issue;
- Whether OHCHR could provide additional support through its monitoring;
- OHCHR's capacity, and the capacity of partners, to follow up.

Some monitoring is done in response to **emergencies or crises**. In such cases, monitors should take a flexible approach that can cope with rapid changes of circumstance and initial information deficits. When large numbers of people move suddenly in such situations (due, for example, to political insecurity or natural catastrophes), HROs should aim to complete as many of the strategic planning steps as they can. It is especially important to draft contingency plans that anticipate a range of possible scenarios, including trends and triggers, so that monitoring teams can prepare as well as possible to respond.



Monitoring initiatives need a detailed **advocacy plan** and follow-up strategy; these are essential adjuncts to decisions on scope and strategy (see chapter on *Advocacy and intervention with the national authorities* ). In planning advocacy and follow up, HROs should focus on the specific outputs that monitoring is expected to generate, and on how these will be harnessed to improve the human rights situation of migrants. The follow-up strategy should adopt a human rights-based approach designed to have a long-term and sustainable impact. Two key determinants of the strategy are OHCHR's ongoing monitoring capacity and the quality and range of OHCHR's relations with partners. In the course of planning monitoring activities, and particularly where monitoring is done by an OHCHR country office, HROs should agree with the Government and within OHCHR that monitoring will be supported by a public communications strategy.


HROs should prepare the communications strategy with the support of communications officers, decide what audiences they will target and plan accordingly. Confidential reports to national authorities or United Nations human rights bodies have value but should be treated as additional to public reporting.

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Checklist: Creating a strategy for monitoring migrants' rights

- Define strategic priorities, taking account of the context; plan to maximize impact.
- Identify human rights protection gaps and areas in which monitoring activities can add value.
- Engage with other actors and stakeholders (including national authorities, United Nations entities, local, national and international civil society organizations, national preventive mechanisms and national human rights institutions).
- Define the scope of monitoring and outline and agree on a medium- or long-term follow-up strategy that incorporates advocacy and communications.

3 Working with the media

Through the media it is possible to reach a broader audience with a rights-based analysis and message. HROs should therefore consider carefully whether working with the media will help to protect migrants and promote respect for their human rights. When taking this decision, communications and media officers can provide expert advice and ethical guidance. HROs should always take into account the possible repercussions for migrants of media coverage, and the risk of perpetuating anti-migrant narratives.³³ Issuing a media advisory in advance of monitoring, holding press conferences during or at the end of the monitoring and releasing media statements are some of the tools that HROs, together with communications and media officers, can consider. HROs should decide in advance whether members of the team will be authorized to give statements to the media. HROs must never make individual cases public, even if the migrant consents, without having first assessed possible risks to individuals and their families. Applying the “do no harm” principle at all times is vital (see section 1.3 on *Safety and reprisals* and the chapter on *Working with the media* ³⁴).

33 See OHCHR, “Seven key elements on creating human rights-based narratives on migrants and migration” (2020); and OHCHR, toolbox on migration narrative change (2020), available at www.standup4humanrights.org/migration/en/toolbox.html.

34 Chapter forthcoming.

G. Selected human rights issues

This section presents a non-exhaustive list of human rights that may be particularly relevant when monitoring the human rights of migrants. These rights should be considered when defining the strategy and scope of monitoring activities. The section suggests ways to monitor in each area.

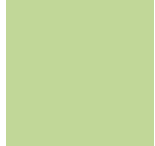
1 Access to economic, social and cultural rights

Migrants, regardless of their status, are entitled to enjoy all economic, social and cultural rights without discrimination.³⁵ In practice, however, migrants in both regular and irregular situations frequently face legal and practical obstacles before, during and after their migration. Many migrants are denied access to public health care, including sexual and reproductive health care, to an adequate standard of living, including food, water, sanitation and hygiene, housing and accommodation, to education and to social security. They may be excluded by law, administrative regulations or practices, stigma or discriminatory social norms, or for other reasons. Many migrants in an irregular situation avoid using such services because they are afraid they may be detained or deported. The creation of firewalls, which guarantee that users' personal data will not be passed by service providers to immigration authorities, protects migrants in this situation.

Internally displaced persons (and other migrants) may be unable to exercise their rights because they have lost or been deprived of civil documentation; this may also prevent them from earning a living. Migrants in an irregular situation are excluded from the formal labour market. For them, and for some migrants on temporary or seasonal contracts, working conditions are frequently dangerous and exploitative; their labour rights may be barely protected or not protected at all. Exploitative working conditions are in violation of the right to work, and they are also associated with other serious violations, including violence, torture and other cruel, inhuman or degrading treatment, forced labour, contemporary forms of slavery and trafficking in persons. Again because of their status, migrants in an irregular situation generally have little or no recourse to remedies.

To determine whether and to what extent migrants are restricted in their access to economic, social and cultural rights, in law and in practice, monitors need to understand how the legal and policy framework in a country applies to migrants. They should interview migrants and other actors with relevant information to find out migrants' specific economic, social and cultural needs, to understand how gender, age, disability, migration status and other relevant factors influence their treatment, and to clarify the conduct and response of government and other service providers.

³⁵ OHCHR, *The economic, social and cultural rights of migrants in an irregular situation* (Geneva, 2014) (HR/PUB/14/1); Committee on Economic, Social and Cultural Rights, "Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2017/1).



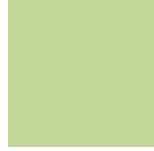
Possible economic, social and cultural rights issues

- **Health:** Refusal to provide immediate assistance needs or treat injuries; lack of access to basic health care, essential medicines, sexual and reproductive health services and rights, or to vaccines; failure to treat chronic health concerns; discriminatory health screenings at borders; discriminatory employment practices (for example, denying an entry or work visa because of a positive HIV or pregnancy test).
- **Work:** Unpaid wages; dangerous and dirty working conditions; excessive hours of work; harassment at the workplace; lack of social protection; labour exploitation; forced labour; child labour.
- **Adequate standard of living:** Failure to provide adequate housing, including employer-provided housing for migrant workers; accommodation far from services and transport; segregation; forced evictions; homelessness; lack of safe drinking water and culturally acceptable sanitation; insufficient or culturally inappropriate food; failure to meet the dietary needs of children and pregnant or nursing migrants.
- **Social security:** Lack of access to social security; differences of treatment relative to nationals; imposition of discriminatory qualifying periods; lack of portability.
- **Education:** Failure to grant equal access to education and vocational training.
- **All:** Failure to establish firewalls between service providers and immigration authorities.

When assessing laws, policies and practices, HROs should examine whether access to economic, social and cultural rights is conditional on migration status, specific documentation or other factors. States are prohibited from discriminating against irregular migrants on the grounds of their nationality or legal status, but they are entitled to apply legitimate distinctions between nationals and non-nationals, and between regular and irregular migrants. States have to show in *each individual case* that such a distinction pursues a legitimate aim and that the means applied to achieve the aim are proportionate.³⁶ HROs should also establish that migrants are able to seek judicial redress if their rights are violated. Where people have been internally displaced, it is essential to assess their economic, social and cultural rights during their displacement and as a possible reason for their displacement. Evidence on whether internally displaced persons are enjoying their economic, social and cultural rights is an important consideration when determining whether a durable solution has been reached.³⁷

36 E/C.12/2017/1.

37 Inter-Agency Standing Committee, *IASC Framework on Durable Solutions for Internally Displaced Persons* (Washington, D.C., Brookings Institution–University of Bern Project on Internal Displacement, 2010). The *IASC Framework* sets out criteria to determine to what extent a durable solution has been achieved. Such solutions include the enjoyment of an adequate standard of living without discrimination, access to livelihoods and employment and access to mechanisms to restore housing, land and property.



Iraq, Central America and Malta

- In **Iraq**, human rights monitors found that internally displaced persons, both in and outside camp settings, had little or no access to food, housing, health care, education or livelihood opportunities. Internally displaced persons reported that they sold food and non-food items they received in the local market because these were their only sources of income. Monitors noted that the shelters in displaced persons camps urgently needed material upgrades, especially the shelters used by long-term populations of internally displaced persons.³⁸
- In **Central America**, monitoring by OHCHR showed that migration was driven partly by lack of access to economic, social and cultural rights, and that access to these rights did not improve over the course of the journey. The situation was exacerbated by the COVID-19 pandemic. HROs were particularly concerned that migrants did not have access to adequate water, food, sanitary and hygiene facilities or public health care.³⁹
- In **Malta**, human rights monitoring revealed labour exploitation of migrants, notably in the construction, tourism and caregiving industries. Migrant workers in an irregular situation were made to work long hours and were paid less than the minimum wage. Employers frequently failed to provide migrants with the necessary safety equipment or insurance.⁴⁰

2 Immigration detention

For the purposes of this chapter, “immigration detention” is any deprivation of liberty for the purposes of border or migration governance.⁴¹ Deprivation of liberty refers to any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.⁴²

Migrants may be detained in a variety of locations during the migration cycle. These include ports of entry, police stations, airports, arrival and reception centres (such as closed camps or shelters), quarantines during health emergencies, employer-provided housing or hotels, boats, vehicles, prisons, islands and other offshore facilities. In many jurisdictions, immigration detention is not considered as a deprivation of liberty, with States using terms such as “retention”, “housing”, “sheltering”, “reception” or

38 End of mission statement by the Special Rapporteur on the human rights of internally displaced persons, Ms. Cecilia Jimenez-Damary, upon conclusion of her official visit to Iraq – 15 to 23 February 2020, available at www.ohchr.org/en/statements/2020/02/end-mission-statement-united-nations-special-rapporteur-human-rights-internally?LangID=E&NewsID=25608.

39 “Situation of human rights in Honduras: report of the United Nations High Commissioner for Human Rights” (A/HRC/46/75), annex, paras. 62–64, 66; “Situation of human rights in Guatemala: report of the United Nations High Commissioner for Human Rights” (A/HRC/46/74), annex, para. 22.

40 Report by the Special Rapporteur on the human rights of migrants, François Crépeau, addendum, “Mission to Malta (6–10 December 2014)” (A/HRC/29/36/Add.3), annex, para. 95.

41 OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, p. 13.

42 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, articles 4 (1) and 4 (2).



“accommodation”. Where these confinements fall within the scope of deprivation of liberty⁴³ they must not be arbitrary and must comply with international law.⁴⁴

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The rights to which migrants in detention are entitled

- Due process;
- Fair trial;
- To be treated with humanity and have their inherent dignity protected;
- Security of person and bodily integrity;
- Freedom from torture and other cruel, inhuman or degrading treatment or punishment;
- Adequate conditions of detention;
- Health care, including physical and mental health care, health information, sexual and reproductive health services and other services.

National laws should establish a presumption against immigration detention: deprivation of liberty should be used only as a last resort; it should be lawful, necessary and proportionate based on individual circumstances; and it should be for the shortest possible period. Migrant children ought never to be detained because it is never in their best interests.⁴⁵ The detention of migrants in vulnerable situations, including that of trafficked persons,⁴⁶ should be avoided.⁴⁷

Furthermore, because irregular migration should not be considered a criminal offence (including when migrants have used the services of a smuggler), immigration detention should be administrative in nature and conditions of detention should reflect this. This implies that:

- Detention of migrants should never resemble punishment;
- Migrants should be held separately, as far as practicable, from persons detained for criminal offences;
- Immigration facilities should be gender-segregated; families should be kept together to preserve family unity.

43 This is true of closed or semi-open camps or shelters run by the State, private corporations or non-governmental organizations that are used for reception and to detain migrants ostensibly for their own protection. So-called protective detention intensifies the vulnerability of migrants and is also highly gendered in its reach, remit and application because it is often used to restrict the movement of girls, women and lesbian, gay, bisexual, transgender and intersex persons.

44 Arbitrary detention occurs, inter alia, when detention is automatic or mandatory, indefinite, discriminatory or illegal (without a basis in national law); and also when detention conditions amount to torture or ill-treatment or otherwise fall below international minimum standards. See the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

45 “Report of the Working Group on Arbitrary Detention” (A/HRC/39/45), annex (Revised deliberation No. 5 on deprivation of liberty of migrants), para.11; joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child, paras. 6 and 9.

46 “Recommended principles and guidelines on human rights and human trafficking: report of the United Nations High Commissioner for Human Rights to the Economic and Social Council”, addendum (E/2002/68/Add.1), Guideline 2.6, Principle 7. Guideline 4.5 makes it clear that trafficked persons should not be detained if they have been involved in unlawful activities that were a direct consequence of their situation as trafficked persons. See further Special Rapporteur on trafficking in persons, especially women and children, “The importance of implementing the non-punishment provision: the obligation to protect victims”, available at www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Non-Punishment-Paper.pdf.

47 OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, Guideline 8.3.

Under no circumstances should family unity form the justification for detaining children; nor should migrant children be separated from their parents. Alternatives to detention should instead be found for the entire family.⁴⁸



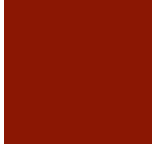
Questions to ask about immigration detention

- *The legal framework:* Are reasons for detention clearly defined in law? Are they of limited scope and duration, necessary and proportionate?
- *The circumstances of detention:* How were migrants detained? Where were they intercepted, arrested or rescued? Was force used? Were they reported or detained when accessing public services, including at or in the vicinity of hospitals, schools or courts? Who carried out the arrest, interception and detention? Were migrants registered on arrest/interception? Were differences of treatment reported (on the basis of gender, age, nationality, ethnic origin, etc.)?
- *Due process:* Were due process safeguards available and accessible? Was detention judicially authorized? Did the detained migrants see a judge or come before an independent tribunal? Is a right to appeal available to them? Did the detained migrants obtain legal information promptly and in a format and language they understood? Were they offered and did they receive competent and independent legal aid and legal representation? Were detainees recorded in the facility's register? Are effective mechanisms in place enabling detained migrants to report human rights violations and abuses? Are interpreters made available? Have detained migrants been invited to seek consular assistance? (See also section G.5 on the *Right to due process.*)
- *Conditions:* Are conditions in the detention facility adequate and are those detained treated correctly? Is the facility age-sensitive and gender-responsive? HROs should consider staffing, organization of the facility, sleeping arrangements, cleanliness, density of occupation, the quality and sufficiency of food and water, safety issues, evidence of abuse by staff or other detainees, freedom of movement within the facility, access to personal belongings including phones, etc. How is the structure and management of facilities in which migrants are held organized? HROs should pay attention to the level of security, to whether guards are armed, and to the degree to which migrants enjoy freedom of movement and autonomy within the facilities.
- *Health care and other services:* Have detained migrants been offered and have they received adequate physical and mental health care, including sexual and reproductive health services, menstrual hygiene items and hormone therapy treatment for transgender migrants? Are interpreters made available? Can detained migrants receive visitors? Are they able to make calls? Have they been offered consular assistance?
- *Migrants in vulnerable situations:* Monitors will need to consider how detention may have a differential impact on migrants, especially migrants in vulnerable situations.

See *Annex I* for a sample questionnaire.

Monitors need to make sure that their visits do not cause harm to those they are monitoring. When monitors visit places of detention, their conversations with migrants should be private. However, private interview rooms may not be available, closed-circuit television cameras may be in use, guards or

⁴⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (A/HRC/28/68), para. 80; "Report of the Special Rapporteur on the human rights of migrants, François Crépeau" (A/HRC/20/24), para. 72 (h).



representatives from other institutions may attempt to sit in on interview, and HROs may be expected to rely on other detainees to interpret (see *Visiting places of detention* [11] 49). All of these situations should be avoided because they can put interviewees at serious risk of reprisals or inhibit their ability or willingness to speak freely. To protect sources, HROs should consider anonymizing the names of interviewees and the institutions they have visited when they publish their findings.

Group discussions raise a separate concern. When families are detained together and an HRO interviews the entire family, for example, social norms around gender and age, or relations of power within the family, may mean that only the oldest man or one individual speaks. This can distort reporting and can cause specific gender or child rights concerns to be masked (see *Integrating a Gender Perspective into Human Rights Investigations* [11]).

3 Screening, identification and referrals

Because many migrants are unable to enjoy their human rights effectively – due to prior or ongoing rights violations or abuses – they are entitled to specific forms of human rights protection that can address their situation. States should put in place screening measures and support mechanisms that:⁵⁰

- Promptly identify migrants' human rights protection needs;
- Determine the refugee status or other protected status of migrants, including trafficked persons, unaccompanied children and victims of crime;
- Allow appropriate referrals to be made.

It is not necessarily the role of monitors to ascertain whether a migrant has been correctly identified (for example, as a refugee or a person with disabilities) or appropriately referred. The aim of monitoring screening, identification and referral processes is rather to describe the measures that exist and determine whether they address effectively and without discrimination the protection needs that migrants have.

The systems put in place are expected to be able to meet the needs of:

- Survivors of violence, including gender-based violence;
- Survivors of torture and trauma;
- Trafficking victims;
- Children, including accompanied, unaccompanied and separated children;
- Pregnant or nursing women or girls and new parents;
- Persons with disabilities;
- Older persons;
- Refugees;
- Stateless persons;
- Lesbian, gay, bisexual, transgender and intersex persons;
- Persons with health conditions;
- Other migrants in vulnerable situations.

49 Chapter 21, forthcoming.

50 Global Compact for Migration, para. 28 (c); OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, Guidelines 6–7; OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, Principle 5, Guideline 5.

To meet these needs, authorities are expected to involve all institutions that may be relevant, including government ministries and local government services, but also national human rights institutions, United Nations entities and civil society actors.⁵¹

Screening that is inadequate will generate unjust or unfounded decisions, which may be biased by conscious or unconscious prejudice. This may lead officials to reject a migrant's right to protection. For example, stereotyping and failure to undertake an individual assessment may cause an official to determine that a woman from a certain region or country is a victim of trafficking when she is not; individuals that do not fit racial or gender stereotypes may not be recognized as victims; an adolescent may be refused protection as a child because he looks older than he is and cannot prove his age.



Austria, Italy and other contexts

- In **Austria**, human rights monitors found that migrants in vulnerable situations were not being screened objectively and as a result were not given protection to which they were entitled. The procedures frequently relied on migrants' own declarations, and OHCHR found that some officials reached negative decisions based on personal views, racial and gender stereotyping, and biased questions. It also found that the State and non-State actors working with migrants in vulnerable situations rarely cooperated.⁵²
- Human rights monitors in various global contexts have reported that screening processes often fail to identify and protect migrant **survivors of gender-based violence or torture** or provide support services for such migrants.
- In **Italy**, human rights monitors found that one reception facility lacked the capacity to identify and refer arriving migrants, including unaccompanied children. A small adjustment in staffing, to include more child protection experts, would have helped to address some of the concerns identified.⁵³

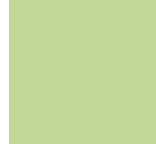
Particular issues arise in emergency situations. During humanitarian responses, States should identify individuals who are at particular risk in larger migrant populations, recognizing that their specific needs may not be visible and will otherwise not be addressed. To assess and recognize vulnerability in such situations, the authorities (and monitors) need to adopt a multidisciplinary approach. Migrants should be asked whether they received the treatment they needed, whether their needs were met, and whether they were treated differently because of their gender, age or other characteristics.

When interviewing migrants, HROs should keep the "do no harm" principle firmly in mind. Accordingly, they should assess the security context and confirm that interviewees are willing to talk and feel safe. Lesbian, gay, bisexual, transgender and intersex individuals and victims of gender-based violence may have good reasons to avoid identifying themselves publicly because, if they do, other migrants, local


51 The Special Rapporteur on trafficking in persons has noted that civil society actors may be in a better position than border agents or police to identify trafficked persons, because they have often had more contact with migrants. See A/HRC/38/45, paras. 20 and 43.

52 OHCHR, "Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return: 15–18 October 2018", available at www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf.

53 OHCHR, "Security at forefront as Italian island receives migrants", 18 July 2016, available at www.ohchr.org/EN/NewsEvents/Pages/SecurityatforefrontasItalian.aspx.



residents or camp staff may discriminate against them, stigmatize or harm them. In some cases, even talking to an HRO may call attention to migrants and put them at risk.

It can be good practice to approach migrants who may face such risks through local organizations or other partners (see section 1.2 on *Partners and sources of information*, and the chapter on *Engagement and partnerships with civil society* ).



Questions to ask about screening, identification and referrals

- Are procedures timely, gender-responsive, age-sensitive and culturally appropriate?
- Do the authorities provide reasonable accommodation for migrants with disabilities?
- Are sufficient qualified and trained staff on site?
- Do procedures protect the privacy of individuals?
- What role do national referral mechanisms play? What is the composition of their staff?
- Are national referral mechanisms adequately resourced to provide assistance sustainably?

Questions to ask about assistance and services after referral

- Is physical and mental health care available? Does it include psychosocial assistance and counselling?
- Are sexual and reproductive health services available? Do they include access to contraception, safe abortion and post-abortion care?
- Is maternal health care available?
- Are integrated child and family support services available?
- Are procedures for determining age, refugee or other protection status in place? Are they effective and non-discriminatory?

See also subsequent section on *Pathways for admission and stay*.

4 Pathways for admission and stay

Regular status is often a key step toward effective enjoyment of rights in countries of transit and destination. By granting migrants pathways to admission and stay, States can facilitate regular migration, take a rights-based response to irregular migration, prevent and address situations of vulnerability and enhance human rights protection. Measures include access to asylum, admission and stay based on human rights or humanitarian grounds,⁵⁴ or various types of migration status, residence permits, work visas and regularization.

Regular migration pathways can be provided through:

- Obtaining a visa prior to or upon arrival at a port of entry;
- A process of regularization or grant of residence and/or work permit for migrants in an irregular situation who are already in the territory;
- Adjustment from one migration status to another for migrants already in the territory, due to the expiry of the original status or because another status is available.

⁵⁴ OHCHR and DLA Piper, "Admission and stay based on human rights and humanitarian grounds: a mapping of national practice", December 2018, available at www.ohchr.org/Documents/Issues/Migration/OHCHR_DLA_Piper_Study.pdf.

Recognizing the right to a nationality and issuing identification documents, including passports, civil documents and birth registration certificates are essential to prevent statelessness, guarantee rights and enable international migrants to fulfil conditions for admission and stay.

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Admission and stay based on human rights and humanitarian grounds

Admission and stay based on human rights, humanitarian grounds or other considerations may be relevant for migrants who find themselves in situations of vulnerability. These include but are not limited to the following:

- Migrants who are pursuing family unity;
- Children whose best interests are determined to be served through local integration with secure status;
- Children whose best interests are determined to be served by relocation to a third country;
- Children and young people who have lived in the country of residence since childhood and would otherwise risk becoming undocumented at 18 years of age;
- Migrants compelled to move and/or unable to return in the context of disasters, the adverse effects of climate change and environmental degradation;
- Migrants who might be at risk of death, torture, or other cruel, inhuman and degrading treatment or punishment, or other irreparable harm (non-refoulement under international human rights law);
- Migrants whose return would be impossible for practical reasons, including lack of documents;
- Migrants suffering from serious or chronic health conditions;
- Pregnant women and girls, and women providing neo-natal care;
- Survivors of torture;
- Migrants who have developed enduring emotional, personal, economic or social ties to the destination country;
- Survivors of crime, including in the context of transit migration;
- Survivors of sexual and gender-based violence and harassment;
- Survivors of forced labour or other forms of labour exploitation;
- Survivors of trafficking in persons;
- Migrants subjected to aggravated forms of smuggling.⁵⁵

Pathways for admission and stay can be particularly difficult to access in a range of contexts. Migrant women and girls often find it particularly difficult to obtain identity documents, and frequently face discriminatory nationality laws and abusive practices by employers. Regular pathways for labour migration are also biased in practice against women, because bilateral and multilateral agreements that facilitate labour migration, as well as protections in labour law, generally do not apply to the informal economy or to other sectors in which women are disproportionately represented.

⁵⁵ United Nations Network on Migration, "Guidance Note: Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability", July 2021, available at migrationnetwork.un.org/sites/default/files/docs/guidance_note-regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerability_final.pdf.



Austria, North Macedonia and Nauru

- In **Austria**, HROs described asylum proceedings in which staff drew on harmful gender stereotypes when they questioned the sexual orientation of migrants; the individuals were refused asylum, even though they had grounds for protection.⁵⁶
- In **North Macedonia**, human rights monitors noted that officials were insufficiently informed about migrants' situations as well as pathways to enter and stay. Restrictive provisions in the Asylum Law made it almost impossible for migrants to regularize their stay on arrival, even when they had requested asylum. The team also noted that options for family reunification were extremely restricted.⁵⁷
- In **Nauru**, human rights monitors documented the consequences, for individuals who had been recognized as refugees, of the assertion by the Government of Australia that they "will never be resettled" in Australia. The refugees in question were obliged to wait for resettlement in a third country. Caught in limbo for years, migrants reported many acts of violence against them, including physical assault, gender-based violence, intimidation and theft, in their houses, on the streets, and even in schools. Migrants stopped reporting these incidents to the police because perpetrators were not held accountable and they feared retaliation. The violence they experienced and uncertainty about their future deeply affected the mental health of many adults and children.⁵⁸



Questions to ask about admission and stay

- What pathways to admission and stay and regularization schemes exist in the State? What is the State's record in this regard?
- On what basis are pathways granted? Are the criteria clear, transparent and rights-based? Do they respond to the specific needs of migrants, the situations of vulnerability they face and their sociodemographic and economic reality? Do they include non-refoulement and other grounds of non-return based on international human rights law?
- What are the relevant procedures to obtain pathways? Are they made available promptly and accessibly? Are they individualized and effective? Do they integrate procedural safeguards? Is accurate information and advice available in an accessible format? Is free legal advice made available?
- What access to rights and services do the pathways provide? Do they provide for avenues to transition to another regular migration status? Regardless of the ground for and length of residence that is granted, migrants should be provided with full and equal access to their human rights.
- What barriers impede access to pathways? For example:
 - Are administrative procedures prohibitively complex or expensive?
 - Is there evidence of gender- or age-based discrimination or other forms of discrimination?
 - Do irregular status or lack of identification documents exclude migrants from meeting criteria?


⁵⁶ OHCHR, "Report of mission to Austria".

⁵⁷ OHCHR, *In Search of Dignity: Report on the human rights of migrants at Europe's borders* (2017), available at www.ohchr.org/Documents/Issues/Migration/InSearchofDignity-OHCHR_Report_HR_Migrants_at_Europes_Borders.pdf; OHCHR, "The former Yugoslav Republic of Macedonia: Zeid calls for alternatives to detention and expulsion of migrants", 23 September 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20567&LangID=E.

⁵⁸ OHCHR, "Nauru's migrant dead end", 30 September 2016, available at www.ohchr.org/EN/NewsEvents/Pages/MigrantsInNauru.aspx.

5 Right to due process

Due process rights become critical whenever migrants encounter procedures that directly affect their rights. Such procedures may relate to detention, expulsion, return, labour disputes and pathways to admission and stay, including determination of refugee, child protection or other status. Monitors should establish whether adequate procedural safeguards exist in law and whether they satisfy international human rights standards in practice.

HROs are likely to be unable to monitor cases from start to finish or to establish whether they fully meet due process standards. However, they should be able to monitor key elements of due process and identify specific violations or patterns of violations (see also the chapter on *Trial observation and monitoring the administration of justice* .



Questions to ask about due process

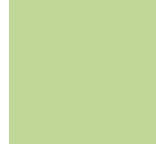
- What procedural safeguards exist? Do they adhere to international human rights standards? Do they ensure a prompt and transparent process? Are they accessible to all without discrimination?
- Are migrants provided accurate and timely information about their case? Is that information sufficient, provided in a format and language they understand, etc.?
- Do migrants have the right to representation and to legal aid?
- Is interpretation made available before and during the case?
- Do official decisions, such as on visa or status, eviction, dismissal and detention or removal orders, contain the reasons for the decision based on an individualized assessment? Are they provided in writing?
- Do migrants have a right to appeal decisions before an independent authority? Do they receive information about how to exercise this right?
- What measures are taken to ensure that consulates respond effectively to the needs of their citizens?



France

- Human rights monitoring in several countries showed that some officials involved in the administration of justice, including prosecutors, lawyers, police and judges, did not understand the content of women's rights and the rights of lesbian, gay, bisexual, transgender and intersex persons, and they sometimes perpetuated gender stereotypes that undermined migrants' procedural safeguards.
- In a number of contexts, human rights monitors have reported that unaccompanied migrant children have been detained without being registered, screened or referred to child protection officers. The children in question did not see a judge or independent authority, and no steps were therefore taken to refer them to child protection services or to appoint a legal guardian.
- In **France**, human rights monitors raised due process concerns when migrants were evicted from a camp in Calais. Migrants said that they were not given access to legal assistance, and in general were not told where they were being sent or what their legal rights were in the context of their asylum requests.⁵⁹

⁵⁹ OHCHR, "Spotlight on human rights of migrants in wake of Calais camp eviction", 16 December 2016, available at www.ohchr.org/EN/NewsEvents/Pages/ProtectingMigrantsInTransit.aspx.



6 Racism, racial discrimination, xenophobia and related intolerance

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Avoiding harmful language

The General Assembly recommends avoiding the use of the expressions “illegal” and “illegal migrant” to refer to migrants whose migration status is irregular. The use of the expressions “illegal” and “illegal migrant” reinforces the criminalization of migrants and the false and harmful stereotype that migrants are criminals for the simple fact of being in an irregular situation.⁶⁰

In many societies, migrants are made scapegoats for socioeconomic problems. Throughout the migration cycle, they are frequent targets of racism, racial discrimination, xenophobia and other forms of intolerance. The discrimination migrants experience is itself a violation and also affects their ability to enjoy other rights. Across the world, migrants find they are not able to obtain adequate housing, decent work or health services, are unable to participate in associations, religious organizations and other public activities, are targeted at borders, in raids and in stop-and-search operations, and cannot access justice when their rights have been violated.

Human rights monitors need to understand structural racism in laws, policies and practices as an important dimension of the discrimination that migrants experience on the basis of race, ethnicity, immigration or other status and on intersectional grounds.⁶¹

HROs should analyse the effectiveness of responses to structural racism and more explicit forms of racial discrimination and xenophobia, including violence and incitement to hatred. They can do this by assessing laws, institutions and mechanisms that enable migrants to claim their rights and seek redress if they experience discrimination in the workplace, if they need to access humanitarian assistance, health care or other services, or if they wish to report a crime or take a case to court.

Monitors should pay close attention to discriminatory remarks or incitement by political figures and influential individuals or organizations. Monitoring hate speech and anti-migrant narratives demands time and resources. It may be necessary to review and evaluate large volumes of material, including statistics, social media, media monitoring reports, text posts, videos, memes, etc. To analyse such materials, HROs need to have a sophisticated grasp of local slang and imagery, and to be able to assess statements against the threshold test for incitement to hatred.⁶² For more information, see chapter on [Gathering contextual information](#) .

60 General Assembly resolution 3448 (XXX).

61 See Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/38/52).

62 “Annual report of the United Nations High Commissioner for Human Rights”, addendum, “Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred”, appendix, “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence: conclusions and recommendations emanating from the four regional expert workshops organized by OHCHR in 2011, and adopted by experts at the meeting in Rabat, Morocco, on 5 October 2012” (A/HRC/22/17/Add.4). See also Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech.



Italy, Morocco and the impacts of the COVID-19 pandemic

- In **Italy**, human rights monitoring found there had been an increase in racist discourse, stigmatization and negative harmful stereotypes against migrants and migrant rights defenders, especially in political discourse and the media, and in racist and bias-based incidents and attacks. Monitors observed an overall lack of urgency in taking decisive action against hateful speech and a lack of accountability for racial discrimination.⁶³
- In **Morocco**, human rights monitoring identified the role of racial discrimination in violations of migrants' economic, social and cultural rights. Forced evictions in neighbourhoods with predominantly black sub-Saharan migrants resulted in the destruction of property and migrant displacement, including of regular migrants, migrants with asylum seeker status, pregnant women, and children. Because of the colour of their skin they were left to reside in inhumane conditions in a forest in freezing winter temperatures, with no sanitation or shelter.⁶⁴
- In **the context of the COVID-19 pandemic**, migrants, including returnees, faced discrimination, calls for their expulsion and physical attacks, fostered by harmful stereotypes and narratives associating them with the spread of COVID-19 and other diseases.⁶⁵

7 Missing, dead or disappeared migrants

Migrants may disappear or die at any point on their journey, from illness, injuries, drowning or other causes, but also as a result of abusive smuggling or trafficking, or excessive use of force at borders, in immigration detention or during return.⁶⁶

When monitoring, HROs should develop an understanding of the applicable legal frameworks, as well as of the occurrence of disappearances in the country and regional context. Monitors should take account of: cooperation agreements that regulate the search and repatriation of migrants' remains and the investigation of missing, dead or disappeared migrants; crimes or rights abuses that may be responsible for deaths, including inadequate housing, insufficient food, long working hours or dangerous working conditions; and other relevant factors. HROs should always do a gender analysis.

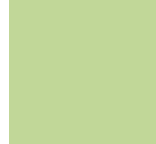
Obtaining access to sound disaggregated data on disappeared, missing and dead migrants is a challenge. Official information on (a) disappearances and (b) unidentified or unclaimed remains tends to be dispersed on different databases in different jurisdictions. In addition, the data included is often

63 OHCHR, "Report of mission to Italy on racial discrimination, with a focus on incitement to racial hatred and discrimination: 28 January – 1 February 2019", available at www.ohchr.org/Documents/Countries/IT/ItalyMissionReport.pdf.

64 OHCHR, "UN expert commends Morocco's international leadership on migration but urges immediate action on domestic racial inequality", 21 December 2018, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24044&LangID=E.

65 OHCHR, "COVID-19 and the Human Rights of Migrants"; Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and Special Rapporteur on the human rights of migrants, "Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants", May 2020, available at www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf; United Nations Sustainable Development Group, "Policy Brief: COVID-19 and People on the Move", June 2020, available at <https://unsdg.un.org/resources/policy-brief-covid-19-and-people-move>.

66 Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration (A/HRC/36/39/Add.2).



incomplete, or of uneven quality (see the discussion of DNA databases and other new technologies for tracking disappearances in section K.4).

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Monitoring missing, dead or disappeared migrants

Monitors can assess the adequacy of:

- Searches for missing migrants, according to the Guiding Principles for the Search for Disappeared Persons;⁶⁷
- Procedures to recover, identify and transfer the remains of people who have died in the course of migration;
- Programmes to trace and restore family links and provide information to families;
- Mechanisms that provide access to justice and effective remedies, including in the context of enforced disappearances or deaths caused by arbitrary or abusive use of force.

HROs should make contact with families or representatives of the victims, victims groups, those responsible for cemeteries and representatives of religious institutions. Institutes of forensic and legal medicine and morgues may be particularly useful sources of information. Organizations that run programmes to trace and document missing or disappeared migrants, such as the International Committee of the Red Cross (ICRC), the International Organization for Migration (IOM) and a range of national organizations, may be key partners in this area of work.

HROs should be sensitive to the situation of the families who may have lost a loved one, ensuring they are treated with respect and dignity.

8 Abusive smuggling

Smuggling is a crime under international criminal law but, viewed through a human rights lens, does not in itself constitute a human rights violation. In many circumstances, it can be a relatively neutral service provided to enable migrants to escape persecution or deprivation.⁶⁸ Moreover, the Protocol against the Smuggling of Migrants by Land, Sea and Air criminalizes only those who secure financial or other material gain from migrant smuggling and related conduct. It does not criminalize family members, humanitarian actors or migrant rights defenders who facilitate the irregular entry of migrants into a territory for non-profit reasons; nor does international criminal law criminalize a migrant for having been smuggled. Smuggled migrants do not forfeit their entitlement to human rights protection and assistance.⁶⁹

Smuggling often occurs in response to restrictive border policies and may offer the only way migrants can reach safety. However, the unequal power relationship between smugglers and the migrants they smuggle does increase the risk of violence, exploitation and other forms of abuse. Corrupt border officials, police or other State actors may also facilitate smuggling and detain or kidnap migrants to extort money from them or their families.

67 Committee on Enforced Disappearances, "Guiding principles for the search for disappeared persons" (CED/C/7).

68 A/HRC/31/35, para. 56.

69 Protocol against the Smuggling of Migrants by Land, Sea and Air, articles 5 and 6.

To monitor abusive smuggling, trust is critical. HROs may need to ask about a migrant's journey more generally to identify situations that may have required the use of smugglers, and before they can ask more direct questions about possible abusive smuggling. It is essential to assess and reduce risk, primarily to the migrants involved. Migrants may be reluctant to talk about their experience of smuggling, due to fear of reprisals against them and their families. They may also depend on smugglers to help them in the next phase of their journey. HROs should reassure migrants that their personal details will not be disclosed and that the information they give will not be used against them. They should also make sure that smugglers or their contacts, who may be State officials, cannot overhear their conversations with migrants they interview. To assess risks, it can be helpful to work with civil society actors and with interpreters who are familiar with the local environment. Protection and security plans should be prepared for interviewees, HROs, interpreters and any other parties involved in interviews.



Questions to ask about abusive smuggling

- What measures are in place to protect migrant victims of abusive smuggling?
- How long are journeys taking? With whom do migrants travel? What route and which means of travel are used?
- How is the journey paid for? Do migrants pay someone to help them cross the border or are they expected to pay upon arrival? How many attempts are included?
- What are the main challenges encountered by migrants en route? Do migrants witness or experience any violence, exploitation or abuse during their journey? Who were the perpetrators?
- Can migrants report crimes and abuse committed against them? Can they access medical or psychosocial care for injuries and trauma suffered?
- HROs can identify human rights abuses or situations that may point to abusive smuggling and, if the situation permits, they can ask more direct questions about the circumstances.



Libya

In **Libya**, human rights monitors were informed that smugglers and armed groups held migrants in so-called connection houses, on farms and in warehouses and apartments. The migrants were exploited as forced labour and extorted to cover the cost of their onward transport. Women held in connection houses reported being raped by smugglers or by other men given entry by the smugglers. Monitors also received reports that some State employees and local officials participated in this violence. They reportedly delivered migrants who were in immigration detention to smugglers for payment. OHCHR recommended that smuggling offences be investigated and prosecuted, that migrants be able to effectively report abuses by smugglers, and that irregular migration be decriminalized.⁷⁰

⁷⁰ OHCHR, "UN report urges end to inhuman detention of migrants in Libya", 13 December 2016, available at [ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21023&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21023&LangID=E); United Nations Support Mission in Libya and OHCHR, "Detained and dehumanised": Report on Human Rights Abuses against Migrants in Libya", 13 December 2016, available at www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf.



9 Human trafficking, forced labour and related practices

Migrants may be trafficked at any stage of the migration cycle, including in the country of destination. Traffickers are likely to target migrants who have been separated from their family and support networks and who lack safe and regular pathways for admission and stay. It is often difficult to recognize migrants who are at risk of being trafficked or subjected to forced labour or other forms of exploitation.



Questions to assess whether a migrant is at risk of being trafficked

- Is the migrant in possession of travel or identity documents?
- Does the migrant possess money and other personal items of value?
- Is the migrant travelling alone? Who is travelling with the migrant?
- Does the migrant have contacts in the country of destination? Who are they?

In addition, the HRO can obtain supporting information from employers or recruiters and can consult documentary evidence, such as contracts and payments to recruiters. It may be helpful to know if the migrant is isolated at their workplace (often the case for domestic workers) or has access to a trade union or workers association.⁷¹

Even if the result of these inquiries is that all is in order, the individual may still be trafficked, and vice versa.

Trafficking is not just a risk for irregular migrants. Migrants with regular status may also be trafficked or exploited. Moreover, if exploitation is “normalized”, victims are often unaware that they can report their abuse and seek redress. Given this context, monitors should ascertain whether officials who screen migrants explore the possibility that they might be victims of trafficking or related practices (see section G.3 on *Screening, identification and referrals*).

Experience shows that it is difficult to identify human trafficking at any point in the migration cycle. It is inherently clandestine, and migrants who believe that a real job is waiting for them at the end of their journey are unlikely to tell HROs that anything is amiss. Efforts to detect trafficking may even be counterproductive. Traffickers may go further underground, imposing riskier and even harsher conditions on those they traffic. In jurisdictions that criminalize irregular migration, migrants and their traffickers are often detained together, putting migrants at risk of reprisals. At present, most trafficked persons are identified only after they have left situations of exploitation.

⁷¹ In her report of March 2017, the Special Rapporteur on trafficking in persons issued recommendations on trafficking for labour exploitation in businesses and the workplace. See A/HRC/35/37.



Questions on access to protection and assistance for identified trafficked migrants

- Are gender-responsive and child-sensitive identification, referral, assistance and protection mechanisms available in the country of destination?
- Can trafficked migrants obtain access to justice? Are specialized investigators and prosecutors available? Do victims have access to effective remedies and compensation?⁷²
- Do trafficked migrants have pathways to regularize their status and remain in the country, regardless of whether they participate as a witness in a criminal case or cooperate in other ways with the judiciary?
- Is safe shelter available? Are the economic and social rights of trafficked migrants recognized? Do trafficked migrants have access to relevant services?

HROs should evaluate more generally the underlying conditions that may give rise to trafficking, forced labour or other forms of exploitation.

- In countries of origin, these may include: violations of economic, social and cultural rights that lead individuals to seek work opportunities abroad; the absence of pathways for safe migration; and the unavailability of regulated and ethical recruitment processes.
- In countries of transit or destination, these may include: the practice of tying employment visas to a single employer; restrictions on access to health, education and other social rights for migrant workers; and restrictions of labour rights that hinder migrants in an irregular situation and migrant domestic workers from forming or joining a union.

Laws and State regulatory practice should protect trafficked persons from prosecution, detention or punishment for any irregularity in their entry or residence, or for activities they were involved in that were a direct consequence of their situation as trafficked persons.⁷³



Nigeria

In **Nigeria**, human rights monitors concluded that closed shelters for survivors of human trafficking restricted survivors' freedom of movement and were an additional violation of their human rights. They reported that the migrants in question needed appropriate accommodation and assistance, including intensive counselling.⁷⁴

⁷² Report of the Special Rapporteur on trafficking in persons, especially women and children (A/69/269), annex: "Basic principles on the right to an effective remedy for victims of trafficking in persons". See also Report of the Special Rapporteur on trafficking in persons, especially women and children (A/74/189).

⁷³ "Recommended principles and guidelines on human rights and human trafficking", addendum (E/2002/68/Add.1), Principle 7, Guideline 4.5; Special Rapporteur on trafficking in persons, "The importance of implementing the non-punishment provision".

⁷⁴ OHCHR, "Nigeria must step up efforts to prevent trafficking and reintegrate victims, says UN expert", 10 September 2018, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23528&LangID=E.



10 Migrant human rights defenders

Migrant human rights defenders play a vital role in assisting and protecting migrants, and States should take steps to ensure that individuals and organizations that promote or protect the human rights of migrants can work in a safe, accessible and enabling environment. Migrant human rights defenders include migrants; human rights lawyers, civil society organizations and human rights monitoring organizations; trade unionists; faith-based groups; and humanitarian actors who participate in search and rescue operations or provide shelter, food, medical care and other assistance to migrants in distress.⁷⁵ In many contexts, they are criminalized, penalized, threatened or attacked for the work they do. It is important to monitor their human rights situation as well as that of migrants.



Questions to ask about migrant human rights defenders

- How enabling is the legal environment? What laws and regulations govern public order and safety, peaceful protest, the registering and funding of civil society organizations, etc.?
- Are migrant human rights defenders able to reach migrants and provide assistance?
- Are migrant human rights defenders threatened, slandered or attacked by State and non-state actors? Are they detained or deported because of their work? Do they experience discrimination?
- Are attacks or harassment against migrant human rights defenders based on racial discrimination or xenophobia? Are such attacks gendered? (For example, is the treatment of women or lesbian, gay, bisexual, transgender and intersex migrant human rights defenders distinct, in terms of who is attacked or the effects or repercussions of attacks?)
- Are violations and abuses of the rights of migrant human rights defenders reported? Can victims access justice? If not, is this because firewalls are not in place, mechanisms are inaccessible or too expensive, migrant human rights defenders lack confidence in the justice system or attacks are perceived to be normal?

To understand the environment in which migrant human rights defenders operate and the risks they face, HROs can monitor media reports and public narratives on migration, migrants and migrant human rights defenders.

For HROs, migrant human rights defenders can be important partners and valuable sources of information; for migrant human rights defenders the presence and monitoring work of HROs can be protective. HROs should always assess the degree to which they can interact with migrant human rights defenders safely, without increasing the risks that they face (see section 1.3 on *Safety and reprisals*).



France

In **France**, human rights lawyers and civil society groups told HROs that they were denied or allowed only restricted access to a migrants' camp when it was being dismantled and the migrants were evicted. This deprived the migrants of access to information as well as legal, medical and social assistance.⁷⁶

⁷⁵ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

⁷⁶ OHCHR, "Spotlight on human rights of migrants in wake of Calais camp eviction".

11 Access to justice and effective remedies

Migrants whose rights have been violated, or who are victims of abuse, are entitled to obtain justice and effective remedies. In practice, however, they are often unable to make use of the justice system. A variety of obstacles may stand in migrants' way:

- Their migration status;
- Their unfamiliarity with the relevant legal system and how to navigate it;
- Language, economic and social barriers;
- Judicial and police stereotyping;
- Social or physical isolation, for example in the case of domestic workers, migrants in detention or migrants who work in remote locations;
- The lack of effective firewalls, which may make migrants reluctant to report crimes or participate in legal proceedings if they risk being detained or deported;
- Departure from the country in which the crimes or grievances occurred. If migrants have already moved to another country or returned to their country of origin, it may be impossible to secure access to justice and effective remedy in the original jurisdiction.

Precisely because migrants face so many obstacles to securing access to justice, the availability of due process guarantees is essential, especially in the context of return. Attention to due process is also central in situations of internal displacement, where the achievement of durable solutions depends on access to effective remedies and justice.

Monitors should identify the barriers that prevent migrants from obtaining justice and effective remedies.



Questions to ask about access to justice and effective remedies

- Are mechanisms in place that migrants can use to report violations and abuses? Are they practically accessible? Can complaints be made in a foreign language?
- Does the State ensure that its judicial and reporting procedures are gender-responsive and child-sensitive?
- Do migrants have prompt access to competent and independent legal representation?
- Do migrants have access to interpreters?
- Do criminal justice actors act promptly to investigate and prosecute alleged perpetrators and prevent recurrence?
- Do judicial arrangements exist for addressing cross-border crimes?
- Do specialized police and legal units investigate and prosecute crimes against migrants, including gender-based violence?



Niger and Nepal

- In **Niger**, human rights monitors reported that migrants were subject to abuse, exploitation and other rights violations, such as arbitrary arrests and corruption by officials, and that they lacked effective access to justice. While they were held in detention, no migrant, even children, had legal representation nor received legal aid.⁷⁷
- In **Nepal**, many migrants reported that they had been exploited and abused by their recruiters, but had been unable to seek legal remedies due to cost. Because the institutions that deal with violations of the Foreign Employment Act, such as the Department of Foreign Employment and the Foreign Employment Tribunal, are present only in Kathmandu, migrants needed money for travel and accommodation to be able to file and follow up their complaints.⁷⁸

H. Monitoring the migration cycle

This section identifies human rights concerns that are likely to arise at specific phases of a person's migration, while recognizing that these phases are linked and influence each other. The list is not exhaustive but may help HROs to set the scope of monitoring activities and design a follow-up strategy.

1 Drivers of migration and displacement

Monitoring the forces that drive migration and displacement – that cause or compel people to leave their homes and keep moving – from a human rights perspective serves to identify and address the civil, political, economic, social and cultural rights violations and situations that render migration a necessity rather than a decision based on free choice. Monitoring drivers can therefore help to improve human rights-based migration governance, including the protection of migrants in vulnerable situations and ensuring regular migration pathways.

Monitoring drivers of migration and displacement is challenging methodologically and practically. First of all, migration may begin within a country, perhaps as internal displacement,⁷⁹ and, for some people and families, can then evolve into crossing a border, before possibly becoming a long-distance migration.

Secondly, individuals migrate for complex and often multiple reasons. Those who feel compelled to leave are at higher risk of human rights violations throughout their journeys, particularly if they cannot migrate in a regular manner. Some migrants who move in these circumstances will be unable or unwilling to return to their country of origin.

77 OHCHR, "Niger: human rights protection must be central to migration policies, says expert", 11 October 2018, available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23709&LangID=E.

78 End of mission statement of the Special Rapporteur on the human rights of migrants on his visit to Nepal, 5 February 2018, available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22632&LangID=E.

79 E/CN.4/1998/53/Add.2, annex.

Why people migrate



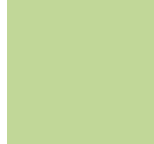
In some circumstances, their reasons for departure will qualify migrants to be classified as internally displaced persons, refugees or trafficked persons, or they will entitle them to other specific forms of human rights protection (for example, health interventions or child protection). Understanding drivers of migration from a human rights perspective can help to identify migrants in vulnerable situations and appropriate protection responses. Applying a human rights lens may also make it possible to decide whether return would be lawful, what risks and threats migrants might face if they returned, and whether their return would be sustainable.

The factors that drive migration are not mutually exclusive. Monitors may find them difficult to disentangle, especially if migrants have been interviewed by several organizations, each of which has institutional reasons to focus on a particular driver.

When HROs investigate the reasons why a migrant has moved, they should start by making it clear that the interview will not contribute to the determination of refugee status. After a general question on why the migrant left, HROs should ask direct questions about the broader situation in the migrant's country of origin or habitual residence, and about violations of economic, social, cultural, civil and political rights the migrant may have experienced. For example, to understand the importance of food insecurity as a driver, HROs might ask how many people lived in the migrant's home, whether it was difficult to feed everyone, how many meals members of the household ate each day, and how decisions were made about who ate. The last question could illuminate gender and other inequalities.

Lack of disaggregated statistical data and difficulties in accessing information on countries of origin (for example, when statistics are not in the public domain and must be requested) complicate efforts to map why migrants move. Individual narratives need to be complemented and supported by studies and statistics on homicide, violence against women and lesbian, gay, bisexual, transgender and intersex persons, racial violence,⁸⁰ rates of employment and unemployment, school drop-out and attendance rates, evictions, poverty, etc. Deeper, longer-term trends also need to be understood: the effects of

⁸⁰ In general, violence is likely to be underreported. This needs to be taken into account when analysing official data. On underreporting of gender-based violence, including against men and boys, see OHCHR, *Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice* (2018) (HR/PUB/18/4), available at www.ohchr.org/sites/default/files/Documents/Publications/IntegratingGenderPerspective_EN.pdf.



changes in demography, climate, the economy and structural racism need to be plotted nationally and regionally for different populations (by gender, age, ethnicity, religion, etc.).

The job of OHCHR and HROs is not to create original statistical data but to use statistics to analyse why migration occurs in a particular context, in order to improve migration governance in a manner that advances respect for migrants' human rights.



Venezuela and El Salvador

- In **Venezuela**, monitors found that the main drivers of migration were violations of the rights to food and health. Lack of pre- and post-natal health services, skilled birth attendants and medical supplies, as well as inadequate hospital conditions, have led many women to leave the country to give birth.⁸¹
- In **El Salvador**, monitoring confirmed that internal displacement was driven by gang-related violence. Killings had become commonplace, gangs regularly extorted "taxes" from individuals and small businesses, and young people were assumed to be members of gangs in their neighbourhood.⁸²

2 International borders

The migration experience is deeply marked by border governance. It affects how people leave, arrive in, transit through or return to a particular country. International borders are not zones of exclusion or exception for human rights obligations, even if many national laws suggest otherwise. States must respect the human rights of all persons at international borders during border control and law enforcement and when pursuing other State objectives, regardless of which authorities carry out border governance measures and where measures are implemented. This remains the case if States have externalized migration controls, for example if they finance or support security or migration management operations in and by third countries.

Border areas that HROs may need to monitor include land border checkpoints, border posts at train stations, ports and airports, immigration and transit zones, the high seas, no-man's-land zones between border posts, de facto borders within the country, and embassies and consulates.

Because pathways for regular entry and stay and migration control measures have become increasingly restrictive, many migrants may be compelled to cross borders irregularly at unofficial border crossings, increasing the risks they face. These so-called green borders include deserts, mountain passes, rivers, the high seas and other remote areas.

81 "Human rights in the Bolivarian Republic of Venezuela: report of the United Nations High Commissioner for Human Rights" (A/HRC/41/18).

82 Statement on the conclusion of the visit of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, to El Salvador – 14 to 18 August 2017, 21 August 2017, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21984&LangID=E.

HROs are not likely to be able to monitor such areas directly, or search and rescue operations in them, but they may be able to use official rescue information and obtain information from civil society partners, recently rescued migrants and rescue professionals such as coastguards.

Many States continue to criminalize irregular entry, stay or exit, which increases the risk to migrants of violence, arrest and detention. Under international human rights standards, the irregular entry or stay of a person in a State should not be considered a criminal offence, because it does not harm persons, property or national security. Therefore, the criminalization of irregular migration exceeds the legitimate interests that States have to protect their territories and regulate migration.⁸³

From the use of unnecessary or excessive force, enforced disappearances and extrajudicial killings to gender-based violence or violent pushbacks, borders are important places to monitor the human rights of migrants, and a range of issues may be relevant there. Human rights violations may occur at borders whenever authorities, or private actors working on behalf of the State, interact with migrants during interception, screening and identification, reception, arrest, detention, transfer or return.



Questions to ask at borders

- Which authorities are responsible for and carry out border governance?
- What does their training cover? Does it cover human rights, gender-responsive and child-sensitive approaches, migrants' rights, etc.?
- When border authorities carry out patrols, interceptions and rescues, what are their methods?
- Are border authorities allowed to use force? Under what circumstances?
- Has it been alleged that the border authorities use excessive force? Have sexual harassment or other forms of gender-based violence been alleged?
- Are border authorities subject to accountability mechanisms and independent monitoring? Are they effective?
- Where two or more States are involved in border operations, how do they cooperate (in theory and in practice)?
- Do handovers take place? What happens after interception?
- How are migrants' identities verified, and by whom? How are migrants screened? Does screening identify individuals who are in a vulnerable situation or at risk?
- Are those migrants referred appropriately?
- What border control policies are applied? How are decisions made to return a migrant or to allow them to enter?
- Are migrants held in detention at the border? Where and in what conditions?
- Are private actors involved in border governance? If so, how?

⁸³ A/HRC/39/45, annex, para. 10; Committee on Migrant Workers, general comment No. 2 (2013), paras. 2 and 24; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/71/384), para. 20.



When monitors detect violations at border zones, such as pushbacks, pullbacks⁸⁴ or other collective or arbitrary expulsions, they should aim to collect information from migrants as well as officials, on both sides of the border – migrants who have crossed, and migrants who have been turned back or are waiting to cross. Individuals who have crossed (or tried to cross) many times can be particularly useful sources.

It may be challenging for HROs to cross international borders to monitor. They should nevertheless try to do so, because it is the best way to obtain a comprehensive picture of a situation. Where it is not possible, HROs should coordinate with field offices and with partners across the border.

When speaking with migrants at or near border zones, HROs should be mindful of their safety. Border authorities may employ sophisticated surveillance techniques. It may be preferable, where possible, to hold interviews at some distance from the border zone.

Satellite imagery may help to monitor interceptions and rescues at sea or in border areas that are difficult to access (see section K.4 on *Remote monitoring*).



Bulgaria, Libya and Latin America

- In **Bulgaria**, human rights monitors were told that border enforcement officials had been responsible for arbitrary and collective expulsions (pushbacks) into neighbouring countries, theft, physical abuse and a reported killing, and that such acts by police, border guards or other government officials had rarely been punished.⁸⁵
- In **Libya**, OHCHR expressed concern when the European Union assisted the Libyan Coast Guard to intercept migrants in the Mediterranean and return them to detention in Libya. Monitors observed inhuman conditions at detention facilities and described “thousands of emaciated and traumatized men, women and children, piled on top of each other, locked up in hangars with no access to the most basic necessities, and stripped of their human dignity”.⁸⁶
- In several States of Latin America, monitors have detected increasingly tight border controls and more recourse to security forces, both of which exacerbate the risks that migrants face. The charred bodies of 19 people were discovered close to the border between Mexico and the United States of America; almost all were Guatemalan migrants. In Ecuador, Peru and Chile, HROs reported that migrants had been expelled without individual assessments of their vulnerability or protection needs.⁸⁷

84 *Pullback* operations are designed to physically prevent migrants from leaving the territory of any given State, or to forcibly return them to that territory, before they can reach the jurisdiction of their destination State. Pullbacks could happen at the instigation and on behalf of destination States desiring to prevent migrant arrivals without having to engage their own border authorities in unlawful pushback operations. *Pushback* operations are proactive operations that physically prevent migrants from reaching, entering or remaining within the territorial jurisdiction of the destination State. They can take place at sea, where they involve the interception of vessels carrying migrants inside or outside territorial waters. They may be followed by immediate return to their port of origin, or they may leave migrants adrift. They can also happen on land at or close to an international border. Pushbacks usually involve the threat or use of force by border officials to prevent migrants from approaching or crossing the border, or to intimidate those who have successfully crossed the border, before returning them to the country of departure. Pushbacks render individual assessments summary or undermine them altogether.

85 OHCHR, “Jailing migrants is not the solution to Bulgaria’s migration challenges – Zeid”, 11 August 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20365&LangID=E; OHCHR, *In Search of Dignity: Report on the human rights of migrants at Europe’s borders*.

86 OHCHR, “UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity”, 14 November 2017, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E; see also OHCHR, “*Lethal Disregard*”: Search and rescue and the protection of migrants in the Central Mediterranean Sea (2021).

87 OHCHR, “Bachelet updates Human Rights Council on recent human rights issues in more than 50 countries”, 26 February 2021, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26806&LangID=E.

3 Transit

Migrants in transit experience specific risks that may have an impact on their onward movement and require specific human rights protection interventions.

Cross-border movement is governed by various laws and regulations. A lack of regular pathways to admission and stay (e.g. transit visas), combined with stringent migration control measures, compel many migrants to move through irregular channels, which means they take dangerous forms of transport or travel in hazardous conditions. Journeys are usually longer. Migrants may wait weeks, months or even years for the right moment to cross a border, they may take work to raise money for the next leg of their journey, or they may be detained. They may also switch their routes, transport and destination. Furthermore, migrants often fall in and out of various legal categories while in transit.⁸⁸ It is particularly important for monitors to understand and be sensitive to this mutability during transit.

At the same time, States may discount their obligations to transient residents who do not intend to remain on their territory.⁸⁹ As a result, migrants may be left in extremely vulnerable situations without State protection. They may become stranded, destitute or ill. They may become victims of robbery, extortion, rape, violence or kidnapping. They may be compelled to work in exploitative conditions. State authorities may also violate their rights by denying migrants access to services, or unlawfully expelling them from the territory.

Migrants in transit may be subject to racial discrimination and xenophobia. Migrant women and lesbian, gay, bisexual, transgender and intersex persons often face specific gendered forms of harm resulting from intersecting discrimination and abuse as migrants and as women and/or lesbian, gay, bisexual, transgender and intersex persons. Migrant children in transit are very exposed to human rights abuses, whether they travel alone or with their families or caregivers.

To monitor the human rights of migrants in transit, HROs should look for places where migrants are likely to rest, such as shelters or stops on migratory routes. When they are not moving, migrants may be more willing to speak. Monitors can also obtain information on transit conditions from migrants who have arrived in countries of destination or returned to countries of origin. When they meet migrants on the road, HROs should carry useful information that they can share, on conditions ahead, shelters in the vicinity or places where migrants can obtain information, health care or other assistance. By offering such help, HROs can avoid giving the impression that their interest is purely extractive.



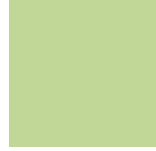
France

In **France**, human rights monitors spoke to migrants seeking shelter and asylum on the border who had remained in transit for many years with little access to protection and basic services. One migrant, who was still en route, described a journey across 14 countries that had taken seven years.⁹⁰

⁸⁸ A/HRC/31/35.

⁸⁹ Ibid., para 7.

⁹⁰ OHCHR, "Spotlight on human rights of migrants in wake of Calais camp eviction".



4 Arrival and reception

Monitoring arrival and reception can be closely linked to monitoring borders and large movements. In locations to which migrants have travelled by sea or across inhospitable terrain, monitoring may focus on rescue or interception and – for arrivals by sea – disembarkation in a place of safety. In other cases, monitoring may occur primarily in official or informal places of reception, including refugee and displaced persons camps, or in mixed settlements of migrants who have dispersed into the community.

Where migrants have been in situations of protracted displacement and unable to secure more permanent accommodation, they may have to remain for months or years in shelters that were designed for temporary reception. HROs should therefore monitor housing conditions closely. Other concerns that monitors are likely to need to address include the following:

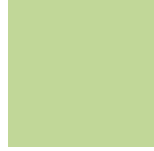
- Migrants in isolated locations may be unable to access public or private transport or other services they need;
- In all locations, migrations may be insecure and at risk of violence, including gender-based violence;
- The authorities may restrict migrants' freedom of movement. This in turn may prevent them from accessing services they need.



Questions to ask about arrival and reception

- On arrival and at registration, what questions are migrants asked? What information is provided to them?
- Are screening, identification and referral procedures conducted promptly? Are they appropriate and adequate?
- Is immediate assistance provided on arrival to those who need it?
- What services and information are made available on arrival?
- Is a safe and effective hotline made available to survivors of gender-based violence on arrival? Is it clearly advertised? Is it available to all migrants?
- Are child services made available on arrival? Are screening procedures and interviews child-friendly? Are qualified child-protection officers on hand at arrival? Are protection systems adequate (for example, are guardianship arrangements in place for unaccompanied and separated children)?
- Do conditions in places of reception meet minimum standards, including conditions of safety and cleanliness?

Places of reception and the conditions in them vary widely. Where it is impossible to monitor them all, HROs should cover a representative selection of the reception facilities and locations in their context. Facilities may include reception centres, transit centres, detention centres, refugee or displaced persons camps, informal settlements, shelters provided by non-governmental organizations (NGOs) and shelters specifically for migrants in vulnerable situations (which receive, for example, unaccompanied or separated children, survivors of torture or trauma, survivors of gender-based violence, etc.). Where HROs are not able to visit particular reception centres or locate migrants dispersed in urban settings, they may be able to obtain information and contacts through migrant and diaspora groups, legal or other service providers, or civil society groups that work with migrants.



i

Arrival and reception: possible human rights at issue

- Adequate standard of living: adequate housing, food and water;
- Sanitation and hygiene, including safe and gender-responsive sanitation facilities;
- Non-discriminatory access to health, education and humanitarian assistance and protection;
- Due process guarantees, including information, legal assistance and representation;
- Family tracing and reunification;
- Freedom of movement;
- Liberty and security of the person and freedom from arbitrary detention;
- Protection from forced evictions and relocation;
- Protection of privacy; data protection.

Monitoring should ensure that access to reception centres and accommodation is non-discriminatory and is not conditional on migrants agreeing to return.



Italy

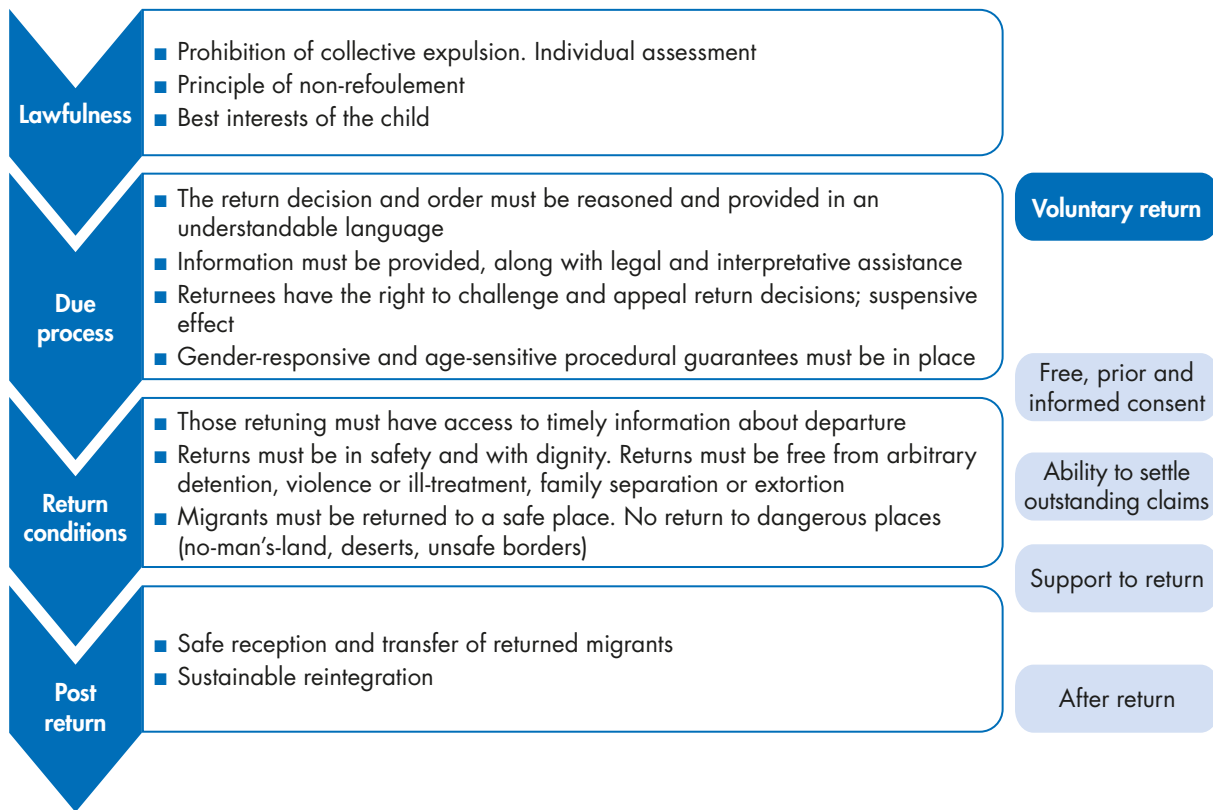
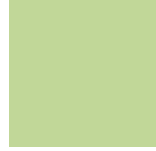
- In **Italy**, human rights monitors reported a number of human rights concerns at reception facilities. The facilities did not clearly separate sleeping areas for men, women and unaccompanied children. Although they were intended for migrant reception, they were operated more like detention facilities than registration centres. The service was supposed to transfer migrants to longer-term accommodation within 48 hours of arrival, but many adults stayed for much longer periods. Unaccompanied children faced particularly long delays, because appropriate places to house them were in short supply.⁹¹

5 Return and reintegration

Return can take different forms and States use a range of terms to describe returns and their implementation (see glossary).

Returning States have a duty to ensure that returns are lawful. They must respect due process rights, the principle of non-refoulement (see the glossary definition of non-refoulement) and the prohibition of collective or arbitrary expulsion. Returns should occur in conditions that are safe and dignified; this implies avoidance of arbitrary detention, violence, ill-treatment, extortion or violation of the right to health. For returns to be considered voluntary, migrants should have given free, prior and informed consent. Returns should be sustainable: migrants should not face human rights violations on return.

⁹¹ OHCHR, "Italy's migrant hotspot centres raise legal questions", 2 August 2016, available at www.ohchr.org/EN/NewsEvents/Pages/LegalQuestionsOverHotspots.aspx.



When monitoring returns, HROs should examine what forms of return are taking place and their context. They should assess returns against human rights standards and focus their monitoring activities accordingly. When setting priorities, HROs should ask whether it is possible to monitor the human rights violations migrants experience before, during and after return, or only during some phases.

HROs should give particular attention to the gender and age dimensions of return. Individual assessments, return processes and reintegration affect individuals differently due in part to their gender, disability, age, sexual orientation, gender identity and other factors. HROs should consider intersectionality. Challenges that HROs should bear in mind when monitoring returns include:

- Legal and administrative processes: These may be lengthy and difficult to follow, and may involve several actors. Decisions may be carried out summarily or without prior notice.
- Bilateral or multilateral return agreements: Diplomatic assurances, readmission, and “safe third country” agreements are made to facilitate speedy return. Arrangements with private transport or security companies further complicate efforts to establish responsibility and ensure accountability.
- Traceability and contact: After return, migrants may become difficult to trace as HROs seek to establish whether they are safe and their rights are being respected.

Forced return is often a traumatic experience, and human rights are likely to be violated during and after it.

Monitors can examine how a forced return was carried out. In particular, they can establish whether unnecessary or excessive force or restraints were used. They can assess whether the use of tranquilizers, sedatives or other medication to facilitate deportation is prohibited and whether this prohibition has been adhered to in practice. They can observe what forms of transport were used, or they can confirm whether due process guarantees were respected.

HROs are unlikely to be able to monitor collective and arbitrary expulsions (handovers, pushbacks and pullbacks at land, air and sea borders), especially if there is no safe access to the border. However,

it may be possible to document these violations on the basis of information provided by partner organizations, derived from satellite imagery or other remote monitoring techniques (see section K.4 on *Remote monitoring*).

Migrants who have been served a removal order, or who have witnessed forced returns, can describe these processes in interviews on the basis of their personal experience. Interviews should ideally be conducted both in the country from which the migrant was returned and in the country to which the migrant was sent (see section H.3 on *Transit*).

Voluntary or assisted return programmes are offered by many States. Typically, migrants who enrol in such programmes receive travel documents, transport and assistance with departure and arrival. A cash grant or other forms of reintegration assistance may be provided. Taken together, these incentives may persuade many migrants to agree to return.

Participating in assisted return programmes may have legal consequences. Asylum seekers may be required to withdraw their asylum claim, which may prejudice future claims. In some cases, migrants may be banned from re-entering the returning State; other States may offer penalty-free re-entry to migrants who return voluntarily but ban re-entry in cases of forced return.

When monitoring voluntary and assisted return programmes, HROs should evaluate:

- The degree of voluntariness ascribed to the State's definition of "voluntary" return;
- How the State implements voluntary returns;
- The degree to which voluntary returns are in fact coercive. A migrant might be considered to have been coerced to return if the authorities:
 - Threaten to impose indefinite or arbitrary detention;
 - Withdraw access to programmes of assistance;
 - Refuse to process the migrant's claims for asylum or unduly prolong the process;
 - Deny or withdraw entitlements to health care, housing support, etc.

For a return to be "voluntary", migrants must have given their free, prior and informed consent, and they must exercise control over the timing and means of their return.⁹²

The right to **due process** is critical to return. In this regard, elements that HROs can examine include:

- The legality of return orders and their compliance with human rights standards;
- The degree to which migrants have received adequate information in an understandable format and access to legal representation;
- The presence and application of gender-responsive and age-sensitive procedural guarantees;
- The availability of a right to appeal, the adequacy of appeal procedures and their implementation;
- The compliance of agreements, such as on voluntary return, with human rights standards.

HROs may be able to obtain this information by interviewing migrants, lawyers, legal representatives and migrant human rights defenders, and also by examining publicly available case files. HROs should recognize that, particularly when they are being pressured to return, migrants may not feel it is in their interests or safe to communicate with HROs.

⁹² OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, Guideline 6.3.



When monitoring **return conditions**, HROs can ask:

- What information about the returns process do migrants receive?
- Do returns take place overnight? Do migrants arrive at night?
- Does the gender composition of accompanying staff match that of the migrants?
- Do child protection officers accompany child migrants throughout the process if they are not with a parent or guardian?
- Does a doctor certify that returning migrants are medically fit to travel?
- Do officials use force? Do they use restraints, dogs, tranquilizers or other types of force?
- Do the officials who implement returns adopt gender-responsive approaches and respect the dignity and privacy of migrants in their custody?
- Are complaint mechanisms in place? Do migrants know how to use them?

Some countries have specific arrangements in place to monitor returns. Particularly when monitoring of forced returns is already in place, HROs should observe rather than conduct interviews. This will provide some protection to migrants while avoiding any additional stress that interviews might cause.

Post return – when migrants have been returned to their country of origin (or sometimes a third country) – there are important human rights concerns. Migrants' (re-)integration may not be straightforward. In particular, unplanned and involuntary return is often associated with debt, unmet family commitments, shame and stigma, which may in addition be gendered. In some cases, individuals are returned to the same situation that compelled them to move in the first place. In the absence of meaningful support, such returns are likely to be unsustainable and may perpetuate a pattern of human rights violations, internal displacement or precarious migration.⁹³

Former refugees who re-enter their country as returnees may experience a period of “internal displacement”, which may last several years, before they are finally able to return to their homes and reintegrate in their communities.

With respect to returning migrants, HROs should ascertain, in particular:

- Whether their social security rights were portable and successfully transferred;
- Whether they have been able to use the justice system to secure unpaid wages or stolen property;
- Whether they faced legal sanctions if the country to which they returned criminalizes irregular exit.

For internally displaced persons, return may not be the only option available to reach a durable solution – they may choose instead to integrate locally in the place where they sought refuge, or to settle elsewhere in the country.

Some countries have set up reception centres for migrants who return. HROs that want to monitor returned migrants may be able to use these for interviews. Contacts can also be made through partner organizations that provide support and assistance to returned migrants, although HROs should be mindful that the interviewees may not be representative of all returned migrants.

Monitoring the sustainability of returns implies a long-term commitment of time and resources.

⁹³ “Promotion and protection of the human rights of migrants in the context of large movements: report of the United Nations High Commissioner for Human Rights” (A/HRC/33/67), para. 30.



Questions for post-return monitoring

- Are the reception procedures for returned migrants adequate?
- Are returned migrants detained, or do they disappear? Are they left to their own devices without essential resources (food, water, money, etc.)? What programmes of assistance are made available to them?
- Are returned migrants offered transfer support to reach their homes or families?
- What (re-)integration programmes are available to them?
- Are (re-)integration programmes gender- and age-sensitive? Are they offered on the same terms to women and girls? Do women and girls use them?
- Do returned migrants have full or incomplete access to public health services?
- Are returned migrants fully recognized as citizens? Are they entitled and permitted to work, can they participate fully in society, and are their rights and security guaranteed by the authorities?



Austria, Honduras, Iraq, Italy and Niger

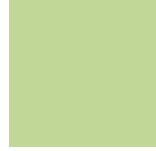
- In **Austria**, human rights monitors documented a number of issues related to return: migrants in situations of vulnerability were not identified or assisted consistently; they had limited access to procedural protections such as access to information and legal counselling; there was increased use of pre-removal detention for reasons beyond those provided in national law; there were violations of the right to family life and the best interests of the child; and the authorities restricted civic space in a manner that limited oversight of border management.⁹⁴
- In **Honduras**, HROs monitored the human rights of migrants after their return and noted the absence of measures to guarantee returnees' sustainable reintegration and the risk that migrants could suffer discrimination and stigmatization. Some returnees told OHCHR that they intended to migrate again, given the lack of socioeconomic opportunities or reintegration assistance.⁹⁵
- In **Iraq**, human rights monitoring identified numerous barriers to fostering durable solutions for internally displaced persons. For example, housing and property for displaced persons had been destroyed or damaged; internally displaced persons lacked documentation proving tenure; land had been contaminated by mines; many internally displaced persons lacked livelihood opportunities. Women-headed families were particularly affected.⁹⁶
- In **Italy**, monitors observed the forced return of migrants held in a detention centre and concluded that the return conditions amounted to inhuman and degrading treatment. The migrants concerned were not notified in advance; some were still in legal procedures to determine their entitlement to remain; and those expelled exhibited clear signs of suffering, extreme stress, anxiety and fear. Some had collapsed; they were carried away under sedation and wheeled out unconscious; the staff employed force; and no female staff were present although the majority of the migrants were women.⁹⁷

⁹⁴ OHCHR, "Report of mission to Austria".

⁹⁵ A/HRC/46/75, para. 66, and "Situation of human rights in Honduras: report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras" (A/HRC/40/3/Add.2), para. 76.

⁹⁶ End of mission statement by the Special Rapporteur on the human rights of internally displaced persons, Ms. Cecilia Jimenez-Damary, upon conclusion of her official visit to Iraq.

⁹⁷ Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Italy (CAT/OP/ITA/1).



- In **Niger**, human rights monitors noted that procedural safeguards were absent for Nigerien and West African migrants who were returned from Algeria. The returns constituted collective expulsions and initially targeted Nigerien women and children in vulnerable situations. They were subsequently extended to Nigerien migrant workers and migrants from other West African countries. Migrants reported that their homes were raided at night and that they had been arbitrarily arrested and detained, beaten and ill-treated, put in trucks, and then dropped 15 km from the border with Niger and forced to walk through the desert, without assistance from Algerian or Nigerien authorities, to the first Nigerien village, 20 km beyond the border.⁹⁸

6 Large movements

When large movements of migrants occur, the human rights issues they generate largely coincide with those arising in the context of borders, arrival and reception and transit, and thus the monitoring methodology is similar.

As there is no agreed definition of a “large movement”, its characteristics are context-specific. In certain cases, a movement may be described as large in order to attract attention or humanitarian relief. In other cases, scale is associated with risk, a sense of crisis or loss of control, which can trigger dangerous political and security responses (closed borders, pushbacks, use of force, xenophobic violence, etc.). HROs should therefore describe migrant movements with care and avoid, for example, water-related imagery such as “flows”, “flood”, “waves”, “tides” or “influx”.⁹⁹

Large movements of migrants are usually mixed and composed of refugees, internally displaced persons, irregular migrants, unaccompanied children and other legally protected categories of migrant. These migrants suffer similar human rights violations and abuse.¹⁰⁰ For both ethical and practical reasons, therefore, monitors and other responders – providing reception services, immediate assistance and protection, etc. – should focus on the equal protection of everyone’s rights rather than attributing people to different legal categories, although monitors should strive to ensure that all legal entitlements are recognized and fulfilled.

If large migration movements occur at the start of an emergency, monitors may have little time to prepare. HROs can nevertheless obtain information from civil society organizations, national human rights institutions and United Nations field presences.

Because large movements sometimes trigger the mobilization of armed forces or law enforcement officials and their concentration in areas that are considered strategic, HROs may decide to monitor the conduct of the security and police forces. This might involve observing their behaviour, documenting which units are present on the ground, identifying their tactics, practices and weaponry, and reporting when and how they use force. In doing so, HROs need to remain focused on their own safety, that of the migrants and that of any bystanders. Coordination with the Department of Safety and Security is necessary.

⁹⁸ OHCHR, “Niger: human rights protection must be central to migration policies, says expert”.

⁹⁹ OHCHR, toolbox on migration narrative change, step 7: “Do no harm.” Available at www.standup4humanrights.org/migration/pdf/MigrationToolbox-Step-7.pdf.

¹⁰⁰ A/HRC/33/67.

When HROs monitor a “large movement”, it may be difficult or impossible to conduct interviews. HROs may have to focus on short conversations and their observation of migrants’ conditions: clothing, provisions, methods of transport, age and gender, etc. Through local partners, it may be possible to organize meeting space for longer interviews. Migrants may be less willing to discuss the reasons for leaving their home country and sensitive subjects, and more willing to discuss reception conditions and experiences in transit (see also section K.1 on *Focus groups*).



Central America

- Since 2018, an increasing number of migrants have departed from and transited through the **Central American region**, with the aim of reaching Mexico and the United States. These migrants travel in large groups or so-called caravans. To monitor their movement and maximize preparedness, OHCHR developed contingency plans, including scenarios, trends and triggers. This work was undertaken in coordination with the Office of the United Nations High Commissioner for Refugees (UNHCR), ICRC, the National Red Cross Societies, national human rights institutions, civil society organizations and other actors at national and regional levels, as well as OHCHR field offices in the region. This level of coordination was essential to monitor movement across the whole region and overcome country-specific mandate restrictions.

I. Planning monitoring activities

A number of external constraints need to be considered when planning monitoring activities: human and financial resources; competing priorities; security; the proximity of destination(s); and time. Time is an especially critical constraint when monitoring crisis situations.

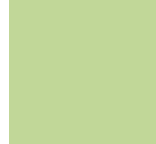
1 Planning the logistics

Team composition

In general, a monitoring team should speak relevant languages, be gender-balanced and possess expertise on migration, gender and other pertinent issues.

Multidisciplinary content skills are important for monitoring. This includes knowledge of human rights and migration, of the country or region and of relevant thematic areas, such as the rights of lesbian, gay, bisexual, transgender and intersex persons, racism, torture, economic, social and cultural rights, indigenous peoples and gender-based violence. In addition, cross-border monitoring teams may benefit from the inclusion of HROs from headquarters, regional offices or other field presences.

HROs should monitor in teams of at least two, never one person alone. It is a best practice to form teams of different genders so that migrants can decide with whom they prefer to speak. Where possible, they should take account of cultural factors and try to ensure teams are appropriately diverse. Similar considerations should guide the appointment and allocation of interpreters. Ideally, run background checks before interpreters are appointed (see chapter on [Interviewing](#)).




If media products (such as photo or video stories) are envisioned, it may be most effective to separate out the different roles and include a communications and media expert in the team.

Team security

The security of the monitoring team is of paramount importance. In advance of the monitoring activity and in close coordination with the Department of Safety and Security, HROs should agree contingency plans to deal with each identified threat and prepare a security plan. HROs are to liaise closely with the United Nations security officer in the country, with other United Nations security focal points and with partners working in camps or immigration detention centres. They will be familiar with the latest threat assessment and can help analyse risks and plan mitigating measures.

Security arrangements should take account of the monitoring plan and address additional security considerations that need to be taken, for example when visiting a camp or a dangerous border zone or when talking with armed actors (including private actors). Monitors should observe the security measures applied by United Nations peacekeeping missions or country teams, when these are present.

It is important to ensure that security arrangements are gender-sensitive, take into account cultural and contextual gender issues and avoid any other forms of discrimination that may affect the team. The team should be aware that monitoring can be physically and emotionally demanding and that this can exacerbate certain risks (see section 1.3 on *Safety and reprisals* and the chapter on [Trauma and self-care](#) )

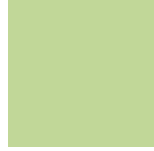
All members of the team should understand and take responsibility for the security plan.

Creating a schedule

The monitoring strategy will guide HROs in creating a schedule that indicates the extent and type of monitoring activities needed, as well as whom to interview. It will help to determine which locations the team will visit, such as a particular migration route, frequented or rarely frequented border crossings, specific camps, reception, return or immigration detention centres, etc.

When monitoring accommodation (detention centres or shelters) segregated by gender or age, HROs should visit locations housing men, women and children. They should visit shelters when migrants will be there and ensure that they have time to speak to them (for example, during evenings after meals rather than in the morning, when migrants may need to work or move on). Teams should make allowances for travel time and security procedures, especially when they visit remote border locations. They should allocate enough time for interviews and discussions.

If a mission is prolonged, the plan should include rest days. Rest is important to ensure that the team can maintain professional standards of monitoring. It is recommended to hold daily team meetings to debrief and review the schedule. If possible, time should be found for team members to write up their notes and interviews, log them in a shared database and begin drafting their observations and final report. Where possible, members of the team should be allocated several days at the end of a mission to rest, seek psychosocial counselling if they need it and draft the final report while memories are fresh, before they return to the office.



i

Checklist: Planning the logistics of a monitoring activity


- Prioritize security, both of the monitoring activity and of team members.
- Select the monitoring team carefully. It should be gender-balanced and culturally appropriate, and should include sufficient interviewers. The team should possess relevant expertise and speak relevant languages. Monitoring teams should always have at least two members, of different genders.
- Taking account of the scope of the monitoring activity, the time available and other monitoring visits, decide which locations the team will visit, and create a schedule accordingly.

2 Partners and sources of information

Partners play a critical role in successful monitoring. They help teams understand the context, identify migrants for interview, refer migrants where required, provide information and contribute to the impact that missions achieve during follow-up.

OHCHR is usually not the main actor working on migration, but its mandate and monitoring can complement and strengthen the promotion and protection of migrants' human rights. When OHCHR is building new relationships or starting to monitor in a location, it may be necessary to discuss OHCHR's role and activities with stakeholders.

Other United Nations agencies will be essential collaborators. OHCHR monitoring staff should take time, during all phases of their work, to establish a productive relationship with United Nations partners by reaching agreement on their roles, responsibilities and complementarities and on how they will collaborate. For instance, it is good practice to share draft press releases, or even sections of draft reports, with key United Nations country partners before issuing them.

Independent human rights monitoring bodies and civil society actors are equally important partners. National human rights institutions, NGOs, trade unions, faith-based organizations and research institutions can provide invaluable political, demographic and economic background, information on the migration context, analysis of violations and trends, advice on issues that should be addressed and potential advocacy strategies (see chapter on [Engagement and partnerships with civil society](#) ).¹⁰¹ Relations with national human rights institutions need to take into consideration their independence and powers. Civil society should be engaged on a range of concerns, including gender, anti-racism, disability and the rights of the child.

In its work with all partners, OHCHR should aim to agree on a response to cases of reprisal against migrants and should establish referral pathways for migrants who need legal, medical or psychosocial support.

¹⁰¹ Civil society actors relevant to human rights include: human rights defenders; human rights organizations; support groups and representative organizations; coalitions, networks and social movements; community-based groups; faith-based groups; trade unions, professional associations; professionals who deliver services that protect human rights, such as humanitarian workers, lawyers and medical staff; relatives and associations of victims of human rights violations; and public institutions and research bodies whose activities promote human rights.



Enhancing monitoring outcomes through partnerships

- In a number of countries, monitors have worked together with women's rights and lesbian, gay, bisexual, transgender and intersex persons' rights organizations to include gender-specific questions in monitoring interviews. This work has uncovered particular gender-specific concerns in the context of migration.
- In **Niger**, members of the United Nations country team supported the work of human rights monitors. Some interviews were conducted at an IOM transit centre for migrants and an IOM transit centre for children; monitors met asylum seekers at the UNHCR office.¹⁰²
- Many shelters serve specific categories of migrant: asylum seekers, women travelling alone, women with children, unaccompanied children, men, etc. HROs need to bear this in mind when they plan interviews, to ensure they speak to a broad range of migrants.

Journalists can also raise the profile of migrants' rights in a country and can be invaluable sources of information and analysis.

Partners can help to identify sources of information, suggest where to monitor and set up interviewing opportunities. Specialized civil society partners can help monitors to reach underrepresented populations, such as women, lesbian, gay, bisexual, transgender and intersex persons and children.


HROs should strive to select interviewees who are, as far as possible, representative of the whole population of migrants. In this sense, they need to evaluate the degree to which the mandates of partners influence the interviews they can arrange and the diversity and quality of the information they provide.

It is important to have frank conversations with partners about OHCHR's mandate, limitations and capacity (including capacity to follow up). To avoid frustration, HROs should manage expectations and not promise anything they cannot deliver. Recognizing that other organizations may devote considerable time and resources to briefing the Office and facilitating its work, HROs should find ways to reciprocate so that OHCHR's partnerships are not merely extractive. Options might include funding support (through the Grants Committee, the United Nations Voluntary Fund for Victims of Torture, etc.), working together on advocacy, or supporting partners' work on migrants' rights. HROs should bear in mind that partners may see OHCHR as a partner but also as an advocacy target.

From the start of a monitoring initiative, it is important to involve local, national and regional **authorities**. Monitoring should be understood as a form of assistance to the State. Recognizing that a range of government ministries and entities (on women's rights, gender equality, child protection, health, labour, etc.) have mandates and responsibilities, including responsibilities for migrants, monitoring identifies gaps in performance and avenues for improvement, and provides opportunities to engage authorities with respect to migrants' rights.

HROs should be transparent about the focus and aims of monitoring and about how monitoring will be done, so that its outcomes and findings will not be a surprise. Good relations are required, particularly with local authorities, to make sure that monitors can work safely and gain full access to key locations.


¹⁰² End of mission statement of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Niger (1-8 October 2018)", 8 October 2018, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23698&LangID=E.

Officials at all levels, especially local authorities, camp representatives or managers of facilities housing migrants, are also sources of valuable information. They can provide insights into their work, the challenges they face, the legal and regulatory framework, the migrants with whom they interact and harmful patterns and practices, and they can suggest recommendations (see chapter on *Engagement with national authorities and institutions* .

3 Safety and reprisals

Migrants, migrant human rights defenders and other individuals, including interpreters, may be endangered or face reprisals for engaging with the monitoring team. HROs must therefore take steps at all times to protect the safety of migrants, other interlocutors and interpreters.

Reprisals may be gender-specific, in their nature or impact. They can take the form of harassment, denial of food or services, loss of jobs, damage to property, gender-based violence or other forms of violence. A migrant might be deported or have an asylum claim or other legal claims turned down. Reprisals may also be levelled against relatives (for example, in cases involving human trafficking, abusive smuggling, refugees and internally displaced persons).

Monitoring plans and follow-up strategies should include risk assessments and precautions that will prevent, mitigate or address reprisals (see chapter on *Protection of victims, witnesses and other cooperating persons* ). If interviews are held in closed spaces (detention centres, reception centres, semi-open or closed camps), it is important to inform the authorities at the start that OHCHR will ask NGOs, staff of the national human rights institution, United Nations agencies and other local partners to report on any reprisals and will respond vigorously if they do. All reports of reprisals should be followed up and, if appropriate, referred to the national human rights institution, the national preventive mechanism or other competent institutions.¹⁰³

Before starting to monitor or holding interviews, HROs must seek information from partners about the security risks that migrants and other contacts might face. For example, partners should be asked whether reprisals have occurred in the past and whether migrants are likely to be threatened if HROs interview them. With the support of partners, HROs should agree strategies that will minimize the risks identified, and they should confirm the commitment that all reprisals will be reported to the national human rights institution, the national preventive mechanism or other competent authority for follow-up.

As part of the security strategy, HROs should decide how they will anonymize the information they collect from interviews and other sources, taking age and gender into account.



Sample considerations on security

- Will HROs entering a factory to conduct interviews with migrant workers put them at risk of reprisals?
- If they are interviewed during working hours, will they lose wages as a result?
- Is the interviewee's experience already public knowledge, for example because it has been reported in the media? Does this increase or reduce the risk of reprisals or violence?

¹⁰³ Cases may also fall under the reprisals mandate of the Assistant Secretary-General for Human Rights. See OHCHR, "OHCHR and intimidation and reprisals for cooperation with the United Nations in the field of human rights", available at www.ohchr.org/EN/Issues/Reprisals/Pages/ReprisalsIndex.aspx.



If risks of retaliation exist, HROs should carefully weigh the potential harm to the interviewee against the benefits of the interview, and if necessary cancel it.



Mitigating risks of reprisals in immigration detention

- An OHCHR monitoring team visited an immigration detention facility, hoping to interview a migrant who was detained there. To avoid the risk of reprisal – because the case was very well known – the team did not ask to meet the migrant. Instead, it visited several sections of the facility, spoke with several groups of individuals on the same floor, and invited the migrant and several other detainees for individual interviews.

J. Interviewing migrants

When interviewing migrants for the purpose of monitoring activities, HROs should take into account a number of considerations: how to obtain informed consent; where to interview; how to ensure privacy, confidentiality and data protection standards; how to manage expectations; and how to avoid a negative impact on migrants being interviewed multiple times by various actors. HROs should always be prepared to decline or cancel interviews to protect individuals' safety, and to adapt to meet unforeseen circumstances.

To hold a successful interview, it is critical to create conditions in which the interviewee can speak freely and with trust. Privacy and confidentiality are equally important, to prevent risk of harm. In migration contexts, HROs will rarely encounter ideal interviewing conditions: borders, immigration detention centres, workplaces (e.g. factories or fields) and places where migrants gather (such as public parks and informal settlements) are unlikely to have private rooms. Local organizations and partners may be able to lend private meeting spaces that are suitable for interviews, but these may not always guarantee privacy and confidentiality. If conditions are not favourable, conducting short interviews with questions that are not sensitive may be preferable.

HROs should bear in mind that the content of an interview can be affected by the conditions in which it takes place and by the profile and character of the interviewees. If detained migrants want to speak about the detention conditions and the purpose of the monitoring is to understand the situation in their country of origin, how can the HRO resolve this tension? If interviews are only held in shelters for refugees, but not with migrants in detention centres, or only with either women or men, this will narrow the experiences described. Nonetheless, HROs should not be rigid about who they will or will not speak with, even as they strive to achieve diversity and a gender balance.

HROs should begin interviews by letting migrants narrate the story in their own words, in the order they wish. To obtain more detailed information corresponding to the focus of the monitoring activity, HROs should follow up with specific questions. For example, if the objective is to understand migrants' experiences in transit, HROs should not start by asking their interviewees to explain why they left their country of origin (see annexes for sample questionnaires).

When HROs broach difficult and sensitive subjects, such as gender-based violence or other traumatic experiences, they should begin by asking migrants whether they are willing to talk about those subjects. The migrant may not wish to do so, or they may have no experience of them. If the migrant is willing to proceed, and is not distressed, the HRO can begin by asking some general open-ended questions. Are such things known to have occurred in a location? Has the migrant heard of such things occurring, or witnessed them? The migrant may wish to continue to talk in general terms, or about the experience of others. In this case, the HRO can ask questions that are appropriately targeted questions. Are such incidents reported? Is support made available to survivors? If not, what actions are available to help? From this point, if the discussion has given the migrant confidence to continue, it may be appropriate for the HRO to ask more direct questions about the migrant's own experiences.

Particularly when interviewing members of a large group of migrants, HROs should identify any hierarchies or informal sub-groups. They should also be alert to gender norms and dynamics as they can inhibit access and efforts to create trust and opportunities to meet migrant women and girls. It will be important to talk with the leader or leaders; however, HROs should recognize that their views and experiences are unlikely to be representative of the whole group, and are particularly unlikely to be representative of those in vulnerable situations. Leadership dynamics may also affect the ability or willingness of women and girl migrants to consent to be interviewed independently of male family members. The team should see whether one HRO can meet the group's leader(s) while other monitors meet a selection of group members.



El Salvador

- In **El Salvador**, human rights monitors interviewed internally-displaced women in secret “safe houses” or shelters in order to learn about their experiences of threats and violence by gang members that led them to flee their homes.¹⁰⁴

Confidentiality and trust are also an issue when working with interpreters. An interpreter's identity (ethnic origin, gender, age, etc.) may influence the willingness of migrants to disclose details of their experience. For example, a migrant may fear that an interpreter who shares the same social and cultural background will report potentially stigmatizing information to the home community (see the discussion of *Who will interpret and how* in the chapter on [Interviewing](#)).

For more information on preparing and holding interviews, see chapter on [Interviewing](#) ; for gender-specific aspects, see [Integrating a Gender Perspective into Human Rights Investigations](#) .

¹⁰⁴ Statement on the conclusion of the visit of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, to El Salvador.



Checklist: Interviewing migrants

Before the interview

- Assess what risks of harm and re-traumatization exist due to the migrant's experiences during migration.
- Prepare interview questions that are clear and understandable, culturally appropriate and gender- and age-sensitive.
- Choose a private and comfortable location for the interview.
- Brief the interpreters.
- Identify gender-responsive and child-sensitive organizations to which the migrant can be referred if it is appropriate and the migrant needs support.
- Consider carefully how the interview can be conducted safely. Be especially careful if the migrant is in immigration detention, in a dangerous border zone, or in a camp or informal settlement.
- If the interview is to take place in a closed space (e.g. a detention centre or a reception centre), tell the authorities that OHCHR will ask local partners to look for evidence of reprisals and that OHCHR will respond vigorously if reprisals occur.
- Consult local organizations to understand what security risks exist and to arrange referrals if reprisals occur.

Introducing the interview

- Introduce the team.
- Explain to the migrant why OHCHR wants the interview.
- Discuss possible risks frankly with the migrant.
- Explain that the interview is voluntary and can be stopped at any time with no consequences.
- Indicate that OHCHR does not distribute aid or determine refugee status, and that the migrant should not expect any personal benefit from the interview.
- Obtain the migrant's informed consent to use information from the interview. Assure the migrant that no information shared with OHCHR will be shared with any other organization without the migrant's consent.

Conducting the interview

- Spend some minutes developing a rapport with the migrant interviewees, while respecting their time.
- Be respectful and patient. Ask whether the migrant is willing to talk about difficult subjects. Approach those subjects progressively in a manner that will elicit relevant and precise information but will not re-traumatize the migrant.
- If the migrant reports or refers to potential human rights violations, clarify the source and the accuracy of the information.

After the interview

- If the migrant requests it and gives consent, refer the migrant to services that provide psychological support or advice on sexual and reproductive health, or that support gender-based violence survivors, offer legal counselling, etc.
- Determine if it is necessary to anonymize the interview.
- Document the interview in the mission database.

K. Other methodologies

1 Focus groups

Focus groups can help monitoring teams to gather information from many people relatively quickly. Some interviewees also feel more comfortable speaking in a group as it may enhance their protection and anonymity. In certain situations, it may simply be the only way available to speak to migrants. Group discussions are, however, not suitable for investigating specific incidents. For that, private and confidential interviews are required. Only non-confidential information that is generic should be gathered through group discussions.

Recognizing that focus groups differ from individual interviews, HROs should design them to protect individual safety and ensure equal participation. First of all, HROs should assess risks before the discussion and make participants aware that the conversation cannot be confidential and consequently, they will not be asked to share anything that they are not comfortable sharing. HROs should also make sure that the interview schedule does not ask participants to say anything that is excessively personal or that could put them or other migrants at risk.

If HROs are approached by a large number of individuals in a closed space (such as a detention centre, shelter, or a displaced persons or refugee camp), it is best to begin by introducing the interviewers to the group and stating the purpose of the visit before inviting migrants to approach individually in order to speak with HROs. Where migrants are eager to speak to HROs, a combination of an initial group discussion followed by individual interviews may be necessary to give everyone the opportunity to speak.

HROs may choose to convene focus groups to gain information about a situation. For example, they might run a focus group with members of a diaspora to learn more about local integration. (Who has children in school? Who has found work? Who has experienced xenophobia or racism? Is it the same across genders?) They may wish to learn about conditions in the country of origin. (What happened to their property? Did their children go to school? Do their families in the country of origin have access to medical care?) Group interviews can also help to identify trends, for example regarding conditions in immigration detention or the increase of harmful policies, such as family separation.

Where conditions do not permit private interviews, monitoring teams may convene impromptu focus groups. HROs should carry out security risk assessments before interviewing in such facilities, to determine whether it would be safe to conduct group discussions. HROs should always ask themselves whether smugglers, or perpetrators of gender-based violence, domestic violence or other human rights abuses, might be in the group. It is important to keep the discussion focused on matters that are less sensitive or personal (and to discourage participants from telling possibly sensitive personal stories). Knowledge of the larger migration context and local demographic composition are key to HROs determining the propriety of focus group discussion.

Suppose, for example, that HROs create an impromptu focus group in a migrant detention centre where private conversations are impossible. The HROs should encourage every participant to speak but should make sure that the discussion helps to uncover human rights concerns and does not put anyone at risk. It might focus on conditions or on procedural aspects of migrants' cases, such as due process and access to information, lawyers and medical care.



2 Case file review

Reviews of legal case files can generate valuable information. Where case files are available and can be consulted without undermining legal proceedings, their review can help to verify statements made by authorities, to identify patterns or trends or to evaluate compliance with human rights standards in individual cases. If police reports and investigation files are accessible, they can provide primary data for evaluating trends in human rights violations. Return orders and individual assessments can show whether and to what extent due process guarantees have been respected. Medical files (if they can be read without breach of confidentiality) can be indicative of the adequacy of medical care in detention centres and the prevalence and incidence of torture and ill-treatment, and can corroborate allegations of the use of force.

Examining labour contracts and related paperwork can assist monitors to understand the situation of migrant workers (working conditions, whether human trafficking is taking place, whether migrants can join unions, etc.). Such research is especially useful when monitors cannot meet the workers, but it is even more powerful when the documentary record can be checked against migrants' own reports of their experience and treatment. Migrants may not realize, for example, that they have paid (or are paying) a recruitment fee, or that they are not receiving the minimum wage: contract documents are likely to reveal such information.

3 Observation

Monitoring by observation is a useful technique for assessing how States and other actors govern migration processes, including during returns, disembarkation, registration or screening, at border checkpoints or during transfers between places, and for evaluating conditions in reception centres, immigration detention, informal settlements and camps. Observation can support and be supported by follow-up interviews with officials, migrants, migrant human rights defenders and others.

When HROs observe, a good first step is to establish who is in charge: who is in a position to grant access or explain what is happening. When they directly observe a situation, HROs should identify when and where interactions take place, who is involved, and how officials treat migrants. When monitoring a location, HROs should observe its nature and conditions.



Questions to ask when observing processes

- Does the HRO have full access to observe or is this constrained?
- What is the rank/position of officials interacting with migrants?
- What is the purpose of the interaction?
- What questions is the migrant asked?
- Are the questions gender-sensitive, child-sensitive, and culturally appropriate?
- Do they adequately identify specific human rights protection needs?
- Is the manner and body language of the official appropriate?
- Where is the migrant taken on completion of the process? Is the HRO permitted to accompany the transfer?

For specific questions when observing return processes see *Annex II*.



Questions to ask when observing a location

- What is its purpose? Is it a detention, returns or reception centre, a camp, a dormitory for migrant workers, or another form of residential location?
- Is the location a closed or semi-closed facility? Do migrants have freedom of movement within it? What is its structure and how is it organized? What is its capacity? Is the location overcrowded?
- What are the security arrangements and possible safety risks?
- Are mobility considerations made? Is the infrastructure appropriate for migrants with disabilities?
- Are unrelated women and men housed separately? Are families housed together?
- Are water, sanitation and hygiene and health facilities adequate and accessible? Are they gender-sensitive?
- Are sleeping quarters, washing facilities and kitchens appropriate and clean?
- If food is served at meals, is it sufficient, nourishing and culturally appropriate?
- Is a room set aside for medical consultations and treatment? Is it adequately equipped and does it ensure privacy?
- Are spaces set aside for children to play in?
- Are contact numbers for shelters and other referral services listed visibly? Are they available and visible to migrants who have been detained?
- Is a private room or space available in which migrants can meet with representatives of national human rights institutions or civil society organizations or other relevant actors and visitors?
- Are there places and areas that HROs are not permitted to visit or observe?

If HROs visit a facility such as a detention centre, reception centre or shelter, they should complement their observations by asking officials questions that cannot be answered by observation alone and that can help to corroborate the observation (see also section G.2 on *Immigration detention* and *Annex I*).

When they observe, HROs should be aware that people and locations might have been “prepared” for the visit. For instance, evidence of certain practices may have been hidden, a special meal may have been prepared, or the facility may have been painted or refurbished. This is another reason why observation needs to be supported by interviews with the head of the facility, staff and migrants.



Conditions of immigration detention centres in several countries

- In several countries, human rights observers have concluded that certain immigration detention centres are organized like prisons, with barbed wire fences and locked cells. In some, migrant boys have been held in “detention within detention”. In migrant camps, observers have seen children living in filthy conditions. Many camps lacked safe spaces for migrant children.

4 Remote monitoring

Remote monitoring encompasses a variety of tools and techniques. These include:

- Remote interviews using information and communications technology;





- Third-country interviews in a country that is not being monitored;
- Use of satellite imagery and open-source monitoring technology to gather information.

Each of these techniques can potentially solve challenges that arise when monitoring people on the move; but each also presents logistical, ethical and substantive difficulties and risks.

Remote interviews

There are now widely available technologies that make it straightforward to interview people at a distance, via a standard landline, a mobile or satellite phone line, a smartphone application, or Voice over Internet Protocol (VoIP). If they use these technologies, HROs should take steps to ensure they are secure, in order to minimize risks to the interviewee, including reprisals.

When monitoring in the context of migration, remote interviews are useful where physical access is inherently difficult, when the authorities do not permit access, or where access is interrupted by conflict, public health emergencies or other circumstances. Through remote interviews, it has been possible to obtain information from migrants in immigration detention, for example when HROs are not given permission to visit them in person. When they make use of information collected during remote interviews, HROs should take particular care that the migrants involved do not subsequently face repercussions. They can mitigate this risk with the help of civil society partners who have access to the migrants (see chapters on [Protection of victims, witnesses and other cooperating persons](#)  and [Engagement and partnerships with civil society](#) .

Third-country monitoring

Third-country monitoring is the practice of gathering information on a country by conducting interviews in a different country. It is frequently used when access to a country is restricted but migrants who have left it can describe their experiences. This form of monitoring can help to monitor drivers of migration as well as situations at borders and in countries of transit.

When they look for interviewees in third countries, HROs are likely to have to rely on intermediaries, both to identify migrants with information and possibly to provide logistical support. HROs need to understand the perspectives and potential biases of the intermediaries with whom they work and to set clear expectations for the intermediary's role and relationship with OHCHR. HROs also need to understand the circumstances of the migrants they interview, because they, too, may have attitudes toward the country being monitored that are not necessarily representative.

Use of new technology

Numerous new technologies, and applications of technologies, can be used to gather information relevant to migrants' rights. Some help to verify information but should always be used with caution, upholding the right to privacy and data protection, and they may require independent verification. Some technologies, particularly the collection of biometric data or the use of drones, can threaten migrants' right to privacy.

Overhead imagery has been used in Myanmar to identify Rohingya villages being burned or destroyed and to corroborate the testimonies of individuals who fled these events. It has also been used to monitor rescues at sea and, in combination with vessel location data, to identify cases of non-

assistance to migrants. Drones can be used to survey and gather information on very inaccessible areas (including “no-man’s-land”) that are otherwise too remote or too dangerous to visit. Satellite and drone imagery can identify how many tents are located in a refugee camp, the changing patterns of informal settlements, etc.

Open source monitoring and investigation encompasses publicly available information that any member of the public can observe, purchase or request without requiring special legal status or unauthorized access.¹⁰⁵ For monitoring in the context of migration, open source research can be used to obtain background information and first-hand accounts of situations; it is especially useful when face-to-face interviews are impossible or would be dangerous.

Monitoring social media may be useful when witnesses use mobile phones to disseminate audio-visual material and testimonies. Uploaded in real time by migrants and others, such material can document use of force, detentions, expulsions and acts of xenophobia and discrimination. Social media messages and public reports issued by State authorities can be sources of information (for example, when military authorities post updates on troop movements or police forces issue advice on migrant evictions).

Contact with migrants through their personal social media accounts is sometimes the best or the only means to reach them, as individuals may change phone numbers, they may lose their phones or have them stolen during their journey, or they may be unable to use them when detained.



Monitoring using satellite imagery and open source data

- Open source data and satellite imagery have been used to investigate allegations of human rights violations committed on the **high seas and sea borders**, areas which most human rights monitors cannot access. Monitors have assembled evidence on alleged violations by using satellite images and AIS (automatic identification system) data to triangulate the movements of ships and other objects and thereby corroborate and supplement public reports, images and audio-visual materials (AIS is an automatic tracking system that monitors the location of ships and aircraft).
- Organizations were able to use independent verification techniques to identify images and videos of “migrant caravans” in **Central and North America**. They demonstrated that caravan images from 2019 had been falsely circulated as images of 2020 caravans.

Forensics play a central role in the search for and identification of remains of missing or deceased migrants through genetic investigation techniques based on DNA testing and DNA databases. Because migrants’ remains are usually detected and identified in jurisdictions far from the homes of their families, HROs can play a role in ensuring that procedures can be used to manage the legal transfer and internment of bodily remains, and in other cross-border dimensions of this work.

HROs may draw on forensic reports, which can play an important role in the investigation of allegations that migrants have been tortured or have suffered other forms of violence and physical injury. Forensic techniques can reveal the nature of injuries, and the types of force and weapons used.

¹⁰⁵ OHCHR, *Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law* (New York and Geneva, United Nations and the Human Rights Center at the University of California, Berkeley, School of Law, 2022) (HR/PUB/20/2), para. 14, available at https://www.ohchr.org/sites/default/files/2022-04/OHCHR_BerkeleyProtocol.pdf.



L. ANNEXES

Annex I. Sample questionnaire for monitoring the human rights of migrants in immigration detention

This sample questionnaire may be used in any centre where individuals are deprived of their liberty, including de facto detention centres and semi-open facilities. In such facilities, the State has an enhanced duty of care. The interview questions aim to clarify processes relating to arrival, and in particular whether screening and referral systems are in place to identify individuals in vulnerable situations; whether detention is unlawful or arbitrary; and whether concerns exist related to the treatment of migrants and their conditions in detention. The questionnaire does not include questions for officials or the facility's management, nor does it include introductory remarks that HROs should make before the interview starts. In terms of structure, the questionnaire lists principal questions, followed by possible prompts. HROs should adapt the questions to the situation and institution they are monitoring.

Observation

General conditions of the facility

- How is the facility structured and organized? Are windows barred? Is barbed wire visible?
- What size are the rooms? How many people are in each room? Are the rooms lit by natural light? What is the temperature?
- Are unrelated women and men housed separately? Are families housed together?
- Are beds and blankets provided? Are they clean and appropriate for the temperature and the number of residents? Is seating provided?
- How many bathrooms and toilets are there? How many residents have to use each toilet or bathroom? Are sanitary items made available? In terms of gender, are the facilities distributed fairly and do they ensure safety? Are they in good condition? Are they clean? Do residents have access to potable water (water fountains)?
- Is clothing provided to residents? Is it appropriate for the temperature and conditions at the centre?
- Do residents have access to books, television, recreational activities and open-air spaces? Are child-friendly spaces and materials available for children?
- Are medical or first aid supplies present on site? Are they adequate and sufficient? Is a private space set aside for medical treatment and care?
- Are fire extinguishers and fire alarms located around the facility?
- Is relevant information about migrants' rights posted where migrants can see it? Is the information in a language that residents can understand?

Interview

Arrival

- **Please describe your arrival at this facility**
 - *Time and date:* Who did you speak to? Did you receive or sign any documents? Were any of your belongings removed?
 - Assistance received: Did you receive physical and mental health care? Food? Water? Blankets? Clothing? Other? Were you referred for particular vulnerabilities?

- Transfer*: Where did you come from? Who brought you? How did you travel? What information did you receive beforehand?
- Due process*: Did you have a personal interview? Did you see a lawyer and/or judge? Was an interpreter present? What information were you given? Was it in a language you speak?
 - Specialized staff (as appropriate): Did you see a specialist in child protection? Gender-based violence? Trauma?
- Ill-treatment*: Have you experienced any form of ill-treatment or abuse?

Screening, identification and referral

- **How have people responded to specific needs you have? How did they identify what your needs were and provide you help and support?**
 - Screening*: Did someone assess whether you were in a vulnerable situation? Who did the assessment? (It should not be a border official.) A doctor? Specialized staff? A multidisciplinary team? A child protection officer? What gender was the person?
 - Did the person look for non-visible signs of gender-based violence, torture, trauma, etc.? Did the assessment take place in a safe space? Were you offered specific support (for example, a case worker) during this screening? What questions were you asked?
 - Quality of assessment*: Were you assessed appropriately and accurately? Were the questions asked during assessment culturally appropriate and gender-responsive? Were you asked questions that related to gender?
 - Referral and consent*: Were you sent on to a different specialist for specific care or services? Did you give your informed consent? Was giving your consent discussed in a language you speak or in the presence of an interpreter?
 - Assistance and referral*: What assistance have you received? What specialist(s) did you see? Reference list:
 - Health: Information, medical care, psychosocial care, emergency obstetric care, sexual and reproductive health services and information; other.
 - Immediate assistance: On arrival, did you receive shelter, food, water and the toiletries that you needed?
 - Protection: Do you feel safe and protected? Have arrangements been made to ensure your safety (particularly relevant for migrants at risk)? Have you seen a specialist to discuss access to asylum, child protection, a specific visa or migration status, other legal claims?
 - Women and girls (particularly if travelling alone)*: Do you know of any women's shelters? Can you and other women and girls access women's shelters? Are specific safe spaces available to women and girls?

Conditions

- **Please describe daily life in the facility (accommodation, hygiene and leisure activities).**
 - Who is being held here? (Are they persons at particular risk?) What is the ratio of staff to migrants?
 - What restrictions are there on your freedom of movement?



- Accommodation:* Describe your beds and mattresses. How many persons sleep to a room? Do you have privacy? Are you safe? Are men, women and children in separate accommodation? Are families housed together?
- Hygiene:* Describe the toilets and washing arrangements. Do you have privacy? Do men and women have separate facilities? Are they safe, accessible and well lit at night? Are toiletries (and menstrual hygiene items for women) provided free of charge?
- Food:* Do you receive sufficient food? Is it of good quality? Is it culturally appropriate? Can you cook your own food?
- Health:* Do you have access to physical and mental health services on site? Are they free of charge? How many nurses and doctors are there? Do they provide good care?
- Work:* Are you doing any work? Describe your working conditions.
- What facilities exist for pregnant or nursing mothers and new parents?
- Are specialized staff available to provide assistance and protection? Reference list: child protection, gender-based violence, trauma, other.
- Communication:* Are you allowed to use a phone and the internet?
- Belongings:* What possessions are you allowed to keep? Are they stored safely? Do you have access to your own cash?
- Visitors:* Are you permitted to have visitors? How often? Are your meetings with them private?
- Recreation:* Can you play sport or participate in cultural, educational or other recreational activities?
- Freedom of religion and belief:* Are you allowed to practise your faith? Is a space available to do so?
- Complaints:* Can you make complaints about your situation? Can you report complaints confidentially? Can you talk to someone about your situation?
- Have you or has someone you know submitted complaints about your current situation? If you are willing to say, what was the subject of the complaint and what has been the response to it?
- Discrimination:* In your experience, are any individuals or groups in the facility treated better or worse than other people, for example on the basis of their age or gender, or on other grounds? What kinds of discrimination have you seen or experienced?

Treatment in detention

■ Please describe any situations in which [you felt] you were ill-treated.

- Who mistreated you? Reference list: an official, private security staff, staff of the facility, other personnel, a resident. What gender was the person who mistreated you?
- Could you have reported the incident? Did you? Did you obtain a remedy? Did the remedy satisfy you? What obstacles did you face in obtaining a remedy (gender, age, other)?
- After the incident, did you receive physical or psychological health care? Did the care include emergency sexual and reproductive health services, if relevant?
- Are you aware of other incidents in which people in this facility have been mistreated? Were the incidents related to gender? Have certain people been targeted because of their nationality, race or other characteristics?

Annex II. Sample questionnaire for monitoring the return and reintegration of international migrants

This sample questionnaire may be used when monitoring cases of return and reintegration. Monitoring may take place in the country from which the migrant returns, or in the country to which the migrant returns. The questions aim to clarify whether return processes are lawful, respect due process and assist reintegration and voluntary return.

Note: The questions concern a migrant who is in the process of returning. If HROs are interviewing migrants after they have returned, they should modify the questions and observational prompts accordingly.

The questionnaire does not include questions for officials, or the introductory remarks that HROs should make before the interview starts. In terms of structure, the questionnaire lists principal questions, followed by possible prompts. HROs should adapt the questions to the situation and facility they are monitoring.

Observation

Return process

- How many staff are involved in carrying out the return? What is the gender breakdown?
- How many migrants are being returned? What is the gender breakdown?
- How are those being returned, including migrants in a vulnerable situation, treated?
- Under what conditions are migrants being transferred? Are they resisting removal? Do they seem sedated? Are their hands or feet cuffed? Are staff using force?
- Who is carrying out the removal? Are private security personnel involved?
- Are those who are carrying out the removal carrying weapons? Are they using dogs or other means to threaten or intimidate those who are being removed?

Interview

Lawfulness

- **Has any official asked you about the situation you could face after you return?**
 - What position did the official hold? What questions were you asked? What gender was the official?
 - Did the official ask you questions personally, or did the official ask only your parent/guardian or partner? (All migrants should be assessed individually where possible, not just the head of household (often male) or adult.)
 - Did the official discuss with you the specific situation of women, men, girls or boys on return?



■ **How do you feel about being returned? What are your concerns?**

- Please describe your family circumstances. Are you here with family or alone? Please describe your experience as a single migrant, including if you have children. Will you be returned with your partner or as a family with children?
- Please describe your concerns. Reference list: family situation; fear of torture or ill-treatment; fear of gender-based violence or harmful practices; risks to life and the security situation; lack of livelihood; access to health care, including sexual and reproductive health services; loss of independence (returned women often experience disempowerment); loss of educational opportunities; stigma and marginalization; severe discrimination; climate- and environment-related concerns; other human rights issues.
- Have you been able to express your concerns? To whom? Where and when?
- Did the official to whom you expressed your concerns show lack of sensitivity or bias?
- Did you feel safe talking to the official? Could you talk privately and in confidence? Were you afraid to be overheard? Did the official show awareness of gender?
- Have organizations helped you or been involved in your case? What kind of support did they provide? Did they take account of your situation and views? Did they consider your age and gender?

Due process

■ **Can you describe the procedures for your return?**

■ **Did you receive a return decision and removal order?**

- Were you informed orally and in writing of the removal order? Were you informed in a language you understand? Did anyone explain the order to you? What did the order say? Does the order refer to an individual assessment and set out the reasoning for your removal in relation to the assessment?
- Do you agree with the decision?

■ **What information have you been given about return procedures and your rights?**

- Who provided the information you received? Did you receive the information in person, or via another person (the head of household, someone else)? Did you receive the information orally or as a written document? Did you receive it well in advance of your scheduled return? Was it accurate? Was it in a language you understand? Was it child- and gender-sensitive?
- Notification: Has a date and time for your return been agreed? What notice period have you been given? Will you depart and arrive during the day? What location will you return to? Have you lived in that place?
- Will family, friends or a member of your community meet you when you arrive? If not, why not?

■ **Have you been given a chance to challenge the decision regarding your return?**

- Have you been informed that you have the right to challenge the decision?
- If you are in an appeals process, did you have a chance to present your situation in a hearing?

- Did you face any particular difficulties when you challenged the decision? How did you feel when you were asked questions? Do you feel the questions were fair or biased? Did you feel your treatment was discriminatory? Was your situation as a migrant taken seriously?
- Pending claims:* Are you involved in any pending judicial proceedings, such as asylum or other claims? Will they be resolved before or after your return?
- Legal assistance:* Have you requested or been offered legal assistance? Who has offered you assistance? For what and on what terms? Have you had to pay?
- Counselling:* Have you received returns counselling? Please describe it. Did the counsellor consider your specific situation? Was the counselling gender-responsive? What conditions are linked to returns counselling? (For example, can you appeal a return decision if you receive it?)

■ **What additional concerns do you have?**

- Health:* Will you be seen by a doctor before your removal to ensure you are medically fit to travel? Have you been offered psychosocial assistance or counselling?
- Practical obstacles to return:* Do any obstacles stand in the way of your return? Reference list: lack of documents or identification; age; dependency; location of family; lack of flights and adequate transport to place of residence; financial issues; statelessness; specific medical needs (for example, as a pregnant woman); family context; other.
- Fees or charges:* Have you had to pay financial penalties or administrative fines? Did you have to pay for your return?

Voluntary departures and voluntary (assisted) returns

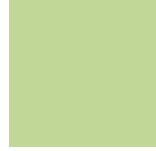
■ **Are you returning by choice? Do you want to go back? (See also the question “How do you feel about being returned?” above.)**

■ **How did you reach your decision? (Free, prior, informed consent)**

- Were you threatened in any way if you did not agree to return? Reference list: threats of violence; ill-treatment; administrative obstruction of the migrant’s claims; indefinite or arbitrary detention; detention in inadequate conditions; suspension or denial of social or economic assistance.
- What information have you been given about your options, if you refuse voluntary return?
- Who gave you this information? How long were you given to reach a decision?
- Which factors led you to make the choice you did? Do you have fears or concerns about your return? Do any concerns relate to gender?
- What are your plans when you go back? Has anyone asked you what your plans are?
- What problems or challenges might you face? Reference list: livelihood; education; debts; family/community structure; stigma or discrimination. (See also the questions on *Reintegration* below.)
- What kind of support (financial, social, medical, etc.) will you receive following your return?
- Will you live with relatives or friends? Will family and friends meet you when you arrive?

■ **If you did not agree to return, can you explain why?**

- Please describe what happened. (See also the question “How do you feel about being returned?” above.)



Reintegration

■ What are your plans after you return?

- Where exactly will you go to when you return? Home, the capital city, elsewhere? Have you ever lived in that place?
- What plans do you have for making a living? Work, study, other?
- What hopes or concerns do you have about seeing your family, friends and community? Reference list: family support, safety, expectations, dependency, stigma, shame, guilt, debt to family, smugglers, other.
- Please describe your family situation. Reference list: separated; no family; close family; migrant depends on the family; the family depends on the migrant; family is sick or impoverished; domestic violence; other.
- Will you have access to health care, including sexual and reproductive health services?
- Do you have any other worries, fears or concerns? Are you likely to experience discrimination or hostility after your return because you migrated?
- How do you think you can address these concerns?

■ What kind of help to reintegrate have you been offered? If assistance is part of a return or reintegration scheme, will you make use of it?

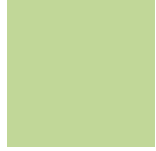
- What information have you received about potential assistance? From whom? In what form? Was it provided in a language you understand?
- Have institutions offered you assistance? Which institutions? What have you been offered?
- Will the assistance be helpful? Does it take into account your circumstances? Were you consulted about the kind of assistance you require?
- Will you receive the assistance yourself? (This question is particularly for women. Women do not always have direct control over financial assistance or benefit equally from educational opportunities. Much assistance is not appropriately gendered and is based on stereotypes, focused on support for men.)
- Will you use the assistance to make an income for you and dependants? Does the assistance take account of any security concerns you have? Will it help you address discriminatory gender stereotypes or social norms?

■ Do you plan to migrate again?

- Why? What challenges do you face? Do they relate to your age or your gender? Reference list: lack of mobility, financial dependence, stigma, domestic violence, poverty, economic opportunities, social norms and practices, other.
- What risks will you encounter if you migrate again? Are these risks increased by your gender or age, or similar factors? Are you willing to take the risks? Why?

Possible discrimination (all phases of return)

- In your experience, have any migrants or groups of migrants been treated better or worse than other people, for example on the basis of their gender, age or race, or on other grounds? What kinds of discrimination have you seen?



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MANUAL ON human rights MONITORING

This chapter forms part of the revised *Manual on Human Rights Monitoring*. Following the success of its first edition, published in 2001, the Office of the United Nations High Commissioner for Human Rights has updated and restructured the *Manual*, to provide the latest and most relevant good practices for the conduct of monitoring work by human rights officers, under the approach developed and implemented by the Office.

The revised *Manual* provides practical guidance for those involved in the specialized work of human rights monitoring, particularly in United Nations field operations. This publication comprehensively addresses all phases of the human rights monitoring cycle, setting out professional standards for the effective performance of the monitoring function. It also outlines strategies to maximize the contribution of monitoring to the protection of human rights.

While each chapter has been made available separately, linkages with other chapters are highlighted throughout. A full reading of the *Manual* is thus recommended for a comprehensive understanding of human rights monitoring.

This tool has been tailored to the everyday needs of United Nations human rights officers in the field. The methodology it sets out would, nonetheless, be of equal relevance to others tasked with human rights monitoring functions. Its wider use and application by regional organizations, national human rights institutions, non-governmental organizations, relevant governmental bodies and others is strongly encouraged.



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