

# ADDRESSING THE CHALLENGE OF MIXED MIGRATION: PROTECTION AND ASSISTANCE IN MIXED MIGRATION



# **TRAINING MANUAL FACILITATOR'S GUIDE**

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# ACRONYMS

<b>BIA</b>	Best Interests Assessment
<b>BID</b>	Best Interest Determination
<b>CRC</b>	Convention on the Rights of the Child
<b>CSOs</b>	Civil Society Organizations
<b>FLO(s)</b>	First Line Official(s)
<b>FGM</b>	Female Genital Mutilation
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>ICRC</b>	International Committee of the Red Cross
<b>NGO</b>	Non-Governmental Organization
<b>NRM</b>	National Referral Mechanism
<b>UASC</b>	Unaccompanied and Separated Children
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNCTOC</b>	United Nations Convention against Transnational Organized Crime
<b>UNICEF</b>	United Nations Children’s Fund
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNJPHT</b>	United Nations Joint Programme on Human Trafficking
<b>VoT(s)</b>	Victim(s) of Trafficking

# GLOSSARY

The working terms and definitions detailed below are presented in alphabetical order, with sources provided in footnotes. The working terms and definitions are offered for the purpose of this manual and may vary from definitions applied in other contexts.

**Asylum seeker:** A person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments.<sup>2</sup>

**Best Interests Assessment (BIA):** Part of a continuous process in which the best interests of the child is pursued continuously as the overall goal of any interventions made on behalf of a child, including an unaccompanied or separated child throughout the displacement cycle.<sup>3</sup>

**Best Interest of the Child:** The primary consideration for child care and protection, in the *Convention on the Rights of the Child* (Article 3 CRC), including the search for short and long-term solutions. It involves evaluating and achieving a balance between all the factors that must be taken into account when making a decision in a specific situation, for a particular child or group of children.

**Best Interests Determination (BID):** A formal, continuous process with procedural safeguards and documentation requirements conducted by a decision-maker to weigh and balance all relevant factors of the particular case of a child, in order to determine his or her best interests. The BID must duly take into consideration the rights and obligations recognized in the CRC and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of the child.<sup>4</sup>

**Child:** Defined by the *Convention on the Rights of the Child* as a person below 18 years old.<sup>5</sup>

**First line officials (FLOs) (also known as first line officers):** This term is used broadly to encompass immigration officials, police officers, social welfare officers, prison officials, other civil servants and civil society organization personnel who have “first contact” and follow up contact with vulnerable migrants in need of protection.<sup>6</sup>

**Gender mainstreaming:** The process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and

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<sup>2</sup>IOM, 2011, Glossary on Migration, Second Edition, International Migration Law N°25.

<sup>3</sup>UNHCR Guidelines on Formal Determination of the Best Interests of the Child, 2006. A more detailed approach to respecting the best interest of the child in large scale mixed migratory flows can be found under the UNHCR Publication, UN High Commissioner for Refugees (UNHCR), *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html>

<sup>4</sup>ibid, UNHCR 2006.

<sup>5</sup>Convention on the Right of the Child, Article 1. While the Convention makes a determination of who a child is, it is not a determination of which migrants might be eligible for assistance on the basis that vulnerability is exacerbated due to age; service providers might exercise their discretion to consider vulnerable migrants aged 18 to 21 years as children for the purposes of providing assistance.

<sup>6</sup>Government of Republic of Zambia, *Training Manual (Facilitators Guide): Protection Assistance for Vulnerable Migrants*, 2014, p.7.

societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.<sup>7</sup>

**Human Rights Based Approach (HRBA):** A human rights based approach is an approach that identifies target groups (both rights holders and their entitlements, and duty bearers and their obligations) and works towards strengthening the capacities of rights of holders to make their claims and duty-bearers to meet their obligations.<sup>8</sup>

**Irregular migration:** Movement that takes place outside the regulatory norms of the origin, transit or receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the country of origin, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfill the administrative requirements for leaving the country.<sup>9</sup> Irregular migration may also be referred to as mixed migration.

**Local integration:** A durable solution that involves permanent settlement in the country in which a person has been granted protection.<sup>10</sup> Local integration may be applied to refugees, asylum-seekers, victims of trafficking or other migrants who cannot be returned and are entitled to remain, for instance, for reasons of family unity, best interests of the child, health or the principle of *non-refoulement*. Local integration is a complex and gradual process that comprises distinct but related legal, economic, social and cultural dimensions and imposes considerable demands on both the integrating individual and the receiving society. In many cases, acquiring the nationality of the country of asylum is the culmination of this process.<sup>11</sup>

**Migrant:** IOM defines a migrant as “any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”<sup>12</sup>

**Migration:** The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, other displaced persons, migrant workers, and persons moving for other purposes, including family reunification.<sup>13</sup>

**Mixed Migration:** (also referred to as mixed flows or mixed migration flows): Complex migratory population movements that include refugees, asylum-seekers, vulnerable individuals, migrant workers and other migrants, as opposed to migratory population movements that consist entirely of one category of migrants.<sup>14</sup>

**National Referral Mechanism (NRM):** In the context of mixed migration response, National Referral Mechanisms (NRM) are the co-operative framework through which State actors fulfill their obligations to protect and promote the human rights of migrants, including refugees, asylum seekers and other vulnerable individuals, travelling in mixed flows by coordinating their efforts in a strategic partnership

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<sup>7</sup>ECOSOC agreed conclusions 1997/2. Also see Gender Mainstreaming: An Overview, UN 2002, <http://www.un.org/womenwatch/osagi/pdf/e65237.pdf>

<sup>8</sup>Office of the United Nations High Commissioner for Human Rights, *Frequently asked questions on a human rights-based approach to development cooperation*, UN, 2006, available at: <http://www.ohchr.org/documents/publications/FAQen.pdf>

<sup>9</sup> IOM, 2011, *Glossary on Migration*, Second Edition, International Migration Law N°25. Here it must be noted that according to Article 12(2) of the International Covenant on Civil and Political Rights, everyone is free to leave any country, including his own.

<sup>10</sup>Government of Republic of Zambia, *Training Manual (Facilitators Guide): Protection Assistance for Vulnerable Migrants*, 2014, footnote 5.

<sup>11</sup>For more UNHCR resources on local integration, see <http://www.unhcr.org/pages/49c3646c101.html>.

<sup>12</sup>IOM, Definition of Migrant, March 2016.

<sup>13</sup>IOM, 2011, *Glossary on Migration*, Second Edition, International Migration Law N°25.

<sup>14</sup>*Ibid.*

with civil society, with a view to referring migrants in need of protection and assistance to appropriate service providers.<sup>15</sup>

**Non-refoulement:** The principle of non-refoulement is the cornerstone of asylum and of international refugee law. This principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. The principle of *non-refoulement* prohibits States from returning refugees or asylum seekers in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. While the basis of non-refoulement is found in the *1951 Refugee Convention*, the expansion of international human rights law has broadened the scope of this obligation to require States to protect non-nationals from being returned to countries for reasons including but not limited to those in which their life is threatened or where they are at risk of being subjected to torture or inhuman and degrading treatment, there is a risk of slavery or forced labour, there is a risk of a flagrant denial of the right to fair trial, where there is substantial grounds for believing that the person faces the danger of being forced to enforced disappearance, regardless of their immigration status. The principle of *non-refoulement* also prevents States from returning an individual to a State where he or she might face a real risk of violation of the right to life by the State or non-state actors. The principle of *non-refoulement* also applies to the non-return of a child when it is in the best interest of a child to remain in the host country.<sup>16</sup>

**Potential victim of trafficking:** A person who may be at particular risk of falling victim to human trafficking.

**Presumed victim of trafficking:** Any person who may reasonably be presumed under the circumstances to be a victim of trafficking in persons.<sup>17</sup> Such circumstances include the person being in the process of being recruited, transported, transferred, harboured or received, by means of the threat or use of force, or other forms of coercion, of abduction, of fraud, deception, 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.<sup>18</sup> A presumed victim of trafficking may be intercepted before the actual exploitation occurs, and considered to be at risk of exploitation by traffickers should they reach their final destination.<sup>19</sup> It is good practice for States to introduce policies to allow authorities that suspect that a person is a victim of trafficking to act upon that presumption by treating the person as if he or she is a victim for the purposes of providing initial assistance and protection.<sup>20</sup>

**Reception Centre:** For the purposes of this training manual, a reception centre is a facility set up to provide immediate post-arrival assistance to migrants in mixed flows. Such centers focus on short-term arrangements for immediate assistance, and identifying and referring of persons with specific needs to the relevant actors towards providing individualized reception arrangements. The types of services available in such facilities may include, shelter, medical assistance, food and basic non-food items. Such centers may also provide some psychosocial support and provide information to migrants on available

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<sup>15</sup>Adapted from the definition in the following publication: *Trafficking in Human Beings: Identification of Potential and Presumed Victims - A Community Policing Approach*, SPMU Publication Series Vol. 10, (OSCE, 2012). Also see *National Referral Mechanisms, Joining efforts to protect the Rights of Trafficked Persons: A Practical Handbook*, OSCE/ODIHR, 2004.

<sup>16</sup> UNHCR Note on the Principle of Non-Refoulement, UNHCR, 1997 <http://www.refworld.org/docid/438c6d972.html> ; International Migration Law, *Information Note on The Principle of non-refoulement*, IOM, 2014. <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IML-Information-Note-on-the-Principle-of-non-refoulement.pdf>.

<sup>17</sup>IOM/Government of the Republic of Zambia, *National Policy to Combat Human Trafficking*, 2007.

<sup>18</sup>See the definition of 'trafficking in persons', in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Transnational Convention against Transnational Organized Crime, 2000 (the Trafficking in Persons Protocol).

<sup>19</sup>UNJPHT Service Providers, Manual – Training Toolkit and Minimum Standard Guidelines on Protection of Victims of Human Trafficking (2012).

<sup>20</sup>See *Policy Guide on Identifying Victims of Trafficking: An introduction for policy makers and practitioners*, Bali Process, 2015, p.3

services and options. Government authorities, non-governmental organizations and/or international organizations may manage such centers. Such facilities are recommended to be open centers.<sup>21</sup>

**Refugee:** “A person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>22</sup> The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.<sup>23</sup>

**Rejected asylum seeker:** An asylum seeker whose application for asylum was unsuccessful.

**Risk Assessment:** Process of identifying and assessing risks associated with a given situation or event.<sup>24</sup>

**Separated children:** Children, as defined in Article 1 of the *Convention on the Rights of the Child*, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.<sup>25</sup>

**Smuggling of migrants:** The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry or stay of a person into a State Party of which the person is not a national or a permanent resident.<sup>26</sup>

**Stateless person:** A person who is not considered as a national by any State under the operation of its law.<sup>27</sup>

**Stranded migrant:** The term ‘stranded migrant’ has no generally accepted definition. In practice, migrants become legally stranded where they are caught between removal from the State in which they are physically present, unable to return to their State of nationality or former residence, and refused entry by any other State. They may also be stranded where there are practical or humanitarian reasons that prevent them from returning home. Those who become stranded – including rejected asylum seekers, migrant workers, or victims of trafficking – may have entered a country irregularly, assisted by smugglers or transported at the hands of traffickers. Some are legally Stateless.<sup>28</sup>

**Trafficking in Persons** (also called human trafficking): The recruitment, transportation, transfer,

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<sup>21</sup> UNHCR, IOM, IFRC *10-Point Plan Expert Round Table No. 2: “Different People, Different Needs” (Tunis, Tunisia, 6-8 July 2009). Summary Report*, 2009 <http://www.refworld.org/docid/4ae15db72.html>

<sup>22</sup>The 1951 Convention on the Status of Refugees (and its 1967 Protocol).

<sup>23</sup>1969 Organization of African Unity Convention.

<sup>24</sup>IOM, 2011, Glossary on Migration, Second Edition, International Migration Law N°25.

<sup>25</sup>Committee on the Rights of the Child, General Comment n°6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005.

<sup>26</sup>See Article 3 and Article 6 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (the Smuggling of Migrants Protocol).

<sup>27</sup>Article 1(1) of the UN Convention Relating to the Status of Stateless Persons, 1954. This definition is now considered part of customary international law as concluded by the International Law Commission in Articles on Diplomatic Protection with commentaries, 2006, which states that the Article 1 definition can “no doubt be considered as having acquired a customary nature”. The Commentary is accessible at [http://untreaty.un.org/ilc/guide/9\\_8.htm](http://untreaty.un.org/ilc/guide/9_8.htm). For more information and guidance on the interpretation of this definition see UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 20 February 2012, HCR/GS/12/01, available at: <http://www.refworld.org/docid/4f4371b82.html>.

<sup>28</sup>See Grant, S, *The legal protection of stranded migrants*, in Ryszard Cholewinski, Euan Macdonald and Richard Perruchoud (eds.), *International Migration Law: Developing Paradigms and Key Challenges*, IOM / T.M.C. Asser Press, 2007.

harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>29</sup>

**Unaccompanied children** (also called unaccompanied minors): Children, as defined in Article 1 of the *Convention on the Rights of the Child*, who have been separated from both parents and other relatives and not being cared for by an adult who, by law or custom, is responsible for doing so.<sup>30</sup>

**Victim-centered approach:** The systematic focus on the needs, concerns and rights of a victim of migration-related crimes, to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner, and the preservation of those rights. In a victim-centered approach, the victim's wishes, safety and wellbeing take priority in all matters and procedures.<sup>31</sup>

**Victim of trafficking** (also called victim of human trafficking or victim of trafficking in persons): A person who has been the victim of the crime of trafficking in persons, as defined in the *Trafficking in Persons Protocol*.<sup>32</sup> Although there are several factors that make certain people vulnerable to human trafficking (including irregular or undocumented migrants, ethnic minorities and unaccompanied or separated children), anyone can be a victim of trafficking, regardless of their age, sex, gender, sexual orientation, nationality, ethnic or social origin, disability or circumstances.

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<sup>29</sup>Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention against Transnational Organized Crime (the Trafficking in Persons Protocol)

<sup>30</sup>Committee on the Rights of the Child, General Comment n°6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005.

<sup>31</sup>NJDCJ, Standards for Providing Services to Survivors of Sexual Assault, 1998.  
<http://www.njdcj.org/standar2.htm>.

<sup>32</sup>Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention against Transnational Organized Crime (the Trafficking in Persons Protocol)

# 1. INTRODUCTION

## 1.1 PURPOSE OF THE MANUAL

The Manual is a training tool that has been developed to support first line officials in Southern Africa to provide services that fulfill the rights and protection needs of migrants, refugees and asylum seekers in situations of mixed migration. It aims to build their capacity in sensitively interviewing, identifying, and referring migrants to appropriate service providers for assistance and protection.

In light of the different functions and tasks performed by the targeted first line officials, as well as the different systems in place to protect vulnerable individuals in mixed migration flows in the participating countries, this Manual does not aim to put forward “standard operating procedures” for the protection of vulnerable groups.

The goal of facilitators should be to effectively adapt and deliver the material provided in the manual, so that at the end of the training, participants will:

- Identify vulnerable individuals in mixed migration flows, including but not limited to refugees and asylum seekers, rejected asylum seekers, victims of trafficking, presumed trafficked persons, person at risk of being trafficked, unaccompanied or separated children, stranded migrants, stateless migrants and other vulnerable migrants, who require referral to appropriate services, in co-ordination with relevant governmental and non-governmental actors;
- Facilitate effective referrals of vulnerable migrants, refugees and asylum seekers to other service providers for protection;<sup>33</sup>

## 1.2 ADAPTING THE MANUAL

The Manual is designed to assist facilitators in the preparation and delivery of the training for groups of up to 22 participants. The expected duration of the entire training is three days, however depending on the inclusion of national inputs, as well as the number of participants, it may last up to three and a half or four days.

This Manual is a generic training manual developed for Southern African countries that are facing challenges in the context mixed migration, as countries of transit and destination. National training officers in each participating country are accordingly required to adapt the manual to the specific local context. Throughout the Manual and the accompanying PowerPoint presentations, prompts are provided for facilitators to include information on specific topics, including references to national sources of law, guidelines and national response or referral mechanisms, as well as the migratory realities specific to the country.

In view of the potentially wide range of functions and levels of expertise amongst first line officials as well as the different geographical contexts in which they may operate, it is advisable, for participants to undertake **pre and post-training questionnaires** prior to, and at the end of the training

(see Annex VI).

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<sup>33</sup>The specifics of each country’s referral mechanism are to be added by national facilitators.

This questionnaire will allow trainers to assess learning needs of participants, adapt the different activities proposed in this Manual and assess change in knowledge/skills after the training.

## PLANNING THE TRAINING

Before the training is delivered logistical arrangements will need to be confirmed. The Checklist below is offered to support infrastructural and logistical arrangements:

<b>Preparation Checklist</b>	
Circulate invitations / nominations to relevant personnel	<input type="checkbox"/>
Confirm attendance numbers	<input type="checkbox"/>
Book venue with relevant authorities	<input type="checkbox"/>
Inform delegates of date, time and place of training	<input type="checkbox"/>
Confirm catering requirements	<input type="checkbox"/>
Advise venue of preferred set-up for training (e.g. table configuration)	<input type="checkbox"/>
Advise venue of resource requirements (e.g. projector, flip-charts, paper)	<input type="checkbox"/>
Print sufficient copies of materials for distribution	<input type="checkbox"/>
Design and print certifications of completion for distribution at close of workshop	<input type="checkbox"/>
Adapt training material (manual and PowerPoint presentation) to audience and context	<input type="checkbox"/>
Ensure pre and post training questionnaires are ready	<input type="checkbox"/>

## 2. OPENING THE TRAINING

### 2.1 SESSION OUTLINE

This session aims to introduce participants to the general objectives and expected outcomes of the training. Facilitators are offered training methodologies and activities with which to set the stage for the rest of the training workshop.<sup>34</sup>

#### **Training Objectives**

- Establish an atmosphere of trust, respect and collaboration;
- Lay the ground rules to be adhered to throughout the training sessions;
- Get acquainted with one another and state expectations.

#### **Expected outcomes**

As a result of the training, first line officials will:

- Understand the purpose of the training
- Feel a sense of ownership of the training and its outcomes
- Become comfortable with the setting and become acquainted with the facilitator(s) and fellow participants.

#### **Training materials:**

- ❖ Projector
- ❖ Laptop
- ❖ Coloured Cards (1 per participant)
- ❖ Flip chart + flip chart paper
- ❖ Markers
- ❖ Blu tack / press-stick (flip chart paper to be displayed on walls)

### 2.2 LEARNING METHODOLOGY AND TRAINING FACILITATION

This Manual employs the term “facilitator” instead of the more commonly used term “trainer”. This reflects the learning methodology applied by this Manual where the facilitator assists the group of participants to identify learning needs on the basis of their profile, experience and knowledge, taking into consideration the diversity of participants, whilst appreciating the principles of adult learning. Facilitators should draw upon the local context, information and practical experience that participants have that will be relevant to the training, regardless of their varying education level or professional experience.

The facilitation goal is to create an environment that encourages free and open discussions delivered through an ethical, respectful and participatory approach. The following guidelines support ethical education practice:<sup>35</sup>

<sup>34</sup>This section has been largely adapted from the Government of The Republic of Zambia, *Training Manual (Facilitators Guide): Protection Assistance for Vulnerable Migrants*, 2014, Chapter 2.

<sup>35</sup>Section adopted from the IOM *Manual for Law Enforcement Officers and Prosecutors on the Implementation of the Zambia Anti-Human Trafficking Act (No. 11 of 2008)*, 2013, p. 4.

- **Use effective questioning techniques:** To allow participants to develop independent thoughts, avoid questions that suggest a predetermined answer;
- **Avoid open-ended questions:** A good example is asking each participant how an issue affects them, rather than asking the group “who is affected by this issue?” or “what do you think about this issue?”;
- **Record responses that require follow up during the training:** Do not ignore comments because they do not address your needs or expectations. This will allow you to redirect communication without being authoritarian or insensitive;
- **Ask for responses in ways that allow everyone to participate:** Use pairs, small groups and one-person-at-a-time interviewing techniques to maximize participation;
- **Avoid required participation:** Allow learning through listening and indicate that a response of “I pass” is acceptable when a participant wants time to think, prefers to listen, or has no response for the moment;
- **Provide thinking time in exercises:** Allow time for reflection in an exercise before taking any responses;
- **Check-in with participants:** Ask specific and direct questions to assess how the training can meet the needs of participants. This is important throughout the sessions, from questions during activities (“do you need more time?”) to checking in with the group on planned activities and outcomes (“is there anything else you hope to achieve during this three-day training?”).

#### Key Resource

The methodologies used throughout this Manual have accompanying Facilitation Tips, adapted from the *OSCE Training Guide for Anti-Trafficking Trainers*, outlined in **Annex I** to assist facilitators in maximizing the learning value of the different methodologies, and fostering confidence and communication.

Where resources permit, ideally a **team of facilitators** will be assembled from the different government departments responsible for immigration, refugees, social welfare, and at least one from IOM or UNHCR. Other national authorities or organizations responsible for assisting with protection-related issues may also be included in the team of facilitators. Such a multifunctional team provides a comprehensive overview of all relevant protection aspects in the context of mixed migration, as well as the required expertise in their specific areas of responsibility.

## 2.3 ACTIVITY: Setting the stage for training

After opening comments and the official opening of the training, facilitators should move to set the stage for the training. Remember to distribute the pre-training questionnaire.

<b>Activity A</b>	<b>Setting rules of Interaction</b>
<b>Aim</b>	To establish rules of interaction to be followed throughout the training
<b>Duration</b>	5 - 10 minutes
<b>Materials</b>	Flip chart
<b>Instructions</b>	<ul style="list-style-type: none"> <li>• The facilitator should ask participants to establish ground rules to ensure their effective participation and interaction with each other.</li> <li>• A co-facilitator (or selected participant) should clearly write these rules.</li> <li>• The rules should be displayed on the wall for the duration of the training to encourage compliance by participants.</li> </ul>
<b>Activity B</b>	<b>Sharing expectations</b>
<b>Aim</b>	To clarify and canvass expectations of participants
<b>Duration</b>	10 - 15 minutes
<b>Materials</b>	One blank card for each participant Blu-tack / adhesive / pins to display cards
<b>Instructions:</b>	<ul style="list-style-type: none"> <li>• The facilitator should <b>give a blank card to each participant and ask them to write down one expectation</b> they have regarding the training. The expectation should have some kind of relationship with each participant's field of responsibility in the context of providing assistance to migrants, refugees or asylum seekers;</li> <li>• The co-facilitator should display the expectations on the wall. These will be important at the end of the training to check whether the training has met these expectations.</li> </ul>

## 2.4 ACTIVITY: Introductions through story-telling

It is suggested to start early with interactions between participants that will introduce them to the topic at-hand while developing a basis from which to develop later sessions. The introduction of participants is a key activity that sets the tone for subsequent sessions and is therefore undertaken after expectations (Activity B) and ground rules (Activity A) are shared and agreed upon.

Story telling is an excellent training tool, which allows for relating the training to the experiences of participants, bringing to light values, beliefs and assumptions, and fostering participants' engagement.

Activity C	Introductions through story-telling
<b>Aim</b>	To bring the human element into the situations encountered when providing protection and assistance to migrants, including vulnerable migrants, refugees and asylum seekers.
<b>Duration</b>	30 - 40 minutes
<b>Resources:</b>	See <i>Annex I</i> for: Facilitation Tip 1: Facilitating the discussion Facilitation Tip 2: Asking participants questions to induce learning or commitment
<b>Instructions</b>	<ul style="list-style-type: none"> <li>• Give participants two minutes to think and make notes on a particular migrant, for example, a refugee, asylum seeker, victim of trafficking, a sick migrant a child etc. who they may have come across in their duties and who may have had a particular impact on them.</li> <li>• Invite participants to introduce themselves, not with real names but using a fictitious name of a migrant, telling his or her 'migrant story' in the first person, as if he or she is the fictitious migrant. In taking the role of the migrant, participants should set out:               <ul style="list-style-type: none"> <li>• A fictional name of a migrant</li> <li>• The origin of the fictitious migrant</li> <li>• The situation in which the fictitious migrant met the first line official</li> </ul> </li> <li>• After each person has introduced his or her fictitious migrant story, each participant is invited to provide a 'real' introduction to him or herself, by his or her actual name, position and duty station.</li> </ul>
<b>Example</b>	"My name is Mary, I come from Kenya. I met Mr. Banda three years ago at the Nakonde border. He was at passport control and noticed that I was carrying a false passport. He started asking me questions but he realized that I did not understand anything he said. Later, he came back with an interpreter. I was able to explain that I was in my fourth month of pregnancy and needed help. Then other people came and helped me."
<b>Note</b>	To 'break the ice' and encourage participation, the facilitator should kick-start the session by taking up the role of a fictitious migrant. Facilitators can also refer to a fictitious migrant's frustrating experience to avoid giving the impression that participants should portray themselves as "heroes" or only share positive experiences.
<b>Plenary session</b>	Following story-telling, the facilitator should raise questions as set out below:

QUESTIONS	POSSIBLE ANSWERS
<b>Organizing the facts mentioned in the stories</b>	
<ul style="list-style-type: none"> <li>• “What are some of the aspects of these stories that caught your attention?”</li> </ul>	<ul style="list-style-type: none"> <li>• “The people arriving at the border have rights, vulnerabilities and require protection and assistance.”</li> <li>• “There are lots of children among the vulnerable migrants in need of protection and assistance.”</li> <li>• “Sometimes they look really exhausted and frightened.”</li> </ul>
<b>Triggering personal reflection</b>	
<ul style="list-style-type: none"> <li>• “Have you had similar experiences related to the stories that you have never shared with colleagues?”</li> </ul>	<ul style="list-style-type: none"> <li>• “I feel helpless when I see the needs of these people when they arrive.”</li> <li>• “Why should entry officials carry the burden of helping these people?”</li> </ul>
<ul style="list-style-type: none"> <li>• “Did you personally identify with some of the stories?”</li> </ul>	<ul style="list-style-type: none"> <li>• “It makes me feel good to know that it is possible to help vulnerable migrants in need of protection assistance.”</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Identifying the relevance of the exercise to the training</b></li> </ul>	
<ul style="list-style-type: none"> <li>• “What is the significance of these stories for our training?”</li> </ul>	<ul style="list-style-type: none"> <li>• “It shows that entry officials can make a real difference to people’s lives.”</li> <li>• “This indicates that it is important for entry officials to work closely together with other institutions that have experience in helping people with difficulties.”</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Encouraging further interest</b></li> </ul>	
<ul style="list-style-type: none"> <li>• “What conclusions of the stories should we put on the wall as a reminder throughout the training?”</li> </ul>	<ul style="list-style-type: none"> <li>• “Vulnerable migrants, refugees and asylum seekers are human beings.”</li> <li>• “Many people may have gone through a difficult journey.”</li> </ul>

## 3. MIXED MIGRATION AND HUMAN RIGHTS

### 3.1 SESSION OUTLINE

This session provides an understanding of mixed migration as well as an overview of the international, regional and national legislative frameworks related to the rights of migrants and obligations to protect them, in particular vulnerable individuals in mixed migration flows. This session specifically highlights the need for respect and protection of international human rights norms.<sup>36</sup>

#### **Objectives**

- To define mixed migration;
- To outline the provision of key international, regional and national laws and guidelines and their application;
- To understand human rights in the context of mixed migration flows;
- To identify the categories of migrants in mixed migration flows who require protection;

#### **Training materials:**

- ❖ Projector
- ❖ Laptop
- ❖ International and regional conventions
- ❖ Colored cards
- ❖ Flip chart
- ❖ Flip chart paper
- ❖ Markers
- ❖ Blu-tack / press-sticks
- ❖ Exercise handouts

#### **Expected outcomes**

As a result of the training first line officials will:

- Understand what mixed migration is;
- Become familiar with international, regional and national law and the human rights of migrants, particularly vulnerable individuals, in mixed migration flows;

### 3.2 MIXED MIGRATION

Every year, thousands of people travel from different parts of the world towards other destinations. These movements are recognized as ‘mixed migration’, due to the diverse make-up and motives of the people who are moving. Some migrants travel through regular channels, but where such channels are not available to them, many people use irregular means to cross the borders of transit countries and into their final destination country.

There are numerous reasons why people leave their home countries. Many opt to undertake the journey due to economic and other difficulties in their home countries in search of a better future in a more prosperous country. Others are forced to leave by circumstance; refugees and asylum seekers are escaping conflict or personal persecution in their home countries. Some migrants may be unaccompanied or separated children, stateless persons, stranded migrants or even victims of trafficking, among others. These categories are not mutually exclusive; migrants may fall into several categories at once, or may change from one to another during their migration.

<sup>36</sup>Parts of this section have been derived with major additions, from the *Government of the Republic of Zambia, Training Manual (Facilitators Guide): Protection Assistance for Vulnerable Migrants, 2014*, Chapters 1 and 3.

### Note to national facilitator(s):

You will need to add national content to this session. Additionally, you may need to adjust the content of the presentation to the knowledge level and background of the participants, as a result of your learning needs assessment based on the pre-training questionnaire (Annex VI).

Mixed migration is thus understood to refer to complex migratory population movements that include refugees, asylum seekers, migrant workers and other migrants, as opposed to migratory population movements that consist entirely of one category of individuals.<sup>37</sup> The mixed population movements that cross international borders may include refugees, asylum-seekers, victims of trafficking, unaccompanied and separated children (UASC), and other persons travelling internationally, often in an irregular manner. Stranded migrants in need of protection and assistance and stateless persons may also be part of the mixed movement, as could be many other categories of migrant. In essence, mixed movements (or mixed flows) concern regular and irregular migration, where persons often move without the requisite documentation, crossing borders and arriving at their destination in an irregular manner.<sup>38</sup>

The mixed nature of these movements, consisting of different groups of migrants with differing motivations to travel and different protection needs, makes it necessary to put in place migration policies, legislation and referral mechanisms that respond to individual needs. Such mechanisms must take into consideration the human rights of all migrants, including refugees and asylum seekers, in balancing a human rights-based response to migration governance, with the exercise of State sovereignty in accordance with international human rights and humanitarian law. The fact that migrants, including refugees and asylum seekers, may have entered the country through irregular channels does not diminish the obligations of States to identify and appropriately refer migrants in need of protection and assistance.

### Note to national facilitator(s)

At this point, information should be shared on the national situation of mixed migration in the specific country where the training is delivered, or a regional perspective in the case of a regional training. Specially, information should be offered about the mixed migration flows that arrive or go through the country you are delivering the training in.

Also see **Annex I, Facilitation Tip 3: Delivering effective presentations**

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<sup>37</sup>Ibid, IOM 2011.

<sup>38</sup>IOM, Ninety-Eighth Session, Irregular Migration and Mixed Flows: IOM's Approach, MC/INF/297, 2009.

## OVERVIEW: Southern Africa

The Southern Africa region has seen a rise in such mixed movements, particularly coming from the East and Horn of Africa and the Great Lakes Region. Large mixed migratory groups, pushed by war, lack of protection, economic disparity or hope for better livelihood opportunities, have been moving south, transferring through Kenya and neighboring countries towards Southern Africa. Tanzania, Malawi, Mozambique, Zambia and Zimbabwe are a few of the countries frequently used as transit/ rest-stops, with the majority of individuals on the move aiming to reach South Africa. Recent research indicates that countries traditionally used as transit are also becoming source and destination countries for mixed and irregular migration.<sup>39</sup> Excluding other nationalities that take this route, an estimated 20,000 Ethiopian and Somali migrants make their way to Southern Africa every year. Many do not manage to reach South Africa, and almost all suffer great hardship including elements such as starvation and abandonment, physical and sexual abuses, exploitation, lengthy detentions and even death (usually by drowning when their often overcrowded boats capsize or suffocation in truck containers). When migrants “contract” smugglers to assist them to enter Southern Africa, they are often unaware of the dangers and risks involved.

For States, mixed and irregular movements raise legitimate questions concerning the sovereign prerogative and duty to regulate the entry and sojourn or stay of aliens in a country. Such movements may also give rise to actual or perceived threats to national security. The increase in individuals passing down through Southern Africa is forcing States to rethink their immigration and refugee policies as they are experiencing difficulties coping with the larger numbers passing through their borders. However, increasingly restrictive border management results in more irregular migration and makes it even more difficult for authorities to regulate migration, as it often forces the most vulnerable to seek entry through illicit or dangerous means. Trafficking and smuggling networks also thrive, as does payment of bribes, to enter territories to access protection. Much energy has been exerted into putting in place regulatory measures to punish the migrant, who often has few legal immigration alternatives, with insufficient attention placed on clamping down on the criminal elements benefiting financially from the smuggling of migrants and trafficking in persons.

## PERSONS OF CONCERN

Southern Africa currently hosts more than half a million people of concern. At the end of 2013, this included approximately 136,000 refugees, 278,000 asylum-seekers and nearly 1,700 returnees. Governments in the region are concerned about national security, trafficking, human smuggling and abuse of the asylum system, resulting in stricter border controls. National asylum systems in these countries are severely stretched and identifying people in need of international protection is difficult. While nearly all sub-regional countries are party to the 1951 Refugee Convention, its 1967 Protocol, and the 1969 OAU Convention, most have signed with reservations regarding freedom of movement and employment access. Nearly all the countries have encampment policies that restrict freedom of movement and limit possibilities for self-reliance. UNHCR supports voluntary repatriation, when conditions are conducive for return. Most governments are also reluctant to offer local integration opportunities, though South Africa and Zambia have agreed to locally integrate former Angolan refugees who meet specific criteria. This process is expected to be complete by the end of 2016. Resettlement continues to be an important and effective durable solution in the sub-region. People at risk of statelessness in the sub-region remain a concern. Botswana, Malawi, Mozambique, Zambia, and Zimbabwe have signed the 1954 Convention relating to the Status of Stateless Persons. The 1961 Convention on the Reduction of Statelessness has been signed only by Mozambique. People at risk of

<sup>39</sup>Health Vulnerabilities Study Of Mixed Migration Flows From The East And Horn Of Africa And The Great Lakes Region To Southern Africa (IOM, 2013)

statelessness are found mainly in Malawi, Mozambique, South Africa and Zimbabwe, but exact numbers are unknown. *Excerpted from: 2015 UNHCR sub-regional profile of Southern Africa*, <http://www.unhcr.org/pages/49e45abb6.html>

### 3.3 HUMAN RIGHTS

#### 3.3.1 What are Human Rights?

Human rights are rights inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or other status. All persons are equally entitled to human rights without discrimination. Human rights are interrelated, interdependent and indivisible.<sup>40</sup>

Human rights entail both rights and obligations. At the individual level, everyone is entitled to human rights, and must equally respect the human rights of others. States assume obligations and duties under international law to respect, to protect and to fulfill human rights:

1. The obligation **to respect** means that States must refrain from interfering with or curtailing the enjoyment of human rights. For example: by not interfering with one's right to practice his or her religion or belief.
2. The obligation **to protect** requires States to protect individuals and groups against human rights abuses. For example: by outlawing murder, and ensuring effective policing and prosecuting to enforce laws against murder.
3. The obligation **to fulfill** means that States must take positive action to facilitate the enjoyment of basic human rights. For example: by providing free primary education.

States are bound by their commitments to human rights treaties that they have ratified, as well as by customary international law. 'Customary international law' refers to international obligations arising from general State practice accepted as law.<sup>41</sup> For instance, the right not to be tortured and freedom from slavery, are considered part of customary law, meaning that States must still respect, protect and fulfill these rights even where they are not party to instruments explicitly recognizing those rights.

#### Note to national facilitator(s)

Outline and discuss national legislation relevant to human rights of migrants, including State constitution, legislation on immigration, refugees, combating human trafficking, equality of women, child protection, nationality and civil registration etc.

#### 3.3.3 Non-nationals and human rights

Human rights are guaranteed irrespective of a rights-holder's nationality and immigration status, with only very limited exceptions. Those exceptions are the right to vote and stand for elections that only nationals enjoy, as well as the rights to liberty of movement and freedom to choose residence within the country, which are reserved for those lawfully within the State.<sup>42</sup> In other words, human rights attach to persons on the basis of their humanity, not on the basis of their nationality of a particular State or other grounds. A person's status as an irregular migrant, 'alien' or non-national, does not

<sup>40</sup><http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (March 2014)

<sup>41</sup>See: Article 38(1) of the Statute of the International Court of Justice

<sup>42</sup>States can decide, under their sovereignty, to also grant those rights to vote and be elected to non-nationals, but are not obliged to do so.

exclude him or her from the protection of human rights law (with the very limited exceptions mentioned above).

Like nationals, non-nationals are entitled to rights that are absolute or not subject to derogation or limitation, such as the prohibition of torture and cruel, inhumane, and degrading treatment or punishment. Non-nationals enjoy political and civil rights on an equal basis with nationals (except as mentioned above, with respect to the right to vote and stand for elections, and for irregular migrants, the right to liberty of movement and freedom to choose residence). They also enjoy, on an equal basis with nationals and irrespective of the immigration status, the right to life, the right to due process of law, and the freedom of thought, conscience and religion.<sup>43</sup>

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<sup>43</sup>The *1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* indicates when social and economic rights are enjoyed by migrant workers and members of their families on an equal basis as nationals, and when certain of those rights are slightly more limited for irregular migrants (such as the right to education, or to health care).

### 3.4 ACTIVITY: Human rights and mixed migration flows

Activity D	Human rights and mixed migration flows
<b>Aim</b>	To introduce participants to a range of human rights and identify which rights are relevant to individuals in mixed flows, who might be encountered by participants in the course of their work.
<b>Duration</b>	60 minutes
<b>Materials</b>	Three cards for each of the four groups (12 cards)
<b>Instructions</b>	<ul style="list-style-type: none"> <li>• Divide participants into four groups; each group should nominate a note taker and a presenter.</li> <li>• Provide each group with three cards; on each card there will be a human right and relevant convention. (See Annex II)</li> <li>• Each group should be given 35 minutes to:               <ol style="list-style-type: none"> <li>1. Define each right using the legal definition / their own words</li> <li>2. Explain the importance of the right</li> <li>3. Outline which other rights this right may be linked to</li> <li>4. Explain who is entitled to the right, and whether non-nationals are entitled to this right</li> <li>5. Outline the responsibility of duty bearers in respect of this right</li> <li>6. Depending on the answer to Question 3, describe in one paragraph a situation where this right can be relevant in a mixed migration.</li> </ol> </li> </ul>
<b>In plenary</b>	<ul style="list-style-type: none"> <li>• In the 25-minute plenary session, each group should present a right and their input. The next group should continue with another right and so on, until all rights are presented.</li> <li>• At the end of the presentation, the facilitator or co-facilitator should place the card on one of two boards:               <ul style="list-style-type: none"> <li>• Rights that <i>are</i> relevant for individuals in mixed migration flows, and</li> </ul> </li> </ul>
<b>Resources</b>	See <b>Annex II</b> Relevant Human Rights  Also see relevant human rights treaties for reference (e.g. Compendium of International Migration Law Instruments, IOM, 2007).

### 3.5 Basic human rights as they relate to individuals in mixed migration

All human rights, including those below, must be interpreted and implemented according to key principles, being:

- **Primacy of human rights:** human rights should be at the center of all governance of mixed migration. This principle means that mixed migration governance should not adversely affect the enjoyment of human rights and dignity of migrants, should be guided by the best interests of the child regardless of the immigration status of children or their parents, and should ensure the right to due process of all migrants regardless of their status.<sup>44</sup>
- **Non-discrimination:** migrants should be protected against any form of discrimination in all governance of mixed migration. This principle means that migrants should not be discriminated against on any grounds, including race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, nationality, migration status, age, disability, statelessness, marital and family status, sexual orientation or gender identity, health status, or economic and social situation. Any differential treatment must be in lawful pursuit of a legitimate and proportionate aim.<sup>45</sup>
- **Assistance and protection from harm:** individual circumstances of all migrants at borders should be taken into consideration to ensure their effective assistance and protection. This principle means in practice that human rights obligations of States must take precedence over other objectives with respect to mixed migration governance; including by ensuring that any measures taken to address mixed migration flows must be in accordance with human rights, the principle of *non-refoulement* and the prohibition of arbitrary and collective expulsions.<sup>46</sup>

The following list of rights is not exhaustive but it aims to demonstrate the particular significance of different human rights to individuals in mixed migration flows and their relationship to each other.

#### ***The right to life***

The right to life states that “Every human being has an inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>47</sup>

In the context of mixed migration, Article 6 means that unreasonable force should not be used to prevent the entry of non-nationals into a State, or in carrying out expulsion or deportation orders. Authorities must also endeavour to save those whose lives may be in danger in seeking to enter the State; this includes refraining from abandoning them in harsh terrain or weather conditions, or sending them to a place where their lives may be in danger, including their home country.

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<sup>44</sup>OHCHR *Principles and Guidelines on Human Rights at International Borders*, (OHCHR, 2015), Recommended Principle A, pp.7-8.

<sup>45</sup>Ibid, pp.8-9.

<sup>46</sup>Ibid, p.9.

<sup>47</sup>Article 6(1), ICCPR.

In contexts where migrants are travelling by sea, it also means carrying out rescues to relieve imminent danger to lives and safety as a first priority.<sup>48</sup>

This right links to the *right to seek asylum*, stipulated in Article 14 of the UDHR, and the principle of *non-refoulement*.<sup>49</sup> IOM defines *non-refoulement* as the “[p]rinciple of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened.”<sup>50</sup> While the basis of *non-refoulement* is found in the 1951 Refugee Convention, the expansion of international human rights law has broadened the scope of this obligation and now requires States to protect non-nationals from being returned to countries in which their life is threatened or where they risk being subjected to torture or inhumane and degrading treatments, regardless of their immigration status.<sup>51</sup>

### ***Prohibition against torture and cruel, inhuman or degrading treatment or punishment***

The prohibition against torture and cruel, inhuman or degrading treatment or punishment is part of customary law and is absolutely non-derogable.<sup>52</sup> The aim of this prohibition, contained in Article 7 of the ICCPR and the Convention against Torture (CAT) is to protect the dignity as well as the physical and mental integrity of the individual.<sup>53</sup>

This right has significant bearing on mixed migration and approaches to it. It means ensuring that migrants who have been subject to such treatment en route (for instance, at the hands of traffickers or smugglers to extort more money from migrants and their families) are appropriately identified and removed from those situations. It also means ensuring that migrants are not subject to torture in their home countries, in accordance with the principle of *non-refoulement*, discussed above.

Not only are first line officials and others obliged to ensure that migrants, refugees or asylum seekers are not subject to torture, cruel and inhumane treatment at the hands of other State or non-State actors, but they also must ensure that they do not subject them to such treatment. Particularly in the context of administrative detention, detention should be a measure of last resort only used in exceptional circumstances, with reasons for detention clearly defined in law, of limited scope and duration, necessary and proportionate and any reasons for detention should be explained to migrants. Children should not be detained.<sup>54</sup> Conditions for any detention that does take place should adhere to international standards on conditions of confinement and never amount to torture, cruel, inhuman or degrading treatment or punishment.<sup>55</sup>

Where return processes of irregular migrants and rejected asylum seekers are carried out (only in accordance with the principle of *non-refoulement*), they must be carried out with full respect for the inherent dignity of returnees, taking into account, *inter alia*, their age, sex, state of health and

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<sup>48</sup>See for instance, Article 16 and Article 19 of the Smuggling of Migrants Protocol; Article 98 of the United Nations Convention on the Law of the Sea (UNCLOS); and the International Convention on Maritime Search and Rescue (SAR). Also see OHCHR *Principles and Guidelines on Human Rights at International Borders*, (OHCHR, 2015), Guideline 4.

<sup>49</sup>Further information on the protection of asylum seekers and refugees is provided below in section 4.2 and 5.5.1.

<sup>50</sup>International Migration Law, *Information Note on The principle of non-refoulement*, IOM, 2014,

<https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IML-Information-Note-on-the-Principle-of-non-refoulement.pdf>.

<sup>51</sup>*Ibid.*

<sup>52</sup>Article 3, Convention against Torture (CAT), 1984; Article 7, International Covenant on Civil and Political Rights (ICCPR), 1966). Also see UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, paragraph 3.

<sup>53</sup>UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, paragraph 2.

<sup>54</sup>See International Migration Law, *Information Note on The Protection of Unaccompanied Migrant Children*, January 2011, pp.4-5, referring to U.N. G.A., Human Rights Council, 13th Sess., Report of the Working Group on Arbitrary Detention, Chairperson-Rapporteur: El Hadji Malick Sow, U.N. Doc. A/HRC/13/30 (Jan. 15, 2010) at pp. 24-25, paragraphs 58-61. See also the Working Group’s earlier Deliberation No. 5 on the situation regarding immigrants and asylum seekers (U.N. Doc. E/CN.4/2000/4, Annex II (Dec. 28, 1999) at pp. 29-30). Also see

<sup>55</sup>OHCHR *Principles and Guidelines on Human Rights at International Borders*, (OHCHR, 2015), Guideline 8.

disabilities. Any force used during expulsion should be kept to an absolute minimum, in accordance with the right to life mentioned above.<sup>56</sup>

### ***Freedom from slavery, forced labour or service, and other forms of exploitation***

The prohibition of slavery is considered part of customary law, and is absolute and non-derogable.<sup>57</sup> Slavery was first defined in the 1926 *Slavery Convention to Suppress the Slave Trade and Slavery* as “the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.”<sup>58</sup> Forced labour or service is defined by the 1930 *International Labour Organization (ILO) Forced Labour Convention* as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself / herself voluntarily.”<sup>59</sup> Slavery and forced labour may occur in their own right, but are also among the many forms of exploitation that may occur in the context of trafficking in persons.<sup>60</sup>

In the context of mixed migration, first line officials must be aware that they may encounter victims of crime, including presumed victims of trafficking in the course of their work. Failure to identify victims of trafficking in persons or other serious crimes is likely to result in further rights abuse, meaning that States are therefore under an obligation to ensure that their identification can and does take place.<sup>61</sup>

### ***Right to equality before the courts and tribunals, and to a fair trial***

Article 14 of the ICCPR upholds the right of all persons - including individuals in mixed migration - to equality before courts and tribunals. Among other things, this right means that everyone is entitled to be heard by a competent, independent and impartial tribunal; the right to a fair and public hearing; the right to be heard within a reasonable time; to the presumption of innocence; the right to counsel; access to an interpreter; age-commensurate treatments and procedures.

In practical terms, this means that any decision with respect to return or removal of an individual within a mixed migration must only be carried out in accordance with due procedural guarantees. Arbitrary or collective expulsions violate the principle of *non-refoulement* and contravene the individual’s right to access justice and have his or her individual circumstances considered.<sup>62</sup>

### ***Right to health***

The right to health is contained in the 1966 *International Covenant on Economic, Social and Cultural Rights*, Article 12 of which recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>63</sup> Everyone has the right to health, regardless of their nationality, immigration or other status, meaning that States must refrain from denying equal access to health.<sup>64</sup>

In the context of mixed migration, the right to health means that States have obligations to ensure that migrants within the jurisdiction of the State can access health care. Particularly where migrants are

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<sup>56</sup>Ibid, Guideline 9.

<sup>57</sup>ICCPR, Article 8.

<sup>58</sup>*Convention to Suppress the Slave Trade and Slavery*, 60 League of Nations Treaty Series 253, 25 September 1926, entered into force 9 March 1927 (Slavery Convention).

<sup>59</sup>The International Labour Organization (ILO) definition of forced labour was reaffirmed in 2014 with the adoption of a Protocol to the Forced Labour Convention. International Labour Conference, *Text of the Protocol to the Forced Labour Convention*, 1930, Provisional Record 9A, 103rd Session, Geneva, 2014, Art. 1(3).

<sup>60</sup>See the glossary for a full definition of trafficking in persons, including the forms of exploitation that are included in the definition.

<sup>61</sup>OHCHR, *Principles and Guidelines on Human Rights and Human Trafficking*, (OHCHR, 2015), Guideline 2.

<sup>62</sup>OHCHR *Principles and Guidelines on Human Rights at International Borders*, (OHCHR, 2015), Guideline 9.

<sup>63</sup>Article 12, ICESCR. Several other instruments contain the right to health, including the 1981 African Charter on Human and Peoples’ Rights.

<sup>64</sup>CESCR General Comment No. 14: the right to the highest attainable standard of health (art. 12), 2000, adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4), paragraph 34.

detained (as a measure of last resort) conditions of detention must be such as not to violate the rights of detained persons, including their right to health. Sufficient provisions of health services, hygienic conditions, as well as adequate safety and security are essential towards protecting the right to health of all migrants in detention.<sup>65</sup> In the context of returning migrants to countries of origin (in accordance with the principle of *non-refoulement*), the right to health means that a person with life-threatening medical conditions cannot be returned to a place where his or her death would be expedited because he or she cannot continue with life-saving treatment.<sup>66</sup> Such action would not only jeopardize the individual's right to health but also his or her right to life and right to be free from inhumane treatment.

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<sup>65</sup> International Migration Law, *Migration and the Rights to Health: A review of International Law*, No 19, 2009, p.20, available at: [http://publications.iom.int/bookstore/free/IML\\_19.pdf](http://publications.iom.int/bookstore/free/IML_19.pdf)

<sup>66</sup>*Ibid.*

## 4. VULNERABLE INDIVIDUALS IN MIXED MIGRATION

### 4.1 SESSION OUTLINE

All individuals travelling in an irregular fashion are exposed to hardship and danger. However, some categories of individuals are of special concern as they are particularly vulnerable. This session introduces participants to some of the different categories of vulnerable individuals in mixed migration flows.<sup>67</sup>

Many of these categories are complex to identify and require specialized determination processes. **The key role of front line officials is to provide immediate protection and assistance to migrants they think are in vulnerable situations, and refer them to appropriate authorities for further screening and support.**

The categories covered below include a wide range of vulnerable individuals within mixed migration flows. First line officials need to be aware they also may encounter vulnerable individuals who do not fall under those categories but who need assistance, including elderly migrants, migrants with disabilities or serious health conditions, pregnant women, migrants in need of family unity, and others.

#### *Training materials*

- ❖ *Projector*
- ❖ *Laptop*
- ❖ *Videos*
  - *'Displacement in Africa' (UNHCR)*
  - *'Affected for Life' (UNODC)*
- ❖ *International and regional conventions*
- ❖ *Coloured cards*
- ❖ *Flip chart*
- ❖ *Flip chart paper*
- ❖ *Markers*

#### **Objectives**

- To familiarize first line officials with categories of vulnerable migrants in mixed migration flows.

#### **Expected outcomes**

As a result of the training, first line officials will:

- Understand the different categories of migrants and vulnerable individuals in mixed migration flows and State obligations regarding their protection, including:
  - Refugees and asylum seekers
  - Victims of trafficking in persons and smuggled migrants
  - Unaccompanied and separated minors
  - Stranded migrants
  - Stateless persons
- Understand that their role is to refer vulnerable migrants to appropriate authorities for formal identification, not carry out formal identification processes themselves.

<sup>67</sup>Some parts of this section have been derived, with major additions, from the *Government of the Republic of Zambia, Training Manual (Facilitators Guide): Protection Assistance for Vulnerable Migrants, 2014*, Chapter 3.

## 4.2 REFUGEES AND ASYLUM SEEKERS

### Note to national facilitator(s): Movie - 'Forced Displacement in Africa' (UNHCR):

In order to introduce the participants to the subject, the group will watch a film called "Displacement in Africa" (produced by UNHCR). The movie is 12 minutes long.

Facilitators should watch and become familiar with the movie ahead of the training.

The movie includes a short reference to Internally Displaced Persons (IDPs). Facilitators should explain that IDPs are beyond the scope of this training.<sup>68</sup>

### 4.2.1 Refugees

#### 4.2.1.1 International definitions

According to the United Nations 1951 Convention relating to the Status of Refugees, a refugee is:

"A person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."<sup>69</sup>

#### 4.2.1.2 Regional Definition (The 1969 Organization for African Union Convention Governing the Specific Aspects of Refugee Problems in Africa)

The OAU Convention in addition to the definitions provided by the 1951 Convention, added on to the refugee definition;

"the term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality, is compelled to leave his [or her] place of habitual residence in order to seek refuge in another place outside his [or her] country of origin or nationality."<sup>70</sup>

<sup>68</sup>Internally Displaced Persons (IDPs) are "persons or groups 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." (Guiding Principles on Internal Displacement (U.N. Doc. E/CN.4/1998/53/Add2(1998) Available in 40+ languages at [www.brookings.edu/projects/idp/gp\\_page.aspx](http://www.brookings.edu/projects/idp/gp_page.aspx))

<sup>69</sup>The 1951 United Nations Convention Relating to the Status of Refugees. Art 1 (2)

<sup>70</sup>The 1969 Organization for African Union Convention Governing the Specific Aspects of Refugee Problems in Africa Art 1 (2)

#### 4.2.1.3. Key elements to consider in the International Refugee Definition

The main elements in the refugee definition are:

- a) Being outside of one's country of nationality/former habitual residence;
- b) Well-founded fear;
- c) Persecution;
- d) Reasons of race, religion, nationality, membership of a particular social group or political opinion;
- e) Unable or unwilling to avail of one's own country's protection or to return there.

(A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.

UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html> [accessed 26 January 2016])

#### a. **Being outside the country of nationality/former habitual residence**

Persons cannot be refugees if they are still within the territory of their home country. This does not, however, mean that the fear of persecution must have arisen because of events that took place while the person was still in that country. The Convention definition centers on the individual's unwillingness or inability to return because of a well-founded fear of persecution. A person may therefore become a refugee after moving abroad, if subsequent changes in the political situation of the country of nationality/ former habitual residence or in their personal circumstances create a risk of persecution on return. Such individuals are often referred to as "sur place refugees".

#### b. **Well-founded fear**

The persons concerned must have a good reason for fearing return to their home country. Subjective elements (the person's fear) and objective elements (external evidence justifying this fear) are needed to establish that the fear is well-founded. Generally, the former is deduced by examining an individual's statements and behaviour. The latter requires an assessment of the conditions in the country of nationality/former habitual residence. Persecution will often be at the hands of government officials or others under government control. There are also situations in which the persecutors are "non-State agents", such as paramilitary organizations or individuals who are not answerable to the authorities. In such cases, a fear of persecution will be well-founded if authorities are unable or unwilling to provide effective protection.

c. **Persecution**

The concept of persecution is not defined in the 1951 Refugee Convention, but it is understood to comprise serious human rights abuses or other serious harm often, but not always, perpetrated in a systematic or repetitive way. Physical assault, torture, arbitrary detention, and restrictions on political or religious activities that are not in accordance with human rights obligations may constitute persecution. In some cases, there is no individual measure that amounts to persecution, but the sum of all the adverse factors, when considered together, constitute sufficiently serious harm to establish *cumulative grounds for fear of persecution*.

d. **Reasons of race, religion, nationality, membership of a particular social group or political opinion**

To be a refugee, a person must have a well-founded fear of persecution on account of the reasons mentioned above. In reality, these often overlap. They can also be imputed to the individual by the persecutor.

- **Race** is understood to cover all ethnic groupings (often referred to as “races”).
- **Religion** comprises any belief system held by an individual. The right to freedom of religion under human rights instruments includes the freedom to change one’s religion and to manifest it in public or private, whether through teaching, practice, worship or observance. It includes the right not to have any religion.
- **Nationality** is not confined only to citizenship but refers also to membership of any ethnic, religious, cultural or linguistic community.
- **A particular social group** is a group of persons who either share a common characteristic, other than the risk of persecution, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience, or the exercise of fundamental rights. In certain circumstances, for example, women have been considered a particular social group.
- **Political opinion** covers the holding or expression of views on any matter regarding the State, government or public policy.<sup>13</sup>

4.2.1.4 *Expansion of the refugee definition by the OAU Convention*

The added grounds to the definition of who is a refugee under the 1969 OAU convention mean that people compelled to leave their country also because of: external aggression, occupation, foreign domination, or “events seriously disturbing public order.” The OAU definition also recognizes non-state groups as perpetrators of persecution and does not demand that a refugee show a direct link between the individual and the future danger.<sup>71</sup> Instead, it is enough that the refugee considers the harm sufficient to force him or her to abandon his or her home.<sup>72</sup>

<sup>71</sup> University of Minnesota, *Study Guide The Rights of Refugees*, available at: <http://www1.umn.edu/humanrts/edumat/studyguides/refugees.htm>

<sup>72</sup>Ibid.

## 4.2.2 Asylum seeker

Asylum-seekers are persons who have sought international protection and whose claim for refugee status, either as an individual or as a group, has not yet been determined.

It could also refer to someone who has not yet submitted an application for asylum or someone who is waiting for an answer.”<sup>73</sup>

The right to seek and to enjoy asylum is enshrined in Article 14 of the *Universal Declaration of Human Rights*. The 1951 Refugee Convention establishes key principles that are also applicable to asylum-seekers, such as non-penalization for illegal entry [Article 31 (1) and *non-refoulement* (Article 33)], on the basis of which asylum-seekers must not be turned away at the border.

Before being recognized officially as a refugee, every refugee is an asylum seeker.<sup>74</sup> Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker. As asylum seekers may be refugees, it is an established principle of international refugee law that they should not be returned or expelled pending determination of their status.<sup>75</sup> Thus, any individual claiming refugee protection must be allowed admission to territory and to be entered into a formal system whereby the State makes a determination based on refugee law, as to whether he or she is indeed a refugee or not.

The Refugee Status Determination (RSD) process is an important element of any State’s immigration system, as it is the only way a State can effectively meet its obligations under the 1951 Convention, 1967 Protocol, and the 1969 OAU Convention. An individual remains an asylum seeker and a person in need of international protection even on appeal from a negative decision at first instance.

### 4.2.2.1 Responsibility for the protection of Asylum seekers

States bear primary responsibility for the protection of asylum-seekers, not least in view of their obligation to prevent *refoulement*. While reception arrangements and standards of treatment for asylum seekers, including adequate accommodation, food and medical care, will vary from country to country depending on national legislation and resources available, there are minimum standards set up by the UNHCR’s Executive Committee.<sup>76</sup>

In designing reception and accommodation arrangements, consideration is required of the specific needs of women and children, including unaccompanied or separated children, as well as older or disabled asylum-seekers, all of whom may have lost their traditional support networks. The detention of asylum seekers is, in UNHCR’s view, inherently undesirable. It should not be used as a deterrent. Where exceptionally necessary, such a measure should be proportionate to its objectives, of the shortest possible duration, and should take place in appropriate conditions.

Individual registration and the provision of identity documents are important protection tools for asylum-seekers for ensuring a basic form of legal status, as well as access to essential services and

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<sup>73</sup>UNHCR, *Refugee Protection: A Guide to International Refugee Law* (UNHCR, 2001), available at: <http://www.unhcr.org/3d4aba564.html>

<sup>74</sup>It is important to understand that the process of determining status is understood to be “merely declaratory”. In other words, one either is or is not a refugee by nature of the harm experienced or feared. The RSD process is merely the structure through which it is declared whether someone is in fact a refugee or not. As a matter of International law, a person is a refugee as soon as the criteria contained in the definition are fulfilled.

<sup>75</sup>UNHCR, Self-Study Module on Refugee Status Determination.

<sup>76</sup>ExCom Conclusion No. 93(LIII) - 2002

freedom of movement, pending the outcome of their asylum application. At the same time, early registration will support the identification of persons with particular protection concerns.

#### **4.2.3 Rejected asylum seekers**

An asylum-seeker whose application for asylum has been unsuccessful and has been determined not to be a refugee is a rejected asylum seeker. Rejected asylum seekers are entitled to international protection as they await return. No asylum seeker should be returned to his or her country of origin until all appeals and administrative reviews of his or her case are completed. To do so prior to the completion of the process is tantamount to *refoulement*

#### **Note to national facilitator(s):**

As this section is generic, you are advised to amend it to the procedures used in your country.

When an asylum seeker's claim for asylum has been unsuccessful, the official entity in charge of refugee status determination writes to the individual informing him/her that his/her claim has been rejected. The reasons for rejecting the individual's claim should be well articulated, based on established facts, and allow for response on appeal. Following a denial, the applicant is advised to contact the relevant authorities for appeal or exit formalities. Instructions not only on appeal but also on exit procedures must be clearly stated by the relevant agency that has the duty of ensuring that the rejected asylum seeker is aware of the exit procedure, time frame for departure, and penalties for failure to comply. Should the rejected asylum seeker comply with the advice to report before immigration authorities, he or she is usually given notice to leave the country within a certain period of time.

In some countries, the immigration authorities can temporarily regularize the unsuccessful asylum seeker's status in the country until exit formalities or other actions are taken. In other countries, an individual remains in protected status until all possible appeal avenues are exhausted. In many cases rejected asylum seekers do not present themselves before the immigration authorities for exit procedures, sometimes because they have not been properly advised that their case has been denied. As a result, they may fall into the category of irregular migrants. States may regularize some migrants allowing them to remain in the country on a temporary or permanent basis and be integrated into society accordingly. Others may be returned. Any returns or removals carried out must be rights-based, and carried out in accordance with international law and with due procedural guarantees. Voluntary return should be promoted over forced return, including by providing information about voluntary return processes to rejected asylum seekers in accessible formats and languages they can understand, and ensuring that any consent given to voluntary return processes is free of any coercion. Where Assisted Voluntary Return programs exist, it is possible to include rejected asylum seekers and hence improve their return (and reintegration) conditions back to their country of origin. Any forced returns or removals that are carried out, also must be carried out in accordance with international law including by ensuring due process, and without compromising the dignity or safety of the person being returned.<sup>77</sup>

#### **4.2.4. The principle of non-refoulement**

The principle of *non-refoulement* prohibits States from returning an individual in any manner whatsoever to a country or territory in which their lives, physical integrity or freedom may be threatened or in which they risk being submitted to torture or inhumane and degrading treatment or punishment (at the hands of State or non-State actors). The principle of *non-refoulement* is the

<sup>77</sup>OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (UN, 2015), Guideline 9

cornerstone of asylum and of international refugee law. The principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is returned to persecution or danger.<sup>78</sup>

The principle applies to all persons, irrespective of their migration or other status. The principle also prevents ‘indirect’ or ‘chain’ *refoulement*, where States return a person to a State that in turn expels him or her to a third State where human rights may be violated. The principle of *non-refoulement* applies extraterritorially; meaning anywhere State authorities exercise effective control over the migrant (e.g. where a person is taken on board a State vessel at sea).<sup>79</sup>

An early statement of the principle is contained in Article 33(1) of the 1951 *Refugees Convention*, which states that

“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.”

While the basis of the principles is found in the 1951 *Refugees Convention*, international human rights law has expanded to broaden the scope of this obligation, to now require States to protect non-nationals from being returned to countries in which their life is threatened or where they risk being subject to torture or inhuman and degrading treatment, irrespective of their immigration status.<sup>80</sup> The principle of *non-refoulement* is also captured in Article 3 of the Convention against Torture, Article 22 of the American Convention on Human Rights, Article 16 of the International Convention for Protection of All Persons from Enforced Disappearances, and Article 19 of the Charter of Fundamental Rights of the European Union. The principle is also derived from other instruments including the European Convention for the Protection of Human Rights and Fundamental Freedoms; the African Charter on Human and Peoples’ Rights; the Convention on the Rights of the Child; the International Covenant on Civil and Political Rights; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of the Families.

These international and regional human rights instruments protect migrants who would face violation of a variety of human rights if they were to be returned, including the prohibition of torture and cruel, inhuman or degrading treatment or punishment,<sup>81</sup> and the right to life.<sup>82</sup> Other rights may also lead to application of the principle, including the right not to be submitted to slavery and forced labour, the prohibition on forced disappearances, the prohibition on underage recruitment for military purpose and the right to a fair trial.<sup>83</sup>

The fact that the principle of *non-refoulement* is contained in so many international and regional instruments and the high number of States parties to them has resulted in general recognition of the principle of *non-refoulement* as a cornerstone of refugee and human rights law, and its acceptance as

<sup>78</sup>UN High Commissioner for Refugees (UNHCR), *UNHCR Note on the Principle of Non-Refoulement*, November 1997, available at: <http://www.refworld.org/docid/438c6d972.html>

<sup>79</sup>See general principles of *non-refoulement*, International Migration Law, *Information Note on the principle of non-refoulement*, IOM, 2014, pp. 5-8, <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IML-Information-Note-on-the-Principle-of-non-refoulement.pdf>.

<sup>80</sup>Also see glossary.

<sup>81</sup>This may include extended time awaiting execution after a death sentence; indiscriminate violence in the country of return; death sentence imposed as a consequence of an unfair trial; multiple rapes; harmful practices such as female genital mutilation; inhuman and degrading conditions of detention; living conditions contrary to human dignity in cases in which the person is unable to cater for his or her basic needs; in exceptional circumstances, expulsion to face death as a result of a serious illness.

<sup>82</sup>This may include the death sentence; extrajudicial killings; indiscriminate violence; and threats to life by non-State actors.

<sup>83</sup>International Migration Law, *Information Note on the principle of non-refoulement*, IOM, 2014.

<https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IML-Information-Note-on-the-Principle-of-non-refoulement.pdf>.

a norm of customary international law, according to which the obligation of *non-refoulement* extends to all States in the international community. Furthermore, many scholars argue that the principle can be considered a norm of '*jus cogens*' being a norm from which no derogation or exception is permitted.<sup>84</sup>

The 1951 *Refugees Convention* provides for some exceptions to the principle of *non-refoulement*, namely when the refugee represents a danger to the security of the country or has been convicted of a particularly serious crime. However, the Human Rights Committee has stated that the principle is absolute and should not be balanced with national security considerations. Accordingly, *non-refoulement* is an absolute principle such that even if a person is determined to pose a security risk, he or she cannot be returned where there is a real risk of serious human rights violations.<sup>85</sup>

**Key Resource:**

For more on the principle of *non-refoulement*, see

UN High Commissioner for Refugees (UNHCR), *UNHCR Note on the Principle of Non-Refoulement*, November 1997, available at: <http://www.refworld.org/docid/438c6d972.html>

International Migration Law, *Information Note on the principle of non-refoulement*, IOM, 2014, <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IML-Information-Note-on-the-Principle-of-non-refoulement.pdf>

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<sup>84</sup>Ibid, p.3.

<sup>85</sup>Article 33(2) of the 1951 Refugees Convention. International Migration Law, *Information Note on the principle of non-refoulement*, IOM, 2014, pp.4-5, <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IML-Information-Note-on-the-Principle-of-non-refoulement.pdf>.

### 4.3 Victims of Human Trafficking

#### Note to national facilitator(s): Movie - 'Affected for Life' (UNODC)

The group will watch a 22-minute-long training film called "Affected for Life" created by the United Nations Office on Drugs and Crime (UNODC) to raise awareness of human trafficking and illustrate the elements and different forms of trafficking for practitioners.

National facilitators should view and become familiar with the movie ahead of the training.

After watching the film, 10 minutes should be allowed for discussion. Facilitator(s) should invite participants to share their views and feelings following the screening as well as establish what facts on human trafficking were gathered; those can be written down on a flip chart by the co-facilitator. The following questions can be used to guide discussion:

- 1) What do you understand human trafficking to be?
- 2) What facts do we now know about trafficking?
- 3) In your work, have you come across victims of trafficking? What were their circumstances?

TIP is a highly lucrative business to organised criminal syndicates with profits of up to 32 billion USD a year.<sup>86</sup> This makes it the third most profitable international criminal activity, only surpassed by the drug trafficking and firearms trades. The International Labour Organization (ILO) estimates that there are 21 million people in the world today living under one or another form of slavery.<sup>87</sup> UNICEF estimates that more than one million children are trafficked each year.<sup>88</sup> An often-quoted estimate by the US Department of State puts the number of people trafficked every year between 600,000 and 800,000.<sup>89</sup> Based on ILO's figures, it is now widely believed that, globally, the majority of victims are trafficked into forced labour.<sup>90</sup> Much media and academic attention has however been devoted to sex trafficking which 'comprises a significant portion of overall human trafficking.'<sup>91</sup> Human trafficking is defined in international law in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol). This Protocol supplements the United Nations Convention against Transnational Organized Crime (TOC), 2000. Article 3 of the Protocol defines trafficking as:

*"Trafficking in persons shall mean recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

<sup>86</sup>[http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_181961/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang--en/index.htm)

<sup>87</sup>p 4

<sup>88</sup>UNICEF The State of the World's Children: Excluded and Invisible (2006) p50

<sup>89</sup>US Department of State Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report (2005)

<http://www.state.gov/g/tip/rls/tiprpt/2005/46606.htm>

<sup>90</sup>Belser Forced Labour and Human Trafficking p4

<sup>91</sup>US Department of State Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report: Major Forms of Trafficking in Persons (2009) <http://www.state.gov/g/tip/rls/tiprpt/2009/123126.htm>

ACT	+ MEANS	+ PURPOSE (exploitation)
<b>= HUMAN TRAFFICKING</b>		
<p><i>(What is done)</i></p> <p><b>The Act of:</b></p> <p>Recruitment Or</p> <p>Transportation Or</p> <p>Transfer Or</p> <p>Harbouring Or</p> <p>Receipt of persons</p>	<p><i>(How it is done)</i></p> <p><b>By means of:</b></p> <p>Threat Or</p> <p>Use of force of other forms of coercion Or</p> <p>Abduction Or</p> <p>Fraud Or</p> <p>Deception Or</p> <p>Abuse of power or of a position of vulnerability Or</p> <p>Giving or receiving of payments or benefits to achieve the consent of a person.</p>	<p><i>(Why it is done)</i></p> <p><b>For the purpose of</b></p> <p><b>Exploitation, including:</b></p> <p>Prostitution of others and other forms of sexual exploitation Or</p> <p>Forced labour or services Or</p> <p>Slavery or practices similar to slavery Or</p> <p>Servitude Or</p> <p>Removal of organs.</p>
<b>So long as one condition from each category is met, the result is trafficking.</b>		
Any combination of any element from each category results in trafficking in persons. Where the victim is a child, the 'means' element need not be proven.		

**Act:** The act of trafficking a person refers to the measures employed by traffickers (i.e. what is done) to introduce or maintain a victim in the trafficking scenario. The acts – as detailed in the Protocol above – are not criminal per se in isolation. These acts become illegal when coupled with two additional elements: 1) indication that the act was committed without the consent or through the vitiated consent (implying the absence of a fully informed and freely given consent) of the victim and 2) indication that the intent of the conduct was exploitation.

**Means:** The means (i.e. how) used to traffic a person refers to the manner in which a trafficker introduces or maintains an individual in the trafficking scenario. Means employed by traffickers can include fraud, deception and the abuse of power or of a position of vulnerability and can occur with or without the use of any overt (physical) force. The “use of power or of a position of vulnerability”

contained in Article 3 of the Protocol “is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the exploitation involved.” This is to acknowledge that many trafficked persons are under the influence of someone to whom they are vulnerable, for example, a person holding a position of official authority or a parent or spouse.

**Purpose (exploitation):** The purpose of TIP is ultimately exploitation. The definition of trafficking in the Palermo Protocol includes the following forms of exploitation: prostitution of others; sexual exploitation; forced labour; slavery or similar practices; servitude and removal of organs. According to the Protocol, exploitation covers the forms of exploitation that shall be included “at a minimum.” This means that the list provided in Article 3 is non-exhaustive. Individual states may include other forms of exploitation in their domestic criminal law, depending on national experiences with different forms of trafficking. “Exploitation of prostitution of others” and “sexual exploitation” are not defined in the Palermo Protocol or elsewhere in international law. They were intentionally left undefined so as to allow all States to ratify the Palermo Protocol, irrespective of their domestic laws relating to the legality or illegality of prostitution.

**Consent as a defense:** Trafficking per se cannot involve consent. In addition, the presence of consent of the victim at one stage of the process cannot be taken as consent at all stages of the process. This means that if a person consented to work abroad or to enter a country illegally, but did not consent to exploitation, an offence has been committed. In the case of children, consent is irrelevant because a child cannot voluntarily or willingly enter into an arrangement that resulted in trafficking, even if the child’s parents were to give their consent.

**The Special Case of Children** – The Trafficking Protocol recognizes the special situation of children in subparagraph c, which removes the need for means to be present for trafficking to occur. Child trafficking is defined in Article 3 c as: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation”. In other words, for children, it is not necessary that there be force, fraud or coercion for trafficking to occur. In the case of a child, not only will consent fail as a defense, but there need be none of the prescribed means as well.

#### **Note to national facilitator(s):**

Include the trafficking in persons / human trafficking definition from national legislation if such definition exists.

#### **4.3.2. Human trafficking in the context of mixed migration**

Trafficking in persons is a complex crime that almost anyone can fall victim to, whether old or young, male or female, and regardless of their sexual orientation, nationality, ethnic or social origin, disability or other circumstance. There are many complex factors that can make an individual vulnerable to being trafficked, including poverty and lack of employment opportunities, war and displacement, social or economic exclusion, discrimination including gender discrimination, and some social and cultural practices. These factors are exacerbated by lack of information on the dangers of trafficking as well as demand for cheap or free labour and the enormous profits to be made in exploiting vulnerable people. There are some groups who are particularly at risk of being exploited in trafficking and other contexts. People who migrate regularly, with valid travel documents, may also fall victim to traffickers, but the irregular situation of many migrants in irregular movements makes them particularly vulnerable. Unaccompanied children, stranded migrants, refugees and asylum seekers and stateless persons among mixed migration flows are particularly susceptible.

Many individuals who travel as part of mixed migration flows, may be unaware that they may become victims of trafficking, assuming that they are merely being smuggled to another country. Smuggled migrants voluntarily enter into arrangements with migrant smugglers but may subsequently become victims of crimes, including kidnapping, extortion, rape, assault and trafficking in persons. Some smugglers may put migrants into exploitative situations on the basis of paying off their smuggling debts.

The crime of human trafficking heavily relies on the control of victims by traffickers. Traffickers may assert control in various ways, including the following:

- confiscate travel and identity documents of their victims;
- threaten victims with deportation by immigration authorities;
- use physical, sexual and emotional violence;
- establish romantic or other close relationships with their victims;
- make threats against the life or safety of the victim or his or her family;
- use witchcraft and voodoo to threaten the victim and/or the victim's family;
- threaten to denounce the victim and his or her actions to the victim's family;
- use physical, psychological, cultural or linguistic isolation;
- use 'debt bondage' by forcing the victim to repay a large debt incurred by the victim or his or her family (for instance, for smuggling fees), which can never be paid off;
- force the victim to use drugs (and become addicted to them).

In some cases, a person may know that he or she is destined for a situation of exploitation and even have agreed to it. Here, it is important to understand that it is irrelevant whether a person has consented. Article 3(2) of the *Trafficking in Persons Protocol* explains that the consent of a victim of trafficking to the intended exploitation is irrelevant if any of the 'means' have been used to traffic him or her. The result in practice is that a person may have agreed to travel to another country to undertake work in poor conditions for poor pay, but still may be a victim of trafficking where 'means' such as threat or use of force, coercion, deception etc. have been used against him or her.<sup>92</sup>

### **Distinguishing human trafficking from migrant smuggling**

Human trafficking and migrant smuggling are distinct but interrelated crimes. Smuggling of Migrants is defined as the "procurement in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or permanent resident" (Article 3 of the *Smuggling of Migrants Protocol*). Determining whether a person is a smuggled migrant, a trafficked person, or neither, is a complex process that must be undertaken on a case-by-case basis. The following points offer guidance only:

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<sup>92</sup>Also see, *Issue Paper: The Role of 'Consent' in the Trafficking in Persons Protocol* (UNODC, 2014), available at: [https://www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)

- **Transnationality:** While trafficking may occur within the borders of one country, migrant smuggling always occurs transnationally.
- **Source of criminal profit:** While traffickers profit from exploitation of their victims, smugglers generally profit from smuggling fees paid to them by migrants or their families to facilitate irregular migration. However, smugglers may accept services (for instance, sexual or other services) in lieu of monetary payment for smuggling fees, making smuggling and trafficking difficult to differentiate.
- **Consent:** In smuggling situations, migrants generally initially give their free consent to be smuggled, though they may retract consent when the conditions of the journey are not as promised, and they no longer wish to continue but are forced to or have no choice. In trafficking situations, victims of trafficking either do not consent to trafficking, or coercive means are used to bring about their 'consent' (such as threats or use of force, fraud, deception, abuse of power, etc.).
- **Exploitation:** The purpose of trafficking is exploitation, while migrant smuggling may not involve any exploitation. However, smugglers may also exploit migrants on route; for this reason, although 'exploitation' is not an element of the smuggling offence, as it is for trafficking, exploitation is included as an aggravating circumstance in the *Smuggling of Migrants Protocol*.
- In all cases, it is important to recognize that smuggling may also involve harsh conditions and makes smuggled migrants highly susceptible to crimes both at the hands of smugglers and others. In the context of mixed migrations flows, both smuggled migrants and victims of trafficking may be subject to human rights abuses and have significant protection and assistance needs that need to be addressed.<sup>93</sup>

## Human Trafficking and Refugee Protection

The crime of trafficking in human beings may violate fundamental human rights of victims and sometimes the rights of their families. While UNHCR appreciates the importance placed by States on combating this crime, UNHCR urges that measures taken in this respect are implemented with due regard to victims' potential needs for international protection, respect for the principle of non-refoulement and for victims' human rights.

Persons who have been or are at risk of being trafficked may have a well-founded fear of persecution or be at risk of serious harm. States must ensure that appropriate and effective referral mechanisms are in place between authorities involved in anti-trafficking activities and those responsible for granting of international protection. Such measures must ensure full compliance with the principle of non-refoulement.<sup>94</sup>

<sup>93</sup>See *Issue Paper: A Short Introduction to Migrant Smuggling*, UNODC, 2010; *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence*, International Council on Human Rights Policy, 2010; *Exploitation and abuse of international migrants, particularly those in an irregular situation: A human rights approach*, Global Migration Group, 2013 and M. McAdam, *What's in a Name? Victim naming and blaming in rights-based distinctions between Human Trafficking and Migrant Smuggling*, *International Human Rights Law Review* 4 (2015) pp.1-32.

<sup>94</sup>United Nations High Commissioner for Refugees, *Human Trafficking and Refugee Protection, UNHCR's Perspective* (UNHCR 2009) available at <http://www.unhcr.org/4ae1a1099.html>

### 4.3.3. Exploitative purpose of trafficking

The key goal of traffickers is to criminally profit from the exploitation of their victims. Exploitation can occur in a range of sectors, including agriculture, construction, hospitality, entertainment and sports, domestic work, fishing, textiles and mining. While significant attention has been given to profiting from the prostitution of others and other forms of sexual exploitation, exploitation can take many forms.<sup>95</sup>

#### **Slavery and practices similar to slavery**

Slavery was first defined in the 1926 *Slavery Convention to Suppress the Slave Trade and Slavery* as “the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.”<sup>96</sup> Slavery is marked by the relationship between the victim and the perpetrator, more than the conditions of slavery; at its core it concerns ‘ownership’ of a person by another, signified by power to determine the victim’s name, religion and make decisions about his or her family life. ‘Practices similar to slavery’ are prohibited by the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, and involve customary, traditional or social practices that are exploitative. Examples of ‘practices similar to slavery’ that may particularly impact migrants in mixed flows include:

- **Debt bondage:** “the status or condition arising from a pledge by a debtor of his or her personal services or those of a person under his or her control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or if the length of those services is not limited and defined” (Article 1(a))
- **Sale of children for exploitation** whereby the parents or guardians of a child allow a third party to exploit the child’s labour (Article 1(d)). Recent instruments broaden the concept, to include forced or compulsory recruitment of children for used in armed conflict, pornography, illicit activities such as drug production and trafficking and “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children” (1999 *ILO Convention on the Worst Forms of Child Labour*).

#### **Forced labour or service**

Forced labour or service is defined by the 1930 *International Labour Organization (ILO) Forced Labour Convention* as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself / herself voluntarily.”<sup>97</sup> ‘Menace’ has been taken to mean physical or psychological coercion by an employer, including for instance, by denying employees possibilities of new employment opportunities or housing. ‘Involuntariness’ refers to the fact that labour is ‘forced’ unless the worker has freely given his or her consent, and can retract that consent.<sup>98</sup>

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<sup>95</sup>Also see, *Issue Paper: The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol* (UNODC, 2015), available at: [https://www.unodc.org/documents/human-trafficking/2015/UNODC\\_IP\\_Exploitation\\_2015.pdf](https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf)

<sup>96</sup>*Convention to Suppress the Slave Trade and Slavery*, 60 League of Nations Treaty Series 253, 25 September 1926, entered into force 9 March 1927 (Slavery Convention).

<sup>97</sup>The International Labour Organization (ILO) definition of forced labour was reaffirmed in 2014 with the adoption of a Protocol to the Forced Labour Convention. International Labour Conference, *Text of the Protocol to the Forced Labour Convention*, 1930, Provisional Record 9A, 103rd Session, Geneva, 2014, Art. 1(3).

<sup>98</sup>ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 90th Session, Geneva, 2002, p. 98; *Abolition of forced labour*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILC, 65th Session, Geneva, 1979, paragraph 21.

### **Removal of organs**

Trafficking in persons for the purpose of organ removal can occur in the context of transplantation of organs into people who pay for those organs. It can also occur in cultural and ritualistic contexts, for instance in witchcraft and juju practices. For this reason, some states have included body parts as well as organs in their anti-trafficking legislation, to capture cultural and ritualistic practices.

### **Other forms of exploitation**

The list of forms of exploitation set out in the *Trafficking in Persons Protocol*, are offered to States parties as a 'minimum'. This means that the list is non-exhaustive, and endeavors to capture other forms of exploitation. For this reason, the national anti-trafficking legislation of many countries includes additional forms of exploitation to reflect exploitative forms that are encountered in practice. Examples of other forms of exploitation that have been included in national legislation include:

- Forced marriage
- Forced adoption
- Use of people (particularly children) in armed conflict
- Exploitation of people (particularly children and old people) in forced begging
- Exploitation in criminal activities (such as drug cultivation and transportation)

#### **Note to national facilitator(s):**

Highlight the forms of exploitation that are explicitly included in national legislation.

Discuss whether the definition is inclusive (and allows for other forms of exploitation that are not listed to be captured) or exhaustive (and only captures forms of exploitation that are listed).

#### **4.3.4. Snapshot of human trafficking in select countries in Southern Africa**

The US Department of State compiles an annual report on trafficking in persons around the world. The following summaries for Botswana, Malawi, Mozambique, South Africa, Zambia and Zimbabwe have been extracted from the *Trafficking in Persons Report 2014*.<sup>99</sup>

#### **Note to national facilitator(s):**

Discuss the forms of exploitation that are specifically encountered in the country where training is being conducted. In addition to national resources, refer to the information in the latest *Trafficking in Persons Report* of the United States Department of State.

<sup>99</sup>The *Trafficking in Persons Report 2015*, US Department of State, July 2014, available at: <http://www.state.gov/documents/organization/245365.pdf>

## 4.4 UNACCOMPANIED AND SEPARATED CHILDREN

### 4.4.1. International definitions

“Children” are defined in Article 1 of the 1989 *Convention on the Rights of the Child* (CRC) as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”<sup>100</sup>

“Unaccompanied children” (also called unaccompanied minors) are children, as defined in Article 1 of the CRC, “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”<sup>101</sup>

“Separated children” are children, as defined in Article 1 of the CRC, “who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”<sup>102</sup>

### 4.4.2. Key principles for protecting unaccompanied and separated children

Unaccompanied and separated children must be identified as soon as authorities become aware of their presence in the country.<sup>103</sup> Identifying unaccompanied and separated children may be challenging, particularly where they are in mixed migration flows. Children may not appear to be children, and/or may lie about their age; they also may be accompanied by people who appear to be family members but are not. Best practice is to treat a person who may be a child as if he or she is a child, for the purpose of protecting and assisting her, and giving him or her access to proper age determination processes.<sup>104</sup> Unaccompanied children (or persons who may be children) should be appointed a guardian and only be interviewed in the presence of people trained to interview children.

Unaccompanied and separated children may also fall into other categories. They may be victims of trafficking and accordingly entitled to protection and assistance as such.<sup>105</sup> They may also be refugees. Article 22 of the CRC, addresses the issue of unaccompanied or separated refugee children.

- First, the article guarantees that child refugees and asylum seekers receive the protection and humanitarian assistance applicable by international law.
- Second, the CRC calls on the host State to take steps needed to try and trace the child’s family in order to facilitate family reunification (as long as such step is in the best interest of the child).
- Finally, in cases where no parents or other family members can be found, the CRC clarifies that the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason. In other words, the refugee child will be cared for by the State, the same way the State cares for national children who have no parents or family members.

<sup>100</sup>Convention on the Rights of the Child, paragraph 9.

<sup>101</sup>Committee on the Rights of the Child, General Comment n°6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005, paragraph 7.

<sup>102</sup>Ibid, paragraph 8

<sup>103</sup>Article 8, *Convention on the Rights of the Child*.

<sup>104</sup>OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, UN, 2015, p.vi.

<sup>105</sup>See section 4.3 above. Also see *UNICEF Guidelines on the Protection of Child Victims of Trafficking*, UNICEF, 2006, and *Commentary to the OHCHR Principles and Guidelines on Human Rights and Human Trafficking*, OHCHR, 2010, pp.162-164.

Unaccompanied and separated children are entitled to international protection under international human rights law, international refugee law, international humanitarian law and various regional instruments. The CRC is the International instrument that sets out the rights children have and the State's obligation towards their fulfillment. The Convention has near universal ratification with only the United States yet to ratify it.<sup>106</sup> The CRC sets out eight key principles for the protection of the rights of children:

- **Non-discrimination (Article 2):** States shall respect and ensure non-discrimination of all children within their jurisdiction, including asylum seeking, refugee and migrant children irrespective of their immigration or any other status.<sup>107</sup>
- **Best interests of the child (Article 3):** The best interests of the child are the primary consideration in all actions concerning children, including measures such as appointment of guardians and/or legal representative as appropriate.
- **Life and full development (Article 6):** Obligations related to health, adequate standard of living, education, leisure and play are relevant to full development of children, as is protecting them from violence and exploitation.
- **Family unity (Article 16):** Children shall not be subjected to arbitrary interference with their family, which is entitled to protection by the State.<sup>108</sup> All efforts should be made to return unaccompanied or separated children to their parents, except where it is in their best interests not to do so, taking into account the rights of children to express their views (Article 12).
- **Non-refoulement:**<sup>109</sup> States must not return children to a country where there is a real risk of irreparable harm to the child. Assessments of risks must be age and gender-sensitive.
- **Evolving capacities (Article 5):** Children are active subjects of their rights. States must respect the role of parents, family and the community to guide and direct children in the exercise of their rights in accordance with their evolving capacities to exercise his or her rights.
- **Participation (Article 12):** The views of children should be afforded due weight in accordance with their age and maturity.
- **Confidentiality (Article 16):** Confidentiality of information received in relation to unaccompanied and separated children should be protected, consistent with the obligation to protect the rights of the child including their right to privacy.

#### Key Resource:

For more information, see International Migration Law, *Information Note on The Protection of Unaccompanied Migrant Children*, IOM, 2011, available at:

<https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/InfoNote-Unaccompanied-Migrant-Children-Jan2011.pdf>

<sup>106</sup>As of August 2015, the *Convention on the Rights of the Child* has 140 signatories and 195 parties. See

[https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-11&chapter=4&lang=en&title=UNTC-publisher](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en&title=UNTC-publisher)

<sup>107</sup>Committee on the Rights of the Child, General Comment n°6, *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, 1 September 2005, paragraph 12.

<sup>108</sup>Also see Article 14 and 44 of the *International Convention on the Protection of the Rights of Migrant Workers and their Families*.

<sup>109</sup>See glossary and section 4.2.2 for more on *non-refoulement*.

In accordance with those principles, unaccompanied and separated children must be provided with protection and assistance determined on the basis of a best interest's assessment. The best interests of the child must take precedent over all other objectives, such as migration governance.<sup>110</sup>

Short and long term solutions should be found, according to the needs of each child, including the nomination of a temporary guardian, provision of care and accommodation, access to education and health care, protection from trafficking and forced military recruitment. Appointment of a guardian as efficiently as possible is a key safeguard to ensure respect for the best interests of the child. In large-scale mixed migration flows where it will be difficult to make guardianship arrangements on an individual basis, the rights and best interests of separated children should be promoted by States and organizations. Where children are involved in asylum procedures or other administrative / judicial proceedings, legal representatives should also be appointed. At all stages, children should be informed of the arrangements being made and their opinions taken into consideration.<sup>111</sup> First line officials must refer children and migrants who could be children for Best Interests Assessments as soon as possible.

### Protecting Unaccompanied Children in Southern Africa

On 7-9 July 2015, at Victoria Falls, Zimbabwe, the *Ministerial Dialogue for Southern Africa (MIDSA) on: Addressing Mixed and Irregular Migration* in the Southern African Development Community (SADC) Region focused on Protection of the Unaccompanied Migrant Child. At that meeting, ministers endorsed the *Dar Es Salaam Action Plan on Irregular and Mixed Migration* that was adopted in 2010. Among the menu of actions specified in the Action Plan, are two concerning child protection:

- Review and modify as necessary national policies to ensure that best interest determinations (BIDs) for separated and unaccompanied children are undertaken as soon as possible after arrival.
- Review and modify as necessary national policies to ensure that family reunification is pursued as soon as possible after identification of separated or unaccompanied children, unless not deemed in the best interest of the child.

Source: The Action Plan is available at <http://ropretoria.iom.int/regional-cooperation> and <http://www.unhcr.org/4d7f7ec089.pdf>.

The 2015 MIDSA Ministerial Conference Declaration is available at:

[http://www.iom.int/sites/default/files/our\\_work/ICP/RCP/EnglishMINISTERIALMIGRATIONDIALOGUE.pdf](http://www.iom.int/sites/default/files/our_work/ICP/RCP/EnglishMINISTERIALMIGRATIONDIALOGUE.pdf)

## 4.5. Stateless Persons

### 4.5.1. Legal Definition and Causes of Statelessness

Article 1 of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as “a person who is not considered as a national by any State under the operation of its law”. This definition has attained the status of customary international law, meaning that it applies regardless of whether or not a state is party to the Convention. Statelessness may arise in migratory contexts as well as in situations that are completely unrelated to migration (*in situ*). From a legal point of view, statelessness can occur for various reasons, such as:

<sup>110</sup>OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (OHCHR, 2015), p.8.

<sup>111</sup>International Migration Law, *Information Note on The Protection of Unaccompanied Migrant Children*, IOM, 2011, p.2.

- Gaps in, or between, nationality laws of states.
- Nationality laws that allow the renunciation of a nationality before the acquisition of another nationality.
- Racial, ethnic and/or religious discrimination in nationality laws, resulting in the exclusion of some groups from nationality.
- Gender discrimination that doesn't give both parents the same right to pass on their nationality to their children.
- Gender discrimination that doesn't give both spouses the same right to pass on their nationality to their partners.
- Nationality laws that stipulate excessive requirements for naturalization, such as disproportionate fees, unreasonable deadlines, and/or an unwarranted burden of proof.
- Nationality laws that provide for the automatic loss of nationality, for instance in case of prolonged absence abroad.
- In cases of state succession, conflicts in nationality laws that lead for certain individuals to the loss of one nationality without the acquisition of the nationality of one of the successor states.
- Arbitrary deprivation of nationality by the administration (on discriminatory grounds).

From a more sociological point of view, statelessness can result from:

- Split between people and territory, partly due to colonization and post-colonization.
- Movement of migratory workers for generations, sometimes with severed ties to their country of origin.
- Lack of birth registration.
- Lack of good governance.

#### **4.5.2. International Legal Protection of Stateless Persons**

The 1954 Convention relating to the Status of Stateless Persons prescribes minimum standards for the treatment of stateless persons. It addresses a variety of matters which have an important effect on day-to-day life. The Convention is modelled on the 1951 Convention relating to the Status of Refugees. However, it does not contain an equally comprehensive prohibition of refoulement, provides no protection against penalties for illegal entry, and defines lower standard for employment and association. Since a person can be a refugee and stateless at the same time, this person can cumulatively be entitled to protection under both the 1951 and the 1954 Conventions. The rights enshrined in the 1954 Convention may be applicable even before the determination of the stateless status of an individual has been completed.

Art. 12 to 16 of the 1954 Convention address such issues as personal status, property rights, freedom of association, and access to courts. Art. 17 ff. regulate employment, including self-employment and the access to liberal professions. Art. 20 to 24 provide minimum standards as regards welfare entitlements, such as rationing, housing, public education and social security. The chapter on administrative measures (Art. 25 to 32) regulates, among other issues, IDs, travelling documents, taxation, protection against expulsion and facilitated naturalization. It should be emphasized that the 1954 Convention defines protection standards on an absolute minimum level. Later human rights instruments partly exceed the protection *level with respect to all human beings, including stateless persons under the jurisdiction of these instruments' signatory states.*

The 1961 Convention on the Reduction of Statelessness defines an international legal framework that aims at the prevention and reduction of statelessness. Its essential principles are:

- A state shall grant its nationality to a person born in its territory if that person would otherwise be stateless.
- Nationality shall never be lost without prior or simultaneous acquisition of another nationality.
- A person's loss of nationality shall have no impact on the nationality of his/her spouse and children if thereby they would become stateless.
- No state should deprive anyone of his/her nationality on racial, ethnic, religious or political grounds.

Further human rights standards that are relevant to stateless persons are:

- Art. 15 Universal Declaration of Human Rights,
- Art. 1 (3) and 5 (d) (iii) International Convention on the Elimination of All Forms of Racial Discrimination (CERD),
- Art. 24 (3) International Covenant on Civil and Political Rights (ICCPR),
- Art. 9 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- Art. 7 and 8 Convention on the Rights of the Child (CRC),
- Art. 29 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW),
- Art. 18 (1) Convention on the Rights of Persons with Disabilities (CRPD).

Regional human rights instruments, such as the African Charter on Human and Peoples' Rights, the Protocol on the Rights of Women in Africa and the African Charter on the Rights and Welfare of the Child, are equally relevant for everybody's right to a nationality, and for the enjoyment of human rights by stateless persons.

#### Key Resource

*UNHCR's Handbook on Protection of Stateless Persons* (UNHCR, 2014), Part I, provides guidance to states, UNHCR and other actors on how to interpret Article 1 (1) of the 1954 Convention to facilitate the identification and proper treatment of stateless persons.

#### 4.5.3. Determining Statelessness

Few countries have adopted statelessness determination procedures. Current state practice varies as regards the location of individual status determination within national administrative structures and procedures. In countries where specific procedures have not yet been established, it is important to identify existing administrative or juridical mechanisms that can be used to ensure that the status of stateless individuals is acknowledged and their protection needs are respected.

#### Key Resource

*UNHCR's Handbook on Protection of Stateless Persons* (UNHCR, 2014), Part II, provides guidance and standards on procedures that are aimed specifically, if not exclusively, at determining whether an individual is stateless.

The condition of being stateless ends when the individual concerned acquires a nationality. In migratory contexts, obtaining status as a stateless person may be the first step towards naturalization. However, this is no automatism: A state's recognition of a person as stateless does not carry with it the same state's duty to necessarily grant nationality to this person at a later stage.

For states that are party to the 1954 Convention, it is recommended that they treat individuals awaiting a determination of statelessness according to the same standards as asylum-seekers whose claims are being considered in this state. In particular, individuals awaiting a decision on their stateless status are entitled, at a minimum, to all rights based on their presence on the territory as well as the rights that the 1954 Convention foresees for those 'lawfully in' the country.

This means, *inter alia*, the right to be issued identity papers, freedom of movement, protection against expulsion, access to courts and administrative assistance.

In states that are not party to the 1954 Convention, the standards defined by the 1954 Convention and the practice of its states parties may prove helpful in devising and implementing strategies to address statelessness, and regulating the status of stateless persons. In addition, all states are bound to comply with their obligations under international human rights law, such as protection against arbitrary detention (Article 9 (1) ICCPR) and, in the case of persons stateless *in situ* or returning to their place of habitual residence, the right to enter and remain in one's own country (Article 12 (4) ICCPR).

The above considerations are beyond the scope of what first line officials can address in the course of their work. What is crucial for first line officials is to ensure that they treat stateless persons in accordance with their human rights.

#### Key Resource

UNHCR's *Handbook on Protection of Stateless Persons*, (UNHCR, 2014) Guideline No. 3, addresses the treatment of persons determined to be stateless by a State under the 1954 Convention, the position of individuals awaiting the outcome of a statelessness determination procedure, as well as the appropriate treatment of stateless persons in States that do not have statelessness

#### 4.5.4 Detention of Stateless Persons in Migratory Contexts

Detention is one of the most serious protection issues faced by stateless persons. It is exacerbated by the problem of securing lawful (re)admission to a state. Moreover, lengthy detention is not only harmful to the detained person, but also costly for the detaining state. In some countries, stateless persons may face indefinite (and therefore illegal) detention, stigma, discrimination, and lack of protection and assistance from the state they are in as well as from their state of origin or former habitual residence. Detained stateless persons may also fall into other categories of persons with protection needs, for instance because they are unaccompanied or separated children or victims of trafficking.

Authorities mostly tend to detain stateless persons with a view to preventing their entry into the state, or to secure their availability for expulsion. As with all migrants in irregular situations, detention should be avoided and only be resorted to if clearly based on national legislation that conforms to international human rights. The detention of stateless persons who are not staying legally in the country only should be considered in exceptional cases after examining all possible alternatives. When authorities look on an individual basis into the question as to whether or not to detain a stateless person, they also must take into account whether, in the case at hand, detention would be reasonable and proportional to the objectives to be achieved. If judged necessary, detention should only be

imposed in a non-discriminatory manner, be regulated by domestic law, preferably with maximum limits set on such detention and subject to periodic and judicial review.

Where there is no other state willing to accept the stateless person as a legal resident, detention risks to be prolonged or even indefinite, and therefore contrary to international human rights standards. In fact, cases of stateless persons in detention are best resolved through practical steps to identify and confirm the individual's nationality status. In cases where this is not possible, negotiations with the person's country of former habitual residence should be pursued with the objective of re-admittance as far as this is appropriate and in accordance with the stateless person's protection needs.

#### **4.5.5 Admission or Readmission of Stateless Persons to another State**

Depending on the circumstances and the protection needs of each individual, stateless persons should either be assisted to return to their country of former habitual residence, or to settle in the country where they became stranded, or be accepted by a third country.

Some applicants in statelessness determination procedures may have a realistic prospect of admission or readmission in another state, in some cases through the acquisition or reacquisition of nationality. These cases raise the issue of cooperation between states to find the most appropriate solution.

According to UNHCR's guidelines, protection can only be considered available in another country when a stateless person:

- Is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality; or
- Enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.<sup>112</sup>

Individuals are only expected to return to a country of previous habitual residence, when they already enjoy permanent residence status there or would be granted it upon arrival. Additionally, their residence status ought to be accompanied by a full range of civil, economic, social and cultural rights and open perspectives towards obtaining nationality. Permission to return to another country on a short-term basis would not suffice.

#### **Note to national facilitator(s)**

Include reference to the appropriate national authority for the referral of stateless persons.

<sup>112</sup>UNHCR, *Handbook on Protection of Stateless Persons* (UNHCR, 2014), p.54.

## 4.6 Stranded Migrants

There is no international definition of 'stranded migrants'. In practice, migrants become stranded if they have left home and entered another country irregularly, or their stay in another country has subsequently become irregular, and they are unable or unwilling to return home or to secure regular status in the country they are stranded in. A migrant may become stranded for legal reasons, for instance if he cannot remain regularly in the state he is in, which seeks to remove him, but his state of origin or former habitual residence refuses to grant him entry. He may also become stranded for practical reasons, for instance if he has no resources to move onwards to another state or back to his state of origin or previous habitual residence. Lastly, he may be stranded for humanitarian reasons, for instance if his asylum claim has been rejected but he does not feel safe to return home due to war, internal armed conflict or another humanitarian crisis.<sup>113</sup>

By and large, the protection issues related to the detention of stateless persons and to their admission or readmission to another state (see above) apply to stranded migrants as well.

### Stranded Migrants in southern Africa

While South Africa remains the primary destination country for migrants and refugees moving south, countries such as Malawi, Mozambique and Zambia are increasingly being viewed as alternative destinations. Migrants do not usually have a say in the route they take, but are usually passed from smugglers to facilitators along the way. Passing through Tanzania, Mozambique and Zambia, they are often made to travel in the back of container trucks. There have been reports of people dying from suffocation in these conditions. Unregulated routes through the forest in an attempt to unofficially cross borders are extremely dangerous. There have been reports of murder, rape, cavity searches, torture and muggings, sexual violence (against both male and female migrants) at the hands of smugglers, police and others travelling with them. Those who survive their journeys can end up stranded, intercepted either upon entering or exiting a transit country, usually en route to South Africa. They may have been abandoned by smugglers or arrested by immigration officials. Stranded migrants in these situations include men, women and children, who are normally identified as unaccompanied minors). Many are subject to harsh detention or deportation. Where governments are unable to repatriate individuals, IOM may be requested to assist in voluntary returns. Asylum seekers are normally referred to UNHCR.

Source: OCHA, *Humanitarian Bulletin*, Southern Africa, Issue 13, January 2014. Available at:

[http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA\\_ROSA\\_Humanitarian\\_Bulletin\\_Jan\\_2014.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_ROSA_Humanitarian_Bulletin_Jan_2014.pdf)

<sup>113</sup>Also see Dowd R, 'Trapped in transit: the plight and human rights of stranded migrants', in: *New Issues in Refugee Research*, Research Paper No. 156, UNHCR, 2008, Geneva, available at <http://www.unhcr.org/486c92d12.html>; Grant S, The legal protection of stranded migrants, in: *International Migration Law: Developing Paradigms and Key Challenges* (Cholewinski R et al., eds.). T.M.C. Asser Press, The Hague, pp. 29–47.

## 1.1 ACTIVITY: Categorizing vulnerable individuals

Activity E	Categorizing vulnerable individuals
<b>Aim</b>	To consolidate some of the concepts introduced during the presentation, and help participants to better understand different categories of vulnerable migrants.
<b>Duration</b>	75 minutes
<b>Materials</b>	Flip chart Flip chart paper Handouts for case studies
<b>Instructions</b> <b>(40 minutes for group discussions)</b>	<ul style="list-style-type: none"> <li>• Divide participants into 4 groups.</li> <li>• Ask each group to nominate a note taker, a chairperson (if larger than three people) and a presenter (alternatively each group member could present one or two cases)</li> <li>• Provide each group with a handout containing case studies (See <i>Annex III</i>)</li> <li>• 40 minutes: Group members should read and discuss each case study, answering the following questions:</li> <li>• Does the person fall into any of the vulnerability categories? Which?</li> <li>• What are your reasons for this decision?</li> <li>• If you are not sure, what questions would you pose to the individual to better understand his or her situation?</li> </ul>
<b>In plenary</b> <b>(30 mins)</b>	In the 30 minutes for plenary, each group should present a case and share their analysis. The discussion should then be open to all. Participants should justify their conclusion or doubts about each case. After discussion on one case study has been concluded, move to the next group to present the next case study and so on until all cases are discussed.
<b>Resources</b>	See <i>Annex III</i> Case Studies

## 5 IDENTIFYING VULNERABLE INDIVIDUALS IN MIXED MIGRATION FLOWS

### 5.1 SESSION OUTLINE

This session allows participants to discuss ways to identify vulnerable individuals in mixed migration flows as well as proper ways to conduct initial interviews. It also allows participants to discuss the challenges and frustrations they experience during their work with individuals in mixed migration flows, and suggests ways to overcome such challenges. The session includes an in depth discussion on the proper ways to conduct initial interviews and a practical simulation exercise in which participants will practice good interview techniques through role play.<sup>114</sup>

#### Note to national facilitator(s)

Consider introducing the use of the profiling forms used nationally. A profiling form is an assessment form meant to provide indicators for the initial case determination of vulnerable individuals within mixed migration flows. The profiling form is intended for use by first line officials and is not intended for actual case-type determination.

#### Objectives

- To convey the importance of the initial interview;
- To give participants an understanding of the key considerations during the process of interviewing vulnerable individuals in mixed migration flows;
- To share first interview guidelines and best practices;
- To share major indicators for identifying various categories of vulnerable individuals in mixed migration flows.

#### Expected outcomes

As a result of the training first line officials will:

- Be familiar with the main responsibilities of first line officials undertaking initial identification of vulnerable individuals in mixed migration flows;
- Have insight into the rights of vulnerable individuals in need of protection, with special consideration to issues related to age, gender and culture;
- Have increased ability to make quick and appropriate decisions with respect to different categories of vulnerable individuals in mixed migration flows that they come into contact with;
- Have increased understanding of the main challenges and frustrations of working with migrants and vulnerable individuals in mixed migration flows, and possible ways to address these issues.

#### Training materials:

- ❖ Projector
- ❖ Laptop
- ❖ Flip chart
- ❖ Flip chart paper
- ❖ Blu-tack / press-stick (to hang flip chart paper on walls)
- ❖ Exercise handouts
- ❖ Identification check list

<sup>114</sup>This section has been adapted, with additions and changes, from the Government of the Republic of Zambia, Training Manual (Facilitators Guide): Protection Assistance for Vulnerable Migrants, 2014; Chapter 4.

## 5.2 ACTIVITY: Identification Checklist

The identification of vulnerable individuals in mixed migration flows is usually conducted at two levels. The first level is an initial interview to be carried out by first line officials. Based on the information provided by the individual, the initial interview will be used to assist the first line official in determining which category or categories an individual may fall into. Thereafter the individual will be referred to the relevant actor for the second level of identification. The first level of identification, including interview and screening by first line officials is the focus on this session.

Activity F	Identification Checklist
<b>Aims</b>	<ul style="list-style-type: none"> <li>To discuss participants' experiences of identifying vulnerable individuals in mixed migration flows, conducting a productive initial interview, possible difficulties and how to minimize them.</li> <li>To allow participants to share their experiences and ideas in order to add to a check list for effective identification.</li> </ul>
<b>Duration</b>	20 minutes
<b>Materials</b>	Flip chart Flip chart paper Handout <b>Annex IV</b> : Identification Checklist
<b>Instructions</b>	<ul style="list-style-type: none"> <li>Explain the purpose of the session</li> <li>Invite participants to reflect on the following questions:               <ul style="list-style-type: none"> <li>How do you identify vulnerable individuals in mixed migration flows?</li> <li>What are the main challenges you face?</li> <li>How do you overcome those challenges?</li> </ul> </li> <li>Decide whether you wish to disseminate the Identification Checklist (<i>Annex IV</i>) before or after discussions.</li> </ul>
<b>In plenary (20 minutes)</b>	<ul style="list-style-type: none"> <li>During discussions, encourage participants to talk and share their positive and negative experiences as well as any ideas and suggestions they may have.</li> <li>During the discussion, the facilitator or co-facilitator should write down answers in bullet points on the flip chart. The answers should be divided into three charts; one for each question.</li> <li>Display challenges and responses to them on the flip chat, to be revisited at the end of the session.</li> </ul>
<b>Resources</b>	See <b>Annex I</b> for: Facilitation Tip 1: Facilitating the discussion Facilitation Tip 2: Asking participants questions to induce learning or commitment See <b>Annex IV</b> : Identification Checklist.

## 5.3 INITIAL CONTACT

First line officials are responsible for identifying migrants with protection rights and needs and taking all possible immediate action to ensure those needs are met. First line officials may have very limited time to reflect and make a decision on each person they come across. Therefore, they should observe the following guidelines to ensure effective identification and proper treatment of the individuals they encounter.

### **Notes to national facilitator(s)**

This presentation should build upon the discussions in the plenary discussion. When presenting, facilitators should refer to those discussions, stress ideas that have arisen in that context, and point out and elaborate on ideas that were not mentioned earlier.

Also note that the identification techniques discussed apply to all categories of migrants travelling in mixed migratory flows that have been previously discussed and defined.

### **Key Resource**

See **Facilitation Tip 6: Delivering a participatory presentation**

At the point of first contact, a first line official will need to identify whether the person or people in front of him or her are in need of immediate protection and assistance. This point of first contact is often referred to as 'initial screening' as it allows first line officials to make observations of the condition and behavior of migrants. Challenges faced at this point including communication barriers owing to language, culture or even gender (for instance, where a person may be uncomfortable communicating with a person of the opposite sex). Depending on the context, at the point of first contact people may be in imminent danger, for instance, when they are encountered during dangerous migration journeys. Ensuring immediate safety of the people encountered is the first priority of first line officials.

First line officials should keep an eye open for external signs that may hint that the person in front of them belongs to a vulnerable group. The presence of one of these signs is not conclusive proof that a person does belong to one of the categories discussed above, but should result in further inquiry. Similarly, the absence of any external signs does not necessarily mean that a person is not vulnerable.

Some of the external signs could be:

- A young child without any guardians;
- A child or a group of children with an adult that is not a close relative;
- A pregnant woman travelling alone;
- A person has an apparent physical or mental disability;
- Observed physical weakness or sickness;
- Apparent emotional distress;
- Disorientation;
- The individual appears shocked or traumatized;
- The individual appears to fear another person he/she is traveling with;
- Someone else is holding a person's travel documents;
- A person has no travel or identity documents;
- The person has no belongings;
- Visible signs of violence or abuse.

The above external signs are just examples. There are many other signs that also may be relevant. Many 'indicators' exist for specific categories of vulnerable person. For instance, there are several lists of indicators that exist to help first line officials identify victims of human trafficking.<sup>115</sup>

## 5.4 INITIAL INTERVIEW

The identification of vulnerable individuals in need of protection starts with the initial interview.<sup>116</sup> Every migrant has the full spectrum of human rights set out in the core human rights instruments that front line officials must respect; the purpose of the initial interview is to determine specific protection and assistance needs.

The identification process is meant to determine if an individual possibly fits into one or more of the following categories:

1. Refugee and asylum seeker (or rejected asylum seeker)
2. Victim of trafficking (or 'presumed' trafficked persons and 'potential' trafficked persons)
3. Unaccompanied and separated children (UASC)
4. Stranded migrants or stateless persons
5. Other vulnerable migrants

As stated above, the categories above may not be mutually exclusive and an individual may fall into more than one category (for example: an unaccompanied child who is an asylum seeker). It is therefore important to offer differentiated processes on a case-by-case basis to meet the particular protection needs of each vulnerable individual. A person may have immediate physical, medical and psychological

<sup>115</sup>See for instance, *Policy Guide on Identifying Victims of Trafficking: An Introductory Guide for Policy Makers and Practitioners, Bali Process, 2015*, pp.21-27.

<sup>116</sup>This section is adapted from the Government of the Republic of Zambia, *Protection Assistance for Vulnerable Migrants in Zambia, 2013*, section 6.2.

needs that require urgent attention, and that should be attended to prior to further referral to a shelter or a reception facility.

This initial interview provides a basis for a protection process that upholds the human rights of migrants, refugees and asylum seekers.

#### **5.4.1. Procedural Considerations**

The following procedural considerations are offered towards establishing trust and building the rapport necessary to effectively identify vulnerable people among mixed migration flows

##### **1. Focal points**

is important for each institution that is likely to come into contact with vulnerable individuals in mixed migration flows to appoint protection and assistance focal points who are familiar with State guidelines and procedures. In order to facilitate effective collaboration, focal points can act as liaison officers between the institution and other entities providing protection assistance to vulnerable migrants, refugees or asylum seekers

##### **2. Appropriate interview environment**

As much as possible, institutions interviewing vulnerable individuals in need of protection should create a friendly and safe environment where interviews can be conducted in a non-threatening, non-judgmental and respectful manner, with due consideration for each migrant's situation. The age and gender of the interviewee should be taken into account. It may be preferable for people to be interviewed by or in the presence of people of the same gender. As discussed above, unaccompanied or separated children or people who may be children should be appointed a guardian and only be interviewed in the presence of people trained to work with children.<sup>117</sup>

##### **3. Language**

During any interview, the individual has the right and should be given the opportunity to speak in her/his native language and, if needed, be provided with an interpreter that has been screened/vetted, wherever possible. Lack of communication on grounds of language or cultural barriers may result in individuals being unable to explain the circumstances surrounding their cases and to express their wishes to seek protection. When an interpreter is available it is important to make sure the interpreter and the interviewee understand each other and that there are no family or other ties between them. When interpretation services are unavailable, officials should do their best to collect sufficient information to determine if the individual is vulnerable, and refer for further determination even if they have a doubt, due to lack of effective communication.

#### **Resource**

First line officials should be advised to make use of tools available to overcome language barriers. For instance, the Victim Translation Assistance Tool (VITA) has been designed to help assist victims of traffickers. For more information, see <http://www.ungift.org/knowledgehub/en/tools/vita.html>

##### **4. Immediate needs**

The initial interview should aim to assess risks and identify the individual's immediate needs, such as medical attention and other health services; access to food, clothing and safe accommodation; counselling and psychological care, among other needs. Depending on the specific needs of individuals, a plan may need to be put in place to protect the privacy, safety and security of the

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<sup>117</sup>For further considerations in respect of unaccompanied and separated children, see section 4.4. above.

individual and his or her family, for instance, where there is suspicion that the person is a victim of trafficking or a smuggled migrant who faces threats of harm from traffickers or smugglers.

## 5. Health care

First line officials must ensure that health care needs are tackled immediately. Such health considerations should take priority over migratory concerns.<sup>118</sup> For instance, consideration should be given to ensuring that women who are pregnant or are breastfeeding are given access to maternal health care services.<sup>119</sup>

## 6. Case information

It is important to obtain as much detail as possible of each vulnerable individual that is identified, including the following:

- Their profile (bio-data, nationality or absence of nationality, family composition and immigration status, including profiling of UASC);
- Their types of identity/travel documents;
- Any health conditions;
- Language skills;
- How they found themselves in the country (migration process);
- Their desire (if any) to return home;
- The risks they may face if they are sent back to their country of origin, or reasons to remain in the country (for instance, family unity, best interests of the child);
- Whether they traveling alone or with other family members, and if so, which family members.

### Note to national facilitator(s):

Where available, present and discuss the identification / screening form used in the country.

## 7. Provision of information to the interviewee

Individuals in mixed migration flows in need of specific protection should be provided with the necessary information, in a language they understand. This information should include processes and procedures that the particular person will have to follow as well as information on their rights and obligations during the procedure and the possible consequences of not complying with their obligations.

All persons seeking protection should be provided with information on the services and advice available to them. This includes information on how to contact national actors that provide assistance to vulnerable migrants. Accessible information, in a language they understand, should also be available with regard to legal and consular assistance services, including on the processes of family reunification and/or return.

<sup>118</sup>See also, *Health and Migration: Bridging the Gap*, IOM, 2005; *Health of Migrants: The Way Forward*, WHO, 2012.

<sup>119</sup>OHCHR *Principles and Guidelines on Human Rights at International Borders* (OHCHR, 2015), Guideline 7.6, p.31.

## 8. Consent to refer

The individual should be asked if she/he has any objection to being approached for a follow up interview by other actors or, where applicable and appropriate, relevant national authorities or NGOs.

## 9. Referral for case determination

Once the individual has been profiled; the person conducting the initial interview should document his or her findings and refer the case to the mandated actor with the technical capacity to undertake a case determination.

## 10. Family contact

Individuals may also need to be supported to communicate with their families, or to access family tracing services. The individual may wish to contact his or her relatives to inform them that he or she is safe, unless doing so would compromise his or her safety or the safety of others, for instance, where a person is a presumed victim of trafficking and there is suspicion that his or her family is involved in trafficking him or her, or where the person is a refugee or asylum seeker and communicating with family could lead to the whereabouts of the individual or his or her relatives becoming known.

### 5.4.2. Initial Interview Guidelines

Front line officials carry out an initial interview to identify the protection and assistance needs of individuals for the purpose of referring them to appropriate service providers.

Interviewing individuals in mixed migration flows requires a lot of careful consideration. The physical and mental needs, safety and wellbeing of the individual should be a priority at all times. All migrants should be interviewed in a sensitive manner, ideally by interviewers specially trained to interview vulnerable people. There are a number of basic guidelines that can facilitate a sensitive and productive interview with a meaningful outcome.<sup>120</sup>

#### 1. Maintain privacy and confidentiality

While this basic rule is often difficult to follow, depending on the circumstances, every effort should be made to protect the privacy and confidentiality of the individual being interviewed. The types of information that might be shared with other partners and the conditions on when/how this information will be shared needs to be explained to the interviewee. Therefore, the information received should only be shared with the appropriate entities, who themselves respect confidentiality and data protection, and only on a “need to know” basis. In the case of asylum seekers and refugees, they must be guaranteed that none of the information they provide will be shared with their country of origin, as this would potentially be detrimental for them and could even put them or their relatives in danger.

#### 2. Maintain a respectful and professional attitude

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<sup>120</sup>Reproduced from International Centre for Migration Policy Development (ICMPD), *Anti Trafficking Training for Frontline Law Enforcement Officers: Training Guide*, 2006, pp.48-49 as appears in the Government of the Republic of Zambia, Protection Assistance for Vulnerable Migrants in Zambia, Annex 5; as well as UNHCR, *Protection Training Manual for European Border and Entry Officials*, Session 5 Manual, 2011, p. 9-16 (hereafter: UNHCR Manual, 2011).

Polite, respectful and dignified treatment should be the norm in all circumstances, regardless of who the person being interviewed is. Keeping a professional attitude means avoiding any appearance of judgment and mistrust on one hand, and not appearing too personally engaged or shocked on the other hand. Interviewers must keep emotional reactions private and should not let personal feelings interfere with the interview.<sup>121</sup>

### 3. Put interviewee at ease

Emotions and stress play a big part in any type of interview. The interviewer will have a difficult time evaluating a nervous person. Starting the interview casually with no threatening conversation can have a calming effect. The interviewer should also work to build rapport with the interviewee by expressing empathy, and listening actively. The interviewer may volunteer some personal information about him or herself (without compromising privacy) with which the interviewee can relate.

Migrants may have a negative view of authorities having had poor experiences with them in the past. First line officials should be mindful of this and work to earn the trust of migrants. Non-governmental organizations and civil society groups can be invaluable actors in facilitating building of trust between migrants and State authorities.

### 4. Use good questioning techniques

The way you ask questions is just as important as the questions you ask:

- Use open-ended rather than leading questions to avoid pre-empting the interviewee's response.
- Ensure that the tone of your voice is not aggressive or sarcastic.
- Make sure the language you use makes questions easy to understand; avoid using unnecessarily complicated or technical language.
- Ask questions carefully with the objective of obtaining as much essential information as possible

### 5. Let the person being interviewed do the talking

One of the biggest mistakes that interviewers make is talking too much. Accurate evaluations of a person's situation and gathering crucial information regarding a case, depend on letting the interviewee talk under well-managed conditions. The interviewer should control the interview, but not dominate it.

### 6. Be an active listener

A good interviewer is an active listener. Interviewers must discipline themselves to focus on what is being said and how it is being said. They should not look ahead to subsequent questions or begin to analyze an answer before the person finishes providing it. Nor should they anticipate or assume what the answer will be.

Ask the interviewee to clarify or repeat anything that is unclear; when the interviewee is done, attempt to repeat the case, as presented, back to him/her. This shows that you are listening (which suggests that you care what they have to say) and that you understand what they have said. It does not indicate that you agree with what they said—nor do you have to. You just need to indicate that you do understand them.<sup>122</sup>

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<sup>121</sup>ibid.

<sup>122</sup>ibid.

## 7. Be aware of your body language

Reassuring body language is extremely important to gain the confidence of the person being interviewed. Be aware of your body language as you conduct your interviews to ensure that you do not appear to be threatening or impatient.

Maintaining a steady and friendly visual expression and keeping eye contact with the interviewee suggests, in most cultures, that you are paying careful attention to what is being said. However, be aware of cultural and gender differences in communication, especially regarding non-verbal communication. This is particularly important in the context of cross-cultural communication.

## 8. Avoid stereotypical assumptions and biases

Stereotypes are generalizations or assumptions which people make about the characteristics of all members of a group, based on an image (often wrong) about what people in that group are like. Stereotypes and biases can affect how first line officials see migrants, refugees and asylum seekers. Recognizing that we might hold or be the victim of biases is the first and most crucial step in combating prejudice. It is essential to focus on the particular individual, rather than on their ethnic or national background.<sup>123</sup>

## 9. Be sensitive to factors such as culture, gender, age and other diversity factors that may affect communication<sup>124</sup>

### Cultural considerations

Interviews will be more effective, if the person conducting the interview has skills and understanding of how to effectively engage with people of different backgrounds and cultures. For example, in some cultures, avoiding eye contact is a sign of respect, while in other cultures it can be interpreted as a sign of dishonesty. First line officials should recall that many of the arriving migrants, including asylum-seekers, may have limited knowledge of their new environment, including its norms and values, and that they, the first line officials, may also have limited knowledge of migrants' culture, beliefs or habits. Therefore, in cross-cultural exchanges, it is essential to maintain self-awareness of possible cultural differences and make efforts to effectively and respectfully engage with individuals without imposing cultural biases or assumptions on interactions.

### Gender considerations

People of all genders migrate, including men, women, transgender and intersex individuals. In order to effectively do their work, first line officials must be equipped to approach all individuals professionally and respectfully. The OHCHR *Principles and Guidelines on Human Rights and Human Trafficking* emphasise the need for first line officials to be sensitized and sensitive "to the specific challenges and needs relating the situation of LGBTI migrants at borders, and that they do not express through verbal or body language any judgment relating to the migrant's sexual orientation, gender identity or gender expression."<sup>125</sup>

In the past, many women migrated as dependents, but are now increasingly migrating individually for various reasons. It is important that all persons are provided with equal access to services and

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<sup>123</sup>ibid.

<sup>124</sup>ibid.

<sup>125</sup>OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders* (OHCHR, 2015), Guideline 6.16, p.29.

protection. Due to their cultural background or to the trauma that some women and girls may have suffered during the migration process, female interviewees may wish to speak to women officers and interpreters. Whenever possible, they should be given the choice.

It is vital to identify possible protection concerns that individuals travelling in mixed migratory groups may have on account of their gender, even prior to going into issues related to their migratory status. In cases of women for instance, this means communicating separately with each member of a family unit, otherwise the women and girls may not have a chance to talk.<sup>126</sup>

People, and particularly women and girls as well as lesbian, gay, bisexual, transgender and intersex individuals who are vulnerable to sexual violence, should not be pushed to talk about sexual violence they have experienced. If first line officials suspect that a person has been a victim of sexual violence, or is unable or unwilling to discuss certain events relating to such an incident, they should ask discreet and indirect questions that could enable them to take appropriate protection measures.<sup>127</sup>

### **Age considerations (children)**

All actions in relation to children should always maintain their best interests as the primary consideration, in accordance with their rights under the *Convention on the Rights of the Child* and other core human rights instruments.<sup>128</sup> The child's best interests must be the guiding principle for determining the priority of protection needs and the measures to be applied to unaccompanied and separated children, with efforts made to identify children as soon as their presence in the jurisdiction becomes known to authorities.<sup>129</sup> Age assessments are complex determinations that must be made scientifically in a safe, child and gender-sensitive and fair manner, giving the benefit of the doubt to the person such that if there is any possibility that the person is a child, he or she is treated as such. Age determination processes should not be conducted by first line officials, but should be referred by them. If a person claims to be a child, first line official should give them the benefit of the doubt regardless of their personal opinion about the age the person appears to be; specialized agencies or qualified officials will be better placed to make age determinations.<sup>130</sup>

Children need to be promptly registered by means of an age-appropriate and gender sensitive initial interview, conducted in a language the child understands, by professionally qualified persons for the purpose of collecting bio-data and social history to ascertain the child's identity, including where possible, the identity of his or her parents, siblings and the citizenship of the child,

siblings or parents. The registration process should also record information concerning the reasons that a child is separated or unaccompanied, and an assessment of any particular vulnerabilities, including health, physical, psycho-social, material and other protection needs, including those deriving from domestic violence, trafficking or trauma.<sup>131</sup> As noted below (at 5.5.3), it is important that first line officials with unaccompanied or separated children only gathering basic information. It is preferable for children to be interviewed in the presence of a trusted adult, preferably a parent or guardian.<sup>132</sup> Unaccompanied or separated children should be immediately referred to child protection agencies and only be interviewed in the presence of an appropriately trained childcare worker.

As much as possible, only staff trained in the special needs and rights of children should question them. When possible and appropriate, children should be interviewed by interviewers of the same sex. Interviewers should keep the atmosphere simple and informal, and communicate with children at their eye level. Interviewers should explain things in a manner that the child can understand, and adapt

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<sup>126</sup>UNHCR Manual, 2011.

<sup>127</sup>Ibid.

<sup>128</sup>Also see below, section 5.5.3 on Unaccompanied and Separated Children.

<sup>129</sup>Article 8, CRC and Committee on the Rights of the Child, General Comment n°6, *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, 1 September 2005.

<sup>130</sup>Committee on the Rights of the Child, General Comment n°6, *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, 1 September 2005, paragraph 71.

<sup>131</sup>Ibid.

<sup>132</sup>Ibid, paragraph 33.

questions depending on the age and mental capacity of the child. Interviewers should begin with open-ended questions, allowing the child to give their own account. Leading questions should be avoided, for example “You travelled with your father, didn’t you?”. Interviewers should not pursue and press for details. End the interview in a way that reassures the child that he or she has done well and that the interviewer will be available if he or she needs to talk again.

Children should be granted access to asylum procedures, and their asylum claims handled in an age and gender sensitive manner, and be granted access to family reunification processes.<sup>133</sup>

Family unity should be preserved to the extent possible, and minors should not be separated from their parents. Where parents of children are detained, the presumption against separating them from their parents conflicts with non-detention of children. In such situations then, non-custodial measures should be considered the best solution. Where detention of parents cannot be avoided, decisions concerning children should be determined on the basis of their best interests.<sup>134</sup>

**Note to national facilitator(s):**

Include any relevant national procedures for interviewing and assisting children including unaccompanied and separated children.

**Other considerations (elderly persons and disabled persons)**

Elderly persons and disabled persons<sup>135</sup> should not be discriminated against in any way due to potential physical vulnerabilities. First line officials should be mindful of identifying elderly persons who may need specialist support, facilities or health care. First line officials should also take care to proactively identify persons with disabilities and ensure any specific needs are communicated and met.

Sometimes, disabled persons may be victims of trafficking, due to their disability, for example for the purpose of street begging. First line officials should be mindful of the possibility elderly or disabled persons identified may be in an abusive or exploited situation.

First line officials should also be mindful of the fact that migrants may have been rendered disabled or sustained other injuries at the hands of authorities in their own countries or during their migration journey. As a result, they may be reluctant to engage with officials who they consider to be perpetrators of violence. First line officials should give particular consideration to earning trust and building rapport with migrants who have been traumatised.

**10. Be aware of psychological and emotional needs<sup>136</sup>**

Most of the vulnerable individuals in mixed migration flows that first line official come across have suffered some kind of personal loss and physical or mental trauma. They may have lost family, friends, home, belongings, familiar surroundings and lifestyle. They may also have experienced war, separation, destitution, fear of discovery, as well as hostility and material deprivation on their journey. They may have been abused and exploited, robbed, starved or deprived of their freedom. All migrants have left their familiar home community and are experiencing changes related language, lifestyle,

<sup>133</sup>Ibid.

<sup>134</sup>See *Special Rapporteur on the Human Rights of Migrants, Report to the General Assembly, 4 August 2010*, paragraph. 93; *Detention of third-country nationals in return procedures*, European Union Agency for Fundamental Rights (FRA), p. 88; *Guidelines for border management and detention procedures involving migrants*, IOM, paragraph 1.1.2. For more on non-detention of unaccompanied and separated children, see section 4.4.3 above.

<sup>135</sup>Ibid.

<sup>136</sup>Ibid.

culture and status. Some of the individuals interviewed will show resilience to such conditions and changes while others are vulnerable, and a few may display disturbed behaviour.

First line officials should be aware of the **effects that traumatic experiences may have on communication during initial interviews**. For instance:

- A vulnerable migrant, in particular a refugee or asylum seeker, may fear speaking honestly about his or her situation to state officials, particularly those in uniform, as a result of the persecution suffered in his or her country of origin or, in the case of victims of trafficking, threats by the traffickers. The migrant may lack confidence in the ability of State officials to help and even fear that they will do harm.
- A traumatized individual may become helpless because he/she experiences the world as unpredictable, threatening and assaulting, which fundamentally threatens the individual's sense of self. In this context, traumatized asylum-seekers and other migrants may refuse to talk about experiences of distress and trauma.
- Incoherence may occur because of fatigue or strong emotional reactions, or because of poor command of language.
- In serious cases, there can be total confusion in relation to reality and alterations of identity or total denial. An individual suffering severe post-traumatic stress disorder may have serious memory gaps, such that questions may arise on the credibility of their claims. There have been cases where asylum seekers were unable to remember their children's names, ages, or even faces when questioned about especially traumatic events.

Such psychological effects should be seen as a sign for urgent need of rest, support, counselling and potentially treatment.

In the context of carrying out interviews with traumatised persons, it is important for first line officials to understand that people experience trauma and react to it in very different ways that may manifest differently in the course of an interview. Interviews by first line officials should be done for a specific purpose of identifying vulnerability. If an individual has been identified as vulnerable and traumatized (by the mere fact that trauma is obvious for example), then he or she should be referred for professional assistance as soon as possible without expanding the initial interview.

## 5.5 Identification and Referral of Vulnerable Categories

The above considerations are relevant to all categories of vulnerable migrant. The sections below offer specific considerations for specific categories of vulnerable people.

### 5.5.1. *Asylum Seekers*

The determination of who is, in fact, a refugee is a complicated and legalistic determination, which is to be undertaken by those specifically trained and empowered by the State to make this determination. However, first line officials must be sufficiently versed in the definition, as they must admit asylum seekers into their territory for determination under the refugee status determination (RSD) system.

Many migrants in irregular situations may not verbalize or otherwise express their protection or make asylum claims, though they may qualify for refugee status and protection. There are many reasons why

they may not make a claim. They may fear that they will be penalized for their irregular migration or use of migrant smugglers (though both are irrelevant for ascertaining a person's protection needs and international law prohibits discrimination of a person on the basis that he has used the services of a smuggler).<sup>137</sup> They also may not make claims for asylum because they are unaware that such channels exist, or not know how to use them. These considerations speak to the need to ensure that first line officials are equipped to identify individuals who may be in need of international protection and to appropriately refer them for further screening and that systems are in place to ensure that asylum seekers can access information about the right to claim asylum and to access fair and efficient asylum procedures.<sup>138</sup>

The quality of the initial contact between an asylum-seeker and the first line official is, therefore, very important. An incorrect decision at the point of access to the territory or failure to pass on the asylum request to the competent authority may have serious consequences for the applicant. It is therefore required that those officials who first come into contact with asylum-seekers are fully aware of international legal norms and requirements and refer those seeking asylum or appearing to require international protection to the relevant procedure. Where there is doubt, entry should *not* be refused, but referral should be made to the appropriate adjudication body.

### Access to asylum procedures

Everyone has the right to seek and to enjoy asylum from persecution.<sup>139</sup> The principle of *non-refoulement* contained in Article 33 of the 1951 *Convention Relating to the Status of Refugees* implies the right to admission to the territory and the right to remain until the individual is declared not to be a refugee following a fair and efficient refugee status determination process (including any and all appeals). Protection can only be meaningfully provided if individuals have access to the territory of States where their protection rights and needs can be assessed properly. This means that asylum-seekers need to:

1. Gain access to the territory of the State that is not the State of his citizenship or permanent residence
2. Apply for asylum
3. Access the national asylum procedures.

The principle of *non-refoulement* applies whether or not the person has been formally recognized as a 1951 Convention or OAU refugee, and includes not only a threat to life or freedom on account of race, religion, nationality, membership of a particular social group or political opinion, but also a risk of being exposed to death, torture, to inhuman or degrading treatment or punishment, or widespread and generalized violence. For this protection to be effective, access to an adequate procedure, for the determination of refugee status and/or the general principle of *non-refoulement* is crucial.

No entry restrictions should be made on an asylum seeker arriving with fraudulent documents, without documents, or because he or she has otherwise entered irregularly. For individuals in mixed migratory flows, where there are indications that they cannot return to their country or place of origin due to a well-founded fear of persecution, access to the asylum procedure will be the most appropriate avenue to pursue. For individuals who might have other grounds other than those covered under the *Refugees*

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<sup>137</sup>See for instance, Article 19 of the Smuggling of Migrants Protocol.

<sup>138</sup>OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (OHCHR, 2015), Guideline 7.

<sup>139</sup>Article 14, UDHR.

*Convention*, the principle of *non-refoulement* should be applied and their claim for non-return should be examined by appropriate authorities.

In any event, all individuals in mixed migration flows should be properly informed of their right to seek and enjoy asylum. This information should be communicated to unaccompanied and separated children as well.

Asylum-seekers must be allowed to remain in a country until the determining authority has made a decision. Border officials should immediately inform, without exception, the competent authority of all asylum requests.

### **The role of first line officials in the asylum process**

Asylum seekers should never be interviewed by police or border officials on the substance of their asylum claim. This is the role of officials from the national body mandated to take substantive decisions on asylum claims. Among other reasons for such a division of responsibilities is the need to ensure that the asylum-seeker receives adequate information about his or her rights before a substantive interview takes place. Also, specially trained officials need to study the asylum claim and ensure that a determination of status is made pursuant to fair and efficient standards that accord with international and regional human rights and refugee law. Finally, asylum seekers' claims should not be examined by police or border officials because asylum seekers are likely to have experienced great trauma and an arduous journey, and should have adequate time to rest and recuperate before being subjected to an asylum interview.

Rather, border officials have a positive responsibility to identify persons who may wish to apply for asylum and refer them to the relevant determining authority. They also have the important responsibility to identify and respond to all persons presenting themselves at the border in a protection-sensitive and rights-respecting way and ensure that all individuals who need to seek asylum are entered into the appropriate protection system. This includes posing questions to those seeking protection to determine if they are in fact asylum seekers, even if they do not formally declare themselves as such.

### **Some additional concerns when encountering refugees and asylum seekers:**

- Since refugees and asylum seekers are generally fleeing harm at the hands of their government (or from whom the government cannot or will not protect them) they are likely to be distrustful of government officials; appropriate and timely referral to the competent authority or agency is therefore critical.
- Some individuals in mixed migration flows may not realize that they qualify as a refugee although they are fleeing in search of protection (for example, rape has been recognized as torture under international law), suffered domestic violence without State protection, women or girls fleeing forced marriage (which is recognized as a practice similar to slavery) or female genital mutilation;<sup>140</sup>
- Women travelling with men, and children travelling with adults, should be properly screened not only to ensure that they are not being trafficked or smuggled, but also to properly assess whether the accompanied individual has his or her own independent claim for asylum;
- Some individuals claiming asylum may originate from a place with few refugees. It is important to remember that the first point of reference is the individual's situation in that country. Therefore, at the point of first encounter, it is the role of the first line official to refer any potential asylum

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<sup>140</sup>Also see section 4.2.1.

seeker or refugee to the relevant authority for full consideration of his/her case, not to reject them based on country of origin.

#### Note to national facilitator(s)

Include reference to the appropriate entity for the referral of possible refugees and asylum seekers.

### 5.5.2. Victims of Human Trafficking

First line officials dealing with mixed migration flows are in a unique position to identify possible victims and rescue them, to ensure that victims are removed from situations in which their enjoyment of rights is compromised, and receive the protection and assistance they need and are entitled to as victims of crime. However, identifying victims of trafficking is extremely challenging, even for specially trained experts.<sup>141</sup>

At the point they are encountered by front line officials, trafficked victims may not have been exploited yet, making it difficult to identify victims of trafficking among smuggled and other migrants in mixed migration flows.<sup>142</sup> It is of course ideal to identify victims of trafficking before they are exploited, but there are several challenges involved in doing so. Victims of trafficking may not identify themselves to authorities for several reasons:

- Trafficked persons may not consider themselves to be victims
- Many trafficked victims begin their journey by paying smugglers to facilitate their irregular migration, without knowing that they are bound for exploitative situations.
- Some trafficked persons would prefer to remain in exploitative situations than be returned to their country of origin; exploitation, violence and discrimination may seem 'normal' to them because of their past experiences.
- Where they have entered a country irregularly, they may fear detention or deportation due to their irregular status.
- Trafficked persons may not trust authorities because of past experiences with authorities and/or because they fear that they are collaborating with traffickers.
- Victims may have binding relationships with traffickers and prefer to remain with them, or else fear reprisals by them, or threats made against them individually or against their families.
- Victims of trafficking may experience feelings of shame and stigma and not wish to engage with authorities if their privacy and confidentiality cannot be guaranteed.
- Victims may be too traumatized to cooperate or too young or otherwise inexperienced to express themselves.<sup>143</sup>

<sup>141</sup>See for instance, McAdam, M., 'Who's Who at the Border? A rights-based approach to identifying human trafficking at international borders', *Anti-Trafficking Review*, Issue 2, 2013, pp. 33—49, available at: [www.antitraffickingreview.org](http://www.antitraffickingreview.org)

<sup>142</sup>See *Policy Guide on Identifying Victims of Trafficking: An introductory guide for policy makers and practitioners*, Bali Process, 2015, pp.3-11.

<sup>143</sup>For more on understanding why victims of trafficking may be reluctant to identify themselves, see *Policy Guide on Identifying Victims of Trafficking: An introductory guide for policy makers and practitioners*, Bali Process, 2015, pp.14-15. Also see *Manual for Law Enforcement and Prosecutors on the Implementation of the Zambia Anti Trafficking Act*, IOM, 2013, p.96; ICMPD, *Anti-Trafficking Materials for Judges and Prosecutors*, Background Reader, ICMPD, 2004, p.92

As with other categories of vulnerable person, specially trained personnel are best placed to carry out identification of trafficked persons. The key role of first line officials is to identify persons who they think may be trafficked, and refer them to appropriate authorities for identification.<sup>144</sup> Good practice is to introduce a presumption in favor of treating persons presumed to be victims of trafficking as though they are victims for the purpose of providing initial protection and assistance.<sup>145</sup>

When encountering a person who may be a victim of trafficking, first line officials should immediately separate him or her from the possible trafficker or traffickers and protect him or her from any further harm. Front line officials must contact the appropriate authority in accordance with the national referral system. In many countries this would be the police, who will then further refer the victim to social services or to an NGO.

External indications that a person is a victim of trafficking will vary from region to region and from time to time, depending on the modes of trafficking, common profile of the victims and the intended exploitation. First line officials must become familiar with trafficking patterns in their country, but also remain alert to any new forms of trafficking that may appear.

**Note to national facilitator(s)**

If available, include national indicators of human trafficking.

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<sup>144</sup>Also see IOM *Handbook on Direct Assistance for Victims of Trafficking* (IOM, 2007); *Policy Guide on Identifying Victims of Trafficking: An introduction for policy makers and practitioners*, Bali Process, 2015; *Policy Guide on Protecting Victims of Trafficking: An introduction for policy makers and practitioners*, Bali Process, 2015.

<sup>145</sup>See *Policy Guide on Identifying Victims of Trafficking: An introductory guide for policy makers and practitioners*, Bali Process, 2015, p.3.

There are several lists of indicators that exist to help first line officials identify victims of human trafficking.<sup>146</sup> Some indicators may be compelling in one situation, and irrelevant in other situations. Indicators are not conclusive evidence, but suggest that further enquiries should be made. Some general indicators that can be tailored to specific situations of first line officials may include the following:

- A child or a group of young children traveling with an adult who is not their direct relative (notice that the term “Auntie” is often used not only towards relatives but also towards older ladies who are not family. This may create a false understanding that a child is traveling with a relative when that is not the case).
- One person appears to be in control of another person, or a few other people. This may include answering questions for the other person and/or holding the other person’s documents. (In such cases individuals should be separately interviewed without the presence of the others.)
- The person does not have a very clear idea where he or she is traveling to, the travel route, how he or she will get there or what he or she expects to find at the destination.
- The person describes an unrealistic future at place of destination (For instance, “I will work as a nanny and earn USD\$2000 per month”).
- Recruitment and/or travel agencies are unregistered or unregulated, and have charged the migrant high fees.
- Entry visas are not applicable or the purpose of travel does not correspond with the other information available (for instance, moving for an extended period of time yet travelling with little or no luggage).
- The person has false identity and or work and travel documents, or the information they provide is not credible.
- The person seems abused, exhausted, frightened or traumatized.
- The person or child seems sedated. Traffickers sometimes control their victims through drug use or the use of sleeping pills and other sedatives.
- Signs of physical injuries.<sup>147</sup>

Trafficked persons are victims of serious crimes and should not be held in a detention facility simply because they do not have legitimate travel documents. Such detention would amount to re-victimization. Rather, they should be provided with necessary psychological, medical and any other support required in their situation. All suspected cases of trafficking should be reported as soon as possible, to the police and other competent authorities. As a key measure, first line officials should develop contacts with national referral institutions specialized and mandated to respond to the specific needs of persons in the circumstances highlighted above.

**Note to national facilitator(s)**

Include reference to the appropriate national authority for the referral of victims of trafficking.

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<sup>146</sup>Ibid, pp.21-27.

<sup>147</sup>Ibid, p.26.

### World Health Organization (WHO) Guidelines for First Contact with Trafficked Persons:

**Do no harm:** If there is any reason to believe that conducting an interview will cause the person to be worse off than before, it should not be undertaken at that time. The risks related to trafficking are very real and can be extreme. Do not discount potential risks until you are certain that they have been eliminated.

**Know your subject:** Learn the risks associated with trafficking and with specific cases.

**Prepare referral information:** Be prepared to provide information about appropriate legal, health, shelter, social support and security services, and to help with referral if appropriate.

**Ensure anonymity and confidentiality:** Protect an interviewee's identity and confidentiality.

**Listen to and respect each victim's assessment of his or her situation and risks to their safety:**

Recognize that each person will have different concerns and that the way (s)he views them may be different from how others might assess them.

**Do not re-traumatize the victim:** Do not ask questions intended to provoke an emotionally charged response. Be prepared to respond to a person's distress and to encourage/support her/him.

**Be prepared for emergency intervention:** Be prepared to respond if a trafficked person says (s)he is in imminent danger. Contact the police and the necessary support services if the person needs special assistance. If in doubt as to how to address a specific case, or in presence of difficult circumstances, the correct action to take is always to call the police, or if the person is in immediate need of support refer her/him to a local NGO, international organizations such as IOM, or State Service Providers supporting trafficked people and inform the specialized unit accordingly.

Once a person has been identified as a victim of trafficking in persons, he or she is entitled to protection and assistance as a victim of crime. Article 6 of the *Trafficking in Persons Protocol* sets out that States:

- Shall, in appropriate cases and to the extent possible, protect the privacy and identity of victims, including by making legal proceedings confidential (Article 6(1));
- Shall, in appropriate cases, provide victims with information on court and administrative proceedings, and assistance to present their views and concerns to the court in criminal proceedings, in a manner not prejudicial to the defence (Article 6(2));
- Shall provide for the physical, psychological and social recovery of victims, including by providing appropriate housing; counseling and information; medical, psychological and material assistance; and employment, educational and training opportunities (Article 6(3));
- Shall endeavor to provide for the physical safety of victims (Article 6(5));
- Shall ensure the legal system provides victims with the possibility of obtaining compensation for damage suffered (Article 6(6)).

The *Trafficking in Persons Protocol* further emphasizes that States should take into account the age, gender and individual needs of victims of trafficking, in particular the special needs of children such as appropriate housing, education and care (Article 6(4)).<sup>148</sup> It is important that States fulfill their obligation to protect and assist victims of trafficking, irrespective of their willingness to cooperate in criminal justice procedures against alleged traffickers.

<sup>148</sup>Article 6, *Trafficking in Persons Protocol*. Also see OHCHR *Principles and Guidelines on Human Rights and Human Trafficking*, available at: <http://www.ohchr.org/Documents/Publications/Traffickingeng.pdf>

### 5.5.3. Unaccompanied and Separated Children

The role of front line officials is not to make long-term decisions with respect to children.<sup>149</sup> Rather their role is to ensure that children, or persons who may be children, are referred as expeditiously as possible to specially trained service providers who can carry out age determinations and best interest determinations. First line officials also must ensure that they do not engage with children in a way that may violate their rights.

The OHCHR *Principles and Guidelines on Human Rights at International Borders* offer pertinent guidance in relation to the role of first line officials with respect to children they encounter in their work. In relation to screening and interviewing children, Guideline 6 specifies that States and, where appropriate, international and civil society organizations, should consider:

“Limiting interviews carried out by border authorities with children to only gather basic information about the child’s identity. Children identified as being unaccompanied or separated should be immediately referred to child protection agencies, and only be interviewed in the presence of an appropriately trained childcare worker. Children travelling with adults should be verified as being accompanied by or related to them, including through separate interviews with appropriate trained and qualified personnel.”<sup>150</sup>

In relation to identification and referral, Guideline 7 advises that States, and where appropriate, international civil society organizations should consider:

“Ensuring that children are promptly identified and that anyone claiming to be a child is treated as such and where appropriate given access to proper age determination processes, appointed a guardian, and referred to child protection authorities and other relevant services. Age determination processes should be a measure of last resort and be carried out in a prompt, child-friendly, gender sensitive and multi-disciplinary manner, and be conducted by child protection officials or officials with sufficient and relevant expertise and training. The benefit of the doubt should be given to the individual being assessed, who should have the opportunity to appeal the decision before an independent body.”<sup>151</sup>

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<sup>149</sup>The ultimate long-term, or durable, solutions may be family reunification, where possible. All efforts should be made to locate the child’s family and assess possible reunification in terms of personal safety and child wellbeing; other alternatives include safe return to home country, ensuring availability of care there, in case family has not been traced. Other options are local integration in the host country as well as fostering, adoption or, in rare cases, resettlement in a third country.

<sup>150</sup>OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (OHCHR, 2015), Guideline 6.17, pp.29-30.

<sup>151</sup>*Ibid*, Guideline 7.7, p.32.

## Recommended Procedures for Assistance to Unaccompanied and Separated Children<sup>152</sup>

- Only specially trained authorities should interview unaccompanied and separated children.
- Unaccompanied and separated children shall be questioned by officers of the same sex, except when there is evidence that this would not be in the best interests of the child.
- Basic needs of the child, including provision of food, drink, medical care and rest, should be attended to before any interview is carried out.
- An initial interview should be conducted in an age-appropriate and gender sensitive manner, in a language understood by the child, by professionally qualified persons in order to ascertain the identity of the child, the identity of the child's parents and siblings, as well as the nationality of the child.
- During the interview, particular attention should be given to the reasons for being separated or unaccompanied (e.g. parents are still in the country of origin, were lost during travel or died) as well as to the identification of particularly vulnerable children (e.g. those with disabilities, victims of trafficking, victims of sexual and other forms of violence, or former child soldiers)
- Wherever possible, interviews with children should take place in the presence of a social worker or child psychologist.
- As soon as unaccompanied and separated children are identified, a guardian should be appointed by the responsible ministry to accompany the child throughout the entire process until a durable solution that is in his or her best interests has been identified and implemented.

In relation to detention of children, Guideline 8 of the OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders* clearly prohibits arbitrary detention and advises States, and where applicable, international and civil society organizations, to consider:

“Ensuring in legislation, policy and practice that children are never detained on the basis of their or their parents’ migration status, irregular entry or stay including through release or, where appropriate, adopting human rights based, non-custodial, community based alternatives to detention in accordance with the best interests of the child.”<sup>153</sup>

Detention can never be justified solely on the basis of a child being unaccompanied or separated, or on the basis of their immigration or other status of that of his or her parents. Where detention is exceptionally justified, it shall be as a measure of last resort and for the shortest appropriate period of time with all efforts applied to allow for immediate release of unaccompanied and separated children from detention and their placement in appropriate accommodation.<sup>154</sup>

<sup>152</sup>Adapted from Government of Zambia, *Guidelines: Protection Assistance for Vulnerable Migrants in Zambia*

<sup>153</sup>OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (OHCHR, 2015), Guideline 8.6, p.34.

<sup>154</sup>Committee on the Rights of the Child, General Comment n°6, *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, CRC/GC/2005/6, 1 September 2005, paragraph 61.

### Note to national facilitator(s)

Include reference to the appropriate national authorities for referral of unaccompanied and separated children for protection and assistance.

#### 5.6 ACTIVITY: Simulation Exercise

This activity simulates interviews between first line officials and vulnerable individuals in mixed migration flows. The exercise challenges participants to follow guidelines in their encounters with vulnerable individuals, towards reaching well-founded decisions in categorizing them.

Activity G	Simulation
<b>Aim</b>	To allow participants to practice engaging with vulnerable migrants, and using good identification techniques.
<b>Duration</b>	120 - 150 minutes <b>Note: according to the time you have you can decide how many simulation cases to include in the activity. A minimum of three is recommended.</b> <b>Consider allowing 20-30 minutes for each simulation</b> (10 - 15 minutes for the role play and 10 - 15 minutes for debriefing afterwards.)
<b>Materials</b>	Flip chart Flip chart paper Handouts for case study
<b>Preparation</b>	<ul style="list-style-type: none"><li>• Seat the group in a circle facing each other. Create an ‘interview space’, including an immigration desk in front of the group or in the middle of the circle created by the group, for the role plays to take place.</li><li>• For each simulation case:</li><li>• Identify and invite participants to play the role of the vulnerable individual approaching the border (men can play female roles and women can play male roles), and select two persons for each case study to play the role of the immigration officials, working as a pair. Use different participants for each case study so as many people can take part as possible.</li><li>• Distribute a card / paper to each individual playing the role of a vulnerable individual. This information is to be used by the individual playing a migrant and is not to be shared with others before the simulation (see Annex V).</li><li>• The pair of immigration officers takes their place at the desk, to be approached by participants playing the vulnerable person / people.</li><li>• As each case study commences, the facilitator presents ‘basic facts’ to the immigration officers and the rest of the group before each case study, including details on the appearance of individuals (See Annex V)</li><li>• The “officers” will decide how to conduct the interview in line with the guidelines discussed in the previous presentation and their experience. Eventually they have different choices how to act (e.g. rejecting people at the border, sending them to a transit center, referring to the right authority in relation to the nature of the case etc.).</li><li>• If there is time, in a sixth and finale simulation, one participant should volunteer to play a migrant from a case in which he or she has had experience with.</li></ul>
<b>Instructions</b>	Before starting with the simulation, explain the following instructions: <b>Instructions to participants acting as first line officials</b> <ol style="list-style-type: none"><li>1. You are staffing a border post between two countries, namely A (neighboring country of exit) and B (your country).</li></ol>

	<p>2. This is a busy day at the border and you need to make many important and efficient decisions about the people seeking to enter your country.</p> <p><b>Instructions to participants acting as vulnerable individuals</b></p> <ol style="list-style-type: none"> <li>1. Carefully read the instruction on the case sheet and prepare to adopt the role of the character you are assigned. Do not share the details of this character with the group. In approaching the role play, think of migrants you have come across in your work who have been in a similar situation and how they acted and reacted during their first interview.</li> <li>2. It is up to you to decide if and when to reveal the details, in line with the questions you are asked. Where details are missing from your case sheet, you are welcome to make them up as you see fit.</li> </ol> <p><b>Instructions to other participants</b></p> <ol style="list-style-type: none"> <li>2.a.i.1. Take notes of the interactions between the migrant and the immigration officers for sharing in the debriefing session to follow the role play.</li> </ol>
<p><b>Facilitator's role during the simulation</b></p>	<ul style="list-style-type: none"> <li>• Before each simulation starts, provide participants with information they need for the role play. Offer the group with some background information on the case. For example: "Now approaching the officers is a very old man. He seems exhausted and can hardly stand on his feet, despite using a stick. He does not speak English".</li> <li>• Each simulation exercise should last up to 10-15 minutes and should end with the officials deciding what to do with the case. The way the interview is conducted is as important as the final decision and is at the heart of this exercise.</li> <li>• Following each case: <ol style="list-style-type: none"> <li>1. Ask the participants playing the 'officers' to share how they felt during the exercise - what challenges they encountered, and how they overcame them.</li> <li>2. Ask the participants playing the 'migrants' how they felt during the exercise, about the treatment that they received from the officers.</li> <li>3. Discuss with the group how the identification and interview guidelines were followed, what was done well, what could have been improved.</li> <li>4. Discuss with the group: Did the officers arrive at the right decision? What other option could there be?</li> </ol> </li> <li>• Encourage participants to start with positive feedback before moving on to constructive criticism. Role play is not an easy task and participants should not feel they are being tested.</li> </ul>
<p><b>Resources</b></p>	<p>See: <b>Annex V</b>, Simulation Exercise</p> <p>See: <b>Annex I</b>, Facilitation Tip 4: Maximizing the learning potential of a role play</p>

## 5.7 ADDRESSING KEY CHALLENGES IN IDENTIFICATION

### 5.7.1. Key Challenges

First line officials face several serious challenges in their daily work and in the identification of vulnerable individuals in need of assistance. Such challenges may be the result of insufficient training or resources, but some of them are a reflection of the true complexity of the tasks first line officials, and immigration officials in particular, are responsible to carry out.

Such challenges can have an impact on the effectiveness and quality of work and of the mental well-being of first line officials. In discharging their duties, officials can experience varied emotions ranging from compassion to indifference or even resentment in relation to the individuals they deal with on a daily basis. Their emotions will have an impact on their ability to respond objectively and empathetically to the different situations they are faced with.

Extensive research on the work of institutions dealing with victims of trauma or human rights violations, as well as more generally with people in need, has shown that such work may place psychological strain on staff, particularly those working on the ground in daily or regular contact with people in need.<sup>155</sup> First line officials, particularly border officials, are no exception. Not only are these officials exposed to people's suffering and trauma on a recurrent basis, they are also given the immense task of guarding the borders against irregular crossings and criminal threats, whilst at the same time protecting the rights of all involved and ensuring the efficient flow of legal cross-border transit. Key challenges front line officials often confront:

1. **Border control versus the right to protection** - border officials are responsible for stemming the irregular migratory movements of people while at the same time respecting, fulfilling and protecting the rights of all migrants, and providing certain vulnerable migrants (such as asylum seekers and refugees) with specific protection and assistance.
2. **National legislation versus international law** - border officials and other first line officials are bound by international laws including human rights law, refugee law, transnational criminal law and other norms relevant to international migration law, which may not be easy to understand alongside the body of national laws, procedures and rules that they are also bound to follow.
3. **Practical challenges** – these include the unpredictability of arrivals, lack or shortage of resources to respond to the number of individuals arriving via complex migration routes, challenges posed by often well-resourced clandestine networks of human smuggling and trafficking, challenges posed by the different situations and needs of the migrants encountered.
4. **Language barriers** – as previously discussed, one of the key challenges in providing protection and assistance to migrants, in particular vulnerable ones such as refugees or asylum seekers, is linguistic and cultural differences that often exist between first line official and / or service providers and migrants, as many migrants are not able to speak local languages. This can be particularly challenging when working in remote areas where access to interpreters is limited.

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<sup>155</sup>This presentation, in most part (but not all) is adapted from the Zambia Training Manual, section 4.4.2, is greatly based on two articles on the psychological effects on humanitarian workers assisting refugees and those in conflict situations. The articles are Mark Walkup, *Policy Dysfunction in Humanitarian Organizations: The Role of Coping Strategies, Institutions and Organizational Culture*, Journal of Refugee Studies, 1997, Oxford University Press and the article by Barbara Harrell-Bond, *Can Humanitarian Work with Refugees be Humane?*, Human Rights Quarterly 24 (2002) 51-85, The John Hopkins University Press.

5. **Lack of training on how to work with vulnerable individuals** – vulnerable individuals in mixed migration flows may be desperate, afraid, shy, confused, fearful of telling the truth, unaware of their situation or their rights. They may not understand that cooperation with first line officials is in their best interest, or they may be too traumatized to do so. First line officials who have not been trained to deal with these situations may not be able to fully and properly respond. They also may feel strained over time.
6. **Frustration due to lack of ability to assist** – sometimes the mechanisms in place are incapable of responding to specific vulnerable cases. This may create frustration among the first line officials and even feelings of helplessness if the number of such cases is high.
7. **Criticism of service provision** - as a consequence of the above complexity, it is often the case that first line officials face criticism by the media, humanitarian organizations and migrant organizations, among others, of the services they provide which show an inadequate understanding of the challenges that they must confront in their work.

**Note to national facilitator(s):**

Update this section in line with the particular challenges faced by national first line officials.

### **5.7.2. Confronting challenges**

In order to overcome the challenges highlighted above and to meet the international requirements regarding the rights of migrants, and the – sometimes tremendous – specific protection needs of vulnerable migrants the first line officials need to undertake their tasks with a healthy attitude. This requires specific measures to maintain a balanced and equitable approach to the work of first line officials, including:

- Cooperation of all the relevant actors who need to be involved. It is vital to maintain close links with national referral institutions to complement the actions of key actors and ensure that appropriate solutions are found for each particular case. Such institutions can be governmental or non-governmental, including international organizations;
- Focusing attention on the specific needs of the migrant and providing a differentiated approach or response on a case-by-case basis as not all vulnerable individuals have the same needs even when they fall within the same category;
- Effective communication with vulnerable individuals in order to find the best ways to assist them and to also help them comply with existing laws and procedures. A better understanding of the situations of migrants, including vulnerable ones, such as refugees or asylum seekers, guarantees a more effective response;
- Taking care of your wellbeing: Essential measures include receiving appropriate training; receiving psychological support; participating in peer support networks (even supporting and sharing with colleagues locally can ease the pressure); rotation of officials working in stressful environments; and taking annual leave regularly instead of accumulating leave days.

## 5.8 ACTIVITY: Identification Checklist Revision

At the conclusion of the session, participants are invited to revisit the identification checklist created at the beginning of the session.

Activity H	Identification Checklist Revision
<b>Aims</b>	To revisit the checklist written at the beginning of the session.
<b>Duration</b>	5 - 10 minutes
<b>Materials</b>	Flip chart Flip chart paper Handout <b>Annex IV</b> : Identification Checklist
<b>Instructions</b>	<ul style="list-style-type: none"> <li>• Revisit the identification checklist flip chart paper written at the opening of the session</li> <li>• Invite participants to add any additional points that were raised by participants during discussion</li> </ul>
<b>Resources</b>	See <b>Annex I</b> , for: Facilitation Tip 1: Facilitating the discussion Facilitation Tip 2: Asking participants questions to induce learning or commitment See <b>Annex IV</b> , Identification Checklist.

# 6 SERVICE PROVISION AND REFERRALS

## 6.1 SESSION OUTLINE

The session provides brief information on the key protection and assistance needs of individuals belonging to different vulnerability categories, as well as the guiding principles of protection service provision. It further highlights the need for effective referral of vulnerable migrants for service provision and the importance of coordination between service providers to ensure comprehensive and quality service delivery.<sup>156</sup>

### **Objectives**

- To understand the key rights and needs of individuals belonging to the different vulnerability categories;
- To become familiar with the basic principles of service provision to vulnerable individuals in mixed migration flows;
- To understand the importance of an effective referral mechanism.

### **Training materials:**

- ❖ Projector
- ❖ Laptop
- ❖ Case studies (Annex IV)
- ❖ Flip chart paper
- ❖ Markers
- ❖ Blu-tack / press-stick

### **Session Outcomes**

As a result of the training first line officials will:

- Have a better understanding of the importance of facilitating service provision through referral mechanisms;
- Have increased capacity and motivation to collaborate with relevant actors in the provision of protection and assistance

## 6.2 COMPONENTS OF REFERRAL SYSTEMS

In order for States to fulfill their obligation to provide vulnerable migrants with the protection and assistance services they need, first line officials must put in place approaches to ensure that vulnerable migrants are effectively referred to appropriate service providers. Key components of such approaches are set out below:

### **National Referral Mechanism**

A referral mechanism for assistance and protection of vulnerable individuals is a comprehensive system of cooperation between different governmental and possibly non-governmental agencies that facilitates swift and professional support to the beneficiaries and promotes collaboration in service provision.

The National Referral Mechanism (NRM) for protection and assistance to vulnerable migrants (including vulnerable ones such as refugees and asylum seekers, victims of trafficking, unaccompanied and separated child migrants, and stranded migrants or stateless persons), outlines the different roles played by stakeholders in different stages of assistance and maps out service providers responding to different groups of individuals in mixed flows to provide differentiated protection services. The NRM facilitates coordination among actors to ensure that the immediate, medium and long-term protection

<sup>156</sup>This section has been modified with several changes and additions from the Government of The Republic of Zambia, Training Manual (Facilitators Guide): Protection Assistance for Vulnerable Migrants, 2014; chapter 6

and assistance needs. A NRM is important because it ensures that the human rights of migrants, such as refugees and asylum seekers, are upheld and respected through the effective referral of individuals to appropriate service providers for the required services.<sup>157</sup>

**Note to national facilitator(s):**

Where there is a National Referral Mechanism in the country where the training is being conducted, it should be summarized and shared with participants.

**Case management**

Case management is a step-by-step process entailing a series of interviews, decisions, counseling sessions and actions to provide a range of support to a person. Case management involves the ongoing care of each vulnerable individual, including intake, follow-up and planning for departure from the Service Provider. An important feature of case management is a Care Plan, to be developed by the Case Manager and the migrant. The Care Plan should document the services needed by the migrant, how these services will be provided, and by whom. The Care Plan should be part of the migrant's case file and should be regularly revisited to address changes in the individual's protection and assistance needs.

**Needs assessment**

At the outset, it is important that emergency needs such as first aid are provided for at the earliest possible time. Once immediate actions have been taken to secure the lives and safety of migrants, needs assessments are carried out.

Designated staff with appropriate training to ensure that comprehensive protection services and adequate care are provided should undertake needs assessments. This assessment facilitates the identification of the needs unique to each individual. These needs are linked to the individual situation of the migrant, and it is thus important to offer a differentiated approach. No two individuals will have the exact same needs, even if they belong to the same category of migrants, or of vulnerability. Needs change over time, as the condition of migrants and their circumstances change. For instance, migrants who are victims of trafficking may face increased protection needs if they choose to participate in criminal justice processes. The assistance needs of other migrants may reduce as they recover from their ordeal. Needs assessments must therefore be revised in accordance with individual needs.<sup>158</sup>

Needs can be categorized in three main stages: immediate, medium and long-term (or 'durable').

- **Immediate assistance** will focus on securing and stabilizing the situation – i.e. ensuring the individual is safe, is provided with his/her basic survival needs (shelter, food, clothing etc.), receives initial health care and is screened for further health assistance and is provided with initial psychological/psychosocial support following an assessment of his/her mental wellbeing. In the case of unaccompanied and separated children, there is a need to appoint a guardian and consider, where adequate and possible, fostering services. Initial legal actions, such as establishment of identity, contact with relevant embassies (where they consent to such contact; refugees and asylum seekers may be endangered where their embassies are contacted) and provision of travel or identity documents will start at this stage and will continue. It is of outmost importance that

<sup>157</sup>See for instance *National Referral Mechanisms, Joining efforts to protect the Rights of Trafficked Persons: A Practical Handbook*, OSCE, 2004.

<sup>158</sup>See for instance, *Policy Guide on Identifying Victims of Trafficking: An Introductory Guide for Policy Makers and Practitioners*, Bali Process, 2015, p.2 and p.6.

individuals, especially victims of trafficking, asylum seekers and refugees, are not penalized or discriminated against on the basis that they have irregularly entered or remained in a State.<sup>159</sup>

- **Medium and long term efforts** to assist vulnerable individuals will consist of both a follow-up on services already provided as well as new activities aimed at finding durable solutions for each individual and preparing the person for independent living thereafter (in the case of adults). A durable solution may be safe and voluntary return to the person's home country, where possible, or regulation of stay in the host country. In rare occasions, a person may be relocated or resettled to a third country that agrees to receive the individual and where his or her rights can be guaranteed. In the case of children, durable solutions must be sought in the best interest of the child. Where children are unaccompanied or separated, durable solutions begin with exploring the possibility of family reunification. Family tracing, as a component of durable solutions for unaccompanied or separated children, should be prioritized except where it would not be in the best interests of the child. Returning a child to his or her country of origin is not an option where it would lead to a reasonable risk that such a return would violate the fundamental human rights of a child, or violate the principle of *non-refoulement*. In such cases, local integration is the primary option, based on securing the child's residence status and ensuring he or she enjoys the same access to rights as national children. Where these options are not available, best interest's determinations may show that settlement in a third country may offer a durable solution.<sup>160</sup>

## 6.3 GUIDING PRINCIPLES FOR SERVICE DELIVERY

The following guiding principles are relevant to all approaches to ensuring migrants have access to protection and assistance services, from the point of initial contact through to the provision of relevant services.<sup>161</sup>

**Do no harm** - Ensure that all interactions with migrants from the point of initial contact, in the initial interview and during the provision of service delivery, do not harm migrants.

**Respects for Rights** - Like all humans, migrants, including refugees and asylum seekers, have human rights that States must protect, respect and fulfil, based on international and national laws and standards, at all times.

**Security and Safety** – While the security of the State has to be ensured, the safety and protection of individuals in mixed flows as well as the safety and protection of Service Providers are of paramount importance at all times. Shelters should ensure a safe and secure temporary living environment for migrants, including vulnerable ones. Measures should be taken to ensure that the working environment for shelter staff is safe and secure.

**Confidentiality** - Ensure confidentiality at all times. All information and documentation regarding migrants is confidential and should be treated as such. Individuals' information, including files, should at all times remain stored in a secure place, according to data protection principles. Information should only be shared on a "need to know" basis with actors also complying with these principles. With the

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<sup>159</sup>In this respect, note that the *Smuggling of Migrants Protocol* prohibits prosecution of migrants on the basis that they have been smuggled (Article 5). Also see the United Nations Working Group on Arbitrary Detention, statement that "criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate irregular immigration and leads to unnecessary detention" (A/HRC/7/4, paragraph 53).

<sup>160</sup>See Committee on the Rights of the Child, General Comment n°6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005, paragraphs

<sup>161</sup>These guiding principles have been adapted from Government of the Republic of Zambia, Training Manual (Facilitators Guide): Protection Assistance for Vulnerable Migrants, 2014; Chapter 6.

exception of instances where the safety of the migrant or another person is involved, service providers are not permitted to disclose information relating to the individual without her/his consent, unless national legislation provides a legal obligation of disclosure. Where an individual is an asylum seeker or refugee, at no time should their information be shared with the government of their country of origin.

**Information** - Everyone has the right to information in a language they understand, including information on their rights, the services available, the accessibility of services, the potential risks and consequences of accepting services and the repercussions of not accepting services, so that they can make informed decisions. For children, information should be provided in an understandable and child-friendly manner.

**Note to national facilitator(s):**

Several countries have guidelines in place for interviewing children.<sup>162</sup> Facilitators should include reference to their national guidelines on communicating with children.

**Consent** - All services should be provided with the full and informed consent of the beneficiary, where possible. Beneficiaries have the right to fully participate in all stages of decision making related to their cases. Participation in assistance programmes will be on a voluntary basis only, with the free and informed consent of the migrant.

**Non-Discrimination and Impartiality** – As they respond to the needs of migrants, service providers should ensure non-discrimination and impartiality in all interactions. Beneficiaries are not to be discriminated against by Service Providers based on gender, race, nationality, ethnicity, age and religion, sexual orientation, or any other grounds.

**Client-Centred Approach** – All the services rendered should take into consideration the rights, needs and concerns of each individual. This principle must be respected during all stages of service provision.

**Best Interests of the Child** - The best interest of the child, to be determined by specially trained and authorized service providers, should be the primary consideration in all actions concerning children, including the search for short, medium and long-term solutions. Further, a best interest determination must be conducted in preparation for any decision fundamentally impacting on child's life, including an unaccompanied or separated child. This determination requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, family history and particular vulnerabilities and protection rights and needs.

**Quality assurance** - Service provision is to be carried out by trained and experienced professional service providers. For all parties, service provision is to be conducted in a collaborative, interdisciplinary manner to provide the best possible care. Emphasis should be placed on monitoring and evaluating service provision to ensure its quality.<sup>163</sup>

<sup>162</sup>For example, Finland: Directorate of Immigration, *Guidelines for Interviewing (Separated) Minors*, March 2002, available at: <http://www.refworld.org/docid/430ae8d72.html>, and Heaven Crawley, *Working with children and young people subject to immigration control: Guidelines for best practice*, 2<sup>nd</sup> edition, Immigration Law Practitioners' Association, 2012.

<sup>163</sup>See recommended guidelines on monitoring and evaluation throughout the OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, (OHCHR, 2015).

## 6.4 ACTIVITY: Provision of Protection Services

This practical session will include an analysis of a number of case studies. As previously explained, not all vulnerable individuals fit established legal categories for protection, and each is vulnerable by different degrees. It is therefore critical that migrants, including vulnerable ones are provided with differentiated processes and procedures. Hence service providers should conduct an assessment as a guide for the services to be provided. Such services should address immediate, medium term and long term needs. Where one service provider cannot meet protection and assistance needs, collaboration should be sought with other service providers and competent authorities.

Activity I	Provision of protection services
<b>Aims</b>	To allow participants to identify protection and assistance needs of vulnerable migrants
<b>Duration</b>	30 minutes
<b>Materials</b>	Simulation exercise case studies (see <i>Annex V</i> )
<b>Instructions</b>	<ul style="list-style-type: none"> <li>• Divide participants into four groups.</li> <li>• Invite each group should select a note taker and a presenter.</li> <li>• Hand out one case stories from simulation exercise in Session 5.6 (Annex V) to each group.</li> <li>• Allow each group 10 minutes to discuss the case study and answer the following three questions:               <ol style="list-style-type: none"> <li>1. What are the protection and assistance needs/services for the individual(s) in the case study? Look at short, medium and long-term solutions.</li> <li>2. Which actors provide these protection services in your country?</li> <li>3. What assistance challenges, if any, may there be in assisting the case?</li> </ol> </li> </ul>
<b>In plenary (15 minutes)</b>	<ul style="list-style-type: none"> <li>• Allow 20 minutes for a plenary discussion (5 minutes per group) during which each group will present its case analysis.</li> </ul>
<b>Resources</b>	See <i>Annex V</i> for case studies

## 6.5 ACTIVITY: National Referral Mechanisms

National Referral Mechanisms (NRMs) are more likely to be effective where they are documented formally in writing, for instance, through Memorandums of Understanding or other written documents that outline specific roles and responsibilities of State and non-governmental service providers. NRMs should take into account provisions of the international law, including international human rights law as well as international best practice, as well as the national legal framework to the extent that it complies with international law.

Activity J	National Referral Mechanism
<b>Aims</b>	To allow participants to familiarize themselves with National Referral Mechanisms
<b>Duration</b>	30 minutes
<b>Materials</b>	Flip Chart Flip Chart Paper Markers Where available, National Referral Mechanism (for Option A)
<b>Instructions</b>  <b>OPTION A</b> Where there is a national referral mechanism	<p><b>Group work (10 minutes):</b></p> <ul style="list-style-type: none"> <li>Disseminate a simplified overview of the National Referral Mechanism, preferably in diagrammatic form.</li> <li>Allow groups to discuss what they have found to be the strengths and weakness of the existing NRM in their experience of using it, and come up with suggestions for strengthening the NRM or otherwise making its use more efficient (for instance, is there adequate awareness of the NRM and how it operates?).</li> </ul> <p><b>In plenary (20 minutes):</b></p> <ul style="list-style-type: none"> <li>Invite participants to share views on what they considered to be the strengths and weaknesses of the NRM in their experience of using it</li> <li>Invite participants to discuss how the NRM itself could be strengthened, and / or how their use of the NRM could be made more effective.</li> </ul>
<b>Instructions</b>  <b>OPTION B</b> Where there is no national referral mechanism	<p><b>Group work (20 minutes)</b></p> <ul style="list-style-type: none"> <li>Divide participants into 4 groups (either keeping the same groups as per previous activity or changing the groups)</li> <li>Give each group a flip chart paper and markers and ask the groups to draw a NRM diagram (flow chart) according to the participants' experience of unofficial referral mechanisms</li> <li>Invite the group to design a referral mechanism in a way they think the group would function more effectively. Groups are given 20 minutes.</li> </ul> <p><b>In plenary (10 minutes):</b></p> <ul style="list-style-type: none"> <li>Invite each group to present its diagram to the group</li> <li>Invite participants to discuss effective aspects of each proposal towards suggesting a consolidated NRM</li> </ul>
<b>Resources</b>	Where available, the National Referral Mechanism of the country where training is taking place.

## 7 CONCLUDING THE TRAINING

**Before closing the training workshop:**

**1. Invite participants to:**

Name the three things that he or she is taking from the workshop into their daily work  
Explain how they will incorporate new knowledge into their work routine

**2. Revisit the list of expectations created at the outset of training, and ask participants:**

Which expectations have been fulfilled, and which have not?  
For those expectations that were not fulfilled, how could those expectations be fulfilled outside of the workshop?

**3. Invite participants to exchange contact details to enhance work relations and coordination.**

To facilitate exchange of contact details, facilitators could circulate a contact information sheet for participants to complete, if they consent to their contact information being shared with other participants in the training.

**4. Ask participants to complete the post-training questionnaire (Annex VII).**

**5. Distribute certificates of participation / completion to participants to acknowledge the efforts they have investment in the workshop and the new knowledge and understanding they have gained to encourage them to implement what they have learnt during the workshop.**

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## ANNEX I: Facilitation Tips

### **Facilitation Tip 1: Facilitating the discussion**

Storytelling is a sensitive exercise in general as it deals with personal experiences and feelings. It is even more so in this case as it constitutes the first activity of the training.

**To this end, as a facilitator:**

- Do not judge comments made by participants, either positively or negatively. Feedback should build upon participants, contributions to transform the activity into a learning experience.
- Respect the participants' feelings, beliefs and opinions. If a participant expresses a negative feeling as a result of his/her experience with an asylum seeker or migrant, the facilitator should find out exactly how the past interaction made the participant feel and ask the participant what he or she would have needed in order to overcome that feeling (e.g. resources, knowledge, time, etc.).
- Avoid general comments such as "That was good". Instead, point at what was relevant in the participant's statement from the point of view of the objectives of the session. Ask the group of participants what was the lesson learned.
- To ensure that the group understands the interventions by participants, the following techniques can prove useful, particularly in difficult discussions:
  - **Repeating:** the facilitator repeats contributions to confirm understanding and ensure that the relevant participant is heard by the whole group;
  - **Rephrasing:** the facilitator repeats in his or her words what he or she understands a participant to be saying;
  - **Summarizing:** a summary condenses the content of several comments that may have been made over the course of the discussions;
  - **Re-framing:** extracting the statement and expressing it correctly.
- If a participant expresses an opinion that is contrary to international human rights standards or humanitarian principles, the facilitator should:
  - Highlight the complexity of the issue and announce that the group will consider the issue during another session to avoid in-depth analysis of the issue at this stage (thereafter the issue should be addressed when appropriate according to the training agenda);
  - Make a personal note of it and bring it up in relevant session as it is important to provide clarity. A useful approach is to invite the rest of the participants to give their views.

### **Facilitation Tip 2: Asking participants questions to induce learning or commitment**

Asking questions to the group and receiving the answers in an appropriate manner is a very important skill for facilitators, which is often taken for granted. Like most skills, however, it can be developed with some technique and practicing. Questions, if adequately formulated and posed in a timely manner, can greatly contribute to **inducing learning or personal involvement**.

Asking questions helps participants work things out for themselves. Letting the group find solutions to apparent controversies can enable the group to gain ownership and to commit to basic protection principles. The guiding rule is that facilitators should maintain genuine confidence in the participants as a group.

The present Manual invites the facilitator to continuously pose questions to participants after most exercises, such as after sharing personal experiences, watching a movie, reading a document, doing a

role-play, etc. To maximize the learning, questions should be of the following kind and posed in the following order:

- 1) Questions to help organize the facts mentioned in the stories so that all participants have the same understanding of them: *“What are some of the aspects of this situation that caught your attention?”*
- 2) Questions to trigger personal reflection: *“What was your instinctive response to the situation?”*
- 3) Questions about how the exercise is relevant to the participants’ work: *“What is the significance of these exercises for our daily work?”*
- 4) Questions that may open the way for some kind of inner commitment through specifying which concrete actions participants could take: *“If we went back home right now, what key message would we carry with us that we would like to remember in our daily work or whenever we find ourselves in a similar situation?”* In other words, questions that ask participants to think about how specifically they will apply the new information after they return to work.
- 5) Questions about the relevant legal provisions: *“Are there any legal instruments that could provide some guidance in such cases, and what are the applicable provisions?”*

Since such questions invite participants to provide a lot of information, and the group may lose focus, it is important that the facilitator pays careful attention to the reply to help participants get back on track if needed.

**The facilitator should avoid questions which contain the answer**, as they can sound patronizing or make the exercise boring. All participants will have a base point of knowledge. Questions that call for a participant to use knowledge and reason out of a situation are most effective.

**Participants need to be able to answer at the present level of learning.** The facilitator should not pose questions if they are not explained. If participants lack the theoretical background to respond, they should be supplied with support documents to build their reply.

### **Facilitation Tip 3: Delivering effective presentations**

It is commonly acknowledged that the maximum attention span during a presentation is 45 minutes. This means that participants will not retain any comments made by the facilitator after that. Particularly in presentations of a technical or legal nature, participants can lose concentration or become distracted during the initial 20 minutes. In order to help them integrate the content of the presentation, facilitators should ensure the following:

#### **Preparation**

- Preparation is the key to success. At a very minimum, rehearse your full presentation twice.
- **Be very clear about how much time you have** - and stick to that time in preparing your presentation.
- **Make sure you know the substance** of the presentation well enough so that you do not need to read. You should be able to complement the text in the Power Point presentation without additional notes.
- **Be sure to fully understand the sequence or logic** of your presentation. This is the only way that participants will also understand it. If a Power Point presentation does not follow a logical sequence that you feel comfortable with, modify it until you feel at ease with it.

- **Be very clear about your key message** - and ensure that everything in your presentation is both consistent with, and supportive of, that key message. You should be able to articulate the message in a phrase or a sentence.

## Opening of the presentation

- Depending on the subject, the opening of a presentation can be humorous, questioning or even provocative. It can also be a citation or an anecdote. A connection to a previous speaker or facilitator can also be a very good way to start.
- Often it is best to give a **high-level overview first**, and then plunge into the details; then, while listening to the details participants can relate to the high-level picture and understand where you are. This also helps them save important brain power for later parts of the talk which may be more important.

## Delivery of the presentation

- **Direct eye contact** is the initiator of communication. Facilitators should not face the display screen behind them and talk to it. The presentation should be pitched towards the back of the audience, especially in larger rooms. Eye-contact enables the facilitator to recognize whether the participants are still wholly engrossed in the subject or maybe need a break. It can also provide hints as to whether or not the content was understood by the group. However, it is important to avoid fixing on an individual - this can be intimidating.
- **Avoid sounding mechanical or robotic** to reach the audience. Be spontaneous and energetic in whatever you say. Involve the audience and make them the centre of attraction.
- **Speaking with conviction.** The only way to make the audience believe in what you say is to believe it yourself.
- **DO NOT read from your slides verbatim.**
- **Make brief statements, concentrate on the point and stay focused.** Condense what you say: every word should be needed. Make simple statements. Use familiar words. Explain technical terms. Be precise.
- **Add some humor and interesting facts or examples.** Try to be innovative and draw from your own personal experience to illustrate the different parts of your presentation.
- **Deliberately pause at key points** - this has the effect of emphasizing the importance of a particular point you are making.
- **Make sure that the group maintains an overview of structured content.** When the participants cannot identify a clear structure, they easily lose orientation and overview. Ensure that one Statement is logically linked to the next.
- **Stick to the plan for the presentation**, don't be tempted to digress - you will eat up time and could end up in a dead-end with no escape!
- **Do not go over time.** Keep your presentation as short as possible. As a rule of thumb, allow 2 minutes for each general overhead transparency or PowerPoint slide you use, but longer for any that you want to use for developing specific points.

## Closing of the presentation

- The end of a presentation should consist of three to five sentences summing up the key messages of the presentation. It will give you confidence when delivering your presentation and you will transmit a sense of clarity to the participants.

## Asking for questions

- Some facilitators feel that they have done their duty by presenting the material to the participants, but unless facilitators help their participants to learn, they are not really training.
- Give participants real opportunities to ask questions. Invite questions through motivating statements, rather than rhetorical statements. Give participants time to formulate their questions before you move on. Look at the participants to make sure you do not miss someone with his or her hand up.
- Asking for questions at the end of the presentation may help to save time and to ensure that participants listen to your message until the end, which may resolve some of their doubts. However, if you become aware that some participants are confused, ask for questions at that point to clear up possible misunderstandings and to help the participants concentrate on the rest of the presentation.

**Each facilitator has his/her own style of teaching. While keeping these tips in mind, make sure to be yourself.**

### **Facilitation Tip 4: Maximizing the learning potential of a role play**

1. Structure the role-play well, keeping it brief and clear in focus;
2. When explaining the instructions to the participants, caution them against extensive monologue and encourage participants to give each other sufficient time to speak;
3. Give clear and concise instructions to participants;
4. Make participation voluntary;
5. Encourage participants to play their roles as close to reality as possible. This kind of exercise sometimes invites exaggeration and drama, often making observers in the audience laugh – so it is easy to lose focus. Humor is indeed a core ingredient of the learning experience, but it is equally important that the role play is taken as seriously as possible to enable participants to respond to daily challenges while in a safe and supportive environment.

### **Facilitation Tip 5: Debriefing on feelings and emotions**

Several of the participants – inter alia because of the stress experienced during the exercise – may show rather strong emotions that need to be expressed and integrated. To integrate those feelings, the facilitator needs to conduct this session in a way that:

- Participants are reassured that whatever feelings they have experienced, whether positive or negative, are legitimate.
- Acknowledging such feelings and emotions is an important part of the learning process as it will greatly contribute to increased self-awareness. This will, in turn, strengthen communication skills and help in the decision-making process later on.
- It would be useful to ask the participants whether they can associate any of those feelings to their day-to-day work. If some nod with their heads, the facilitator should ask them if they can recall a

concrete event where they felt overwhelmed, stressed, or just powerless to deal with the situation.

- In group reflections like this, it is important to find common ground between the facilitator and the participants. In this context, it is useful if the facilitator can bring up personal experiences that may have triggered similar feelings or emotions in his or her work, even if it is not specifically related to border control; it could be a tense situation in a refugee camp, a large refugee outflow, etc.

### **Facilitation Tip 6: Delivering a participatory presentation**

In an interactive presentation, the participants share their own experiences with regard to the various concepts presented by the facilitator. Such presentations foster:

- Greater understanding of the participants on the content of the presentation. In addition, the participatory dynamic provides additional legitimacy to the concepts learned. Participants' own experiences reinforce new concepts.
- The facilitator should ask the participants whether they can recall a concrete situation in the discharge of their functions where that specific point was very relevant. He should invite all participants to reflect on the lessons, whether positive or negative, that could be drawn from such situations. The facilitator should integrate these lessons into the presentation.
- In this kind of presentation it is important to keep an eye on the clock. Participants' interventions can lead to interesting and constructive debates, and it is up to the facilitator to allow more time for certain discussions or to go back to the main presentation. However, the facilitator should try to allocate sufficient time for discussion so that he or she can also cover the main issues selected to develop participants' communication skills. To that end a co-facilitator could discreetly assist with time-keeping during the interaction with participants.

### **Facilitation Tip 7: Answering participants' questions adequately**

1. **Directly answer questions requesting information that the rest of participants are not likely to have or that request the facilitator's opinion**

Facilitators should foster the participants' thinking or problem-solving skills by asking questions [see *Facilitation Tip 2: Asking participants questions to induce learning or commitment, in Session 2*]. Thus, if one participant asks the facilitator a question, the facilitator could pose the question to the group and ask all the participants to think about the answer. However, if the participants are not likely to reach the answer easily, directly answering the question may be more practical and rewarding to the group. The answer then should be kept brief and exact.

2. **Redirect questions to which participants are likely to know the answer**

If you think that somebody might know the answer, you may redirect the question to the group, asking for an answer or comment, or an elaboration upon the issue. This procedure not only encourages more participation by the class but it also implies that peers are a resource for learning.

3. **Postpone the answer when you are very short of time, especially if the answer is complex, or when the material will be covered in an upcoming session, or when the answer is of interest to only a few participants**

Participants are more likely to learn and remember if the facilitator answers their questions **when** they ask them. However, when the material is covered later, the facilitator should call it to the participants' attention and give the answer without further explanation. If the answer is not covered in the course, then the facilitator could offer to answer it after the session or make an appointment to discuss the question later. This also tells the group of your willingness to try and answer their questions. Generally, the facilitator should answer more questions than he/she postpones or else the participants may ask fewer and fewer questions.

4. **Gently discourage questions that are inappropriate**

Usually participants ask questions because they wish to learn but sometimes a participant will ask a question to sidetrack the group, to get attention or even to put the facilitator in a difficult situation. Handling such questions presents a dilemma. If the facilitator treats them like other questions, it may encourage the participant to ask more of the same, but if the facilitator turns that participant down abruptly, then he/she may discourage not only that participant but also the rest of the group from asking any kind of question. It is probably best to tactfully indicate in what way the question is inappropriate. It is not uncommon for a group to have at least one participant who appears to be antagonistic toward the facilitator or hostile to the subject matter and who asks questions that serve only to express the participant's disagreements, which often are of little interest to the rest of the group. Because such questions usually stem from emotional rather than intellectual concerns, answering only on a cognitive level serves little purpose. It is probably best to see that participant outside of the session and explain what seems to be going on from the facilitator's point of view. Often such a talk is sufficient to enable the participant at least to censor the questions he or she asks in the room, although it may do little to solve the underlying problem.

5. **Acknowledge it when you do not know the answer**

If the facilitator does not know the answer to a participant's question, then it is important to say so. Although one of the roles of a facilitator is to be the "expert" and "information source," admitting that he or she does not know the answer to a question will not damage the confidence of the group in the facilitator. Conversely, if the facilitator 'makes up' an answer he or she is not convinced of, there is a good chance that the participants will find out, and the facilitator's credibility will be seriously damaged. The facilitator should assume the responsibility of finding the answer to the question and reporting back with the answer to the group. Facilitators can create a 'parking space' for questions that require follow up answers, by placing them on a flip board or black board, and answering them in the following session or later during the training after having done the appropriate research.

6. **Creating an accepting atmosphere and encouraging learning**

If encouraging participants to ask questions is desirable behavior in training, then it is also desirable that the facilitator creates an atmosphere where participants are not afraid to ask questions for fear of embarrassment, etc. The facilitator should avoid anything that would embarrass the participant who asks the question. Rather than responding to a participant's question or comment with a value judgment, ask a probing question. The facilitator may help the participant arrive at the correct answer, or an acceptable one; in which case, rather than proving the participant "wrong", the facilitator has helped him or her to be "right".

## **Facilitation Tip 8: Providing feedback on role plays**

**Give positive feedback:** Give positive feedback before any developmental comments, people respond to praise, encouragement and recognition. The phrase 'negative feedback' should be avoided if possible and the term 'developmental feedback' used instead. Preface developmental feedback with a positive statement, and it is more likely to be favorably received. Example: "I'm very pleased with the way you have settled in, you and your participation in discussion. I do feel though that you need to take more time to reflect on your answers to questions."

**Encourage:** If the facilitator likes something about a participant or feels that they have done something particularly well, the facilitator should recognize this, give positive feedback and encourage them to build on their strengths. The facilitator should always try to end the feedback on a positive note.

**Concentrate on what can be changed:** The facilitator should direct the feedback only towards things that an individual can do something about.

**Give details:** Detailed feedback gives more opportunity for learning. Example: "The way you phrased that question was helpful to the participant because it gave him/her the opportunity to explain."

**Allow the other person to accept or reject your feedback:** The facilitator cannot impose beliefs, opinions and attitudes on others. At best, demands for change are met with initial resistance, and at worst with resentment. Skillful feedback offers the person information about himself/herself, which he/she can consider and from which he/she can learn. Ultimately, it is the receiver's decision whether or not to act upon the facilitator's feedback.

**Offer alternatives:** Turn negative feedback into positive suggestions. Example: "It would save time if you collated all the information first rather than....."

**Take responsibility for feedback:** Avoid "You are...." Statements which suggest universally agreed opinions of the other person. Start with "I think...." or "In my opinion...." It is important to take ownership of proffered feedback.

**Be aware that things may change as a result of your feedback:** There is always the chance that the recipient will be annoyed or hurt by negative feedback, or that the relationship between the facilitator and a participant might change as a result. The facilitator needs to think about this before giving feedback.

**Ask whether or not they agree with the feedback given:** The facilitator should give the person a chance to think about and discuss the feedback in his/her presence. The recipient is unlikely to act upon feedback with which he/she disagrees.

**Ask if he/she has been told something similar before:** If he/she has, the feedback given will reinforce the fact that some kind of change is needed. If the recipient has not, it will at least establish that the issue is between just the facilitator and the participant. **Ask him/her to suggest alternative forms of behavior etc.:** The most positive step towards setting a clear objective about change is to enable the other person, first, to acknowledge the need for change and, second, to reach his/her own conclusion about how things could have been done differently.

## ANNEX II: Relevant Human Rights

For use in Activity D - human rights and migrants.

- Group 1: Card 1, Card 2, Card 3
- Group 2: Card 4, Card 5, Card 6
- Group 3: Card 7, Card 8, Card 9
- Group 4: Card 10, Card 11, Card 12

### **Card 1: The right to life**

#### **UDHR, Article 3:**

Everyone has the right to life, liberty and security of person.

#### **ICCPR, Article 6:**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### **ICRMW, Article 9**

The right to life of migrant workers and members of their families shall be protected by law.

### **Card 2: Freedom of thought, conscience and religion**

#### **UDHR, Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

### **ICCPR, Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### **ICRMW, Article 12**

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.
2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### **Card 3: The right to vote (only citizens)**

#### **UDHR, Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### **ICCPR, Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

## **Card 4: Freedom from slavery**

### **UDHR, Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### **ICCPR, Article 8**

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
- 3.(a) No one shall be required to perform forced or compulsory labour;  
(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;  
(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
  - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
  - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
  - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - (iv) Any work or service which forms part of normal civil obligations.

## **Card 5: Freedom of expression**

### **UDHR, Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### **ICCPR, Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

## **Card 6: The right to health**

### **UDHR, Article 25**

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### **ICESCR, Article 12\***

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### **ICRMW, Article 28**

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

**\*ICESCR – Art 2(3)** 3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant **to non-nationals**.

## **Card 7: Freedom from torture, cruel, inhuman or degrading treatment**

### **UDHR, Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **ICCPR, Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Also see Convention against Torture

## **Card 8: The right to family and family unity**

### **UDHR, Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### **UDHR, Article 16**

- (a) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (b) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (c) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### **ICESCR, Article 10\***

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

**\*ICESCR – Art 2(3)** 3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant **to non-nationals**.

## **Card 9: Freedom of movement**

### **UDHR, Article 13**

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

### **ICCPR, Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

## **Card 10: The right to be treated equally**

### **UDHR, Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### **ICCPR, Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

## **Card 11: The right to food**

### **UDHR, Article 25**

- (a) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (b) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### **ICESCR, Article 11\***

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed.
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

**\*ICESCR – Art 2(3)** 3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to **non-nationals**.

## **Card 12: The right to access public services equally (only citizens)**

### **ICCPR, Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

## ANNEX III: Case Studies

### **Case 1: Aisha**

Aisha is a 17-year-old Somali from Mogadishu. She has no travel documents. She left her home country due to ongoing fighting, which cost the lives of both her parents. She is traveling in a group. None of the other people in the group is a direct family member, although several belong to her clan. Her brother works and lives in South Africa where she has now arrived and is trying to reach him.

*Answer for facilitator(s): Aisha is unaccompanied female child, as she is traveling alone, although with the partial protection of her clan. Due to the reasons for her escape from her home country she can seek asylum. Further interview and situation analysis will be needed to determine if she is a refugee, although in many places asylum seekers from Somalia are considered prima-facie refugees. The proper authorities should further investigate the fact that her brother lives in South Africa for family reunification.*

### **Case 2: Nudi**

Nudi is a 25-year-old man born in State A to parents who are nationals of State B but have been residing in State A for the past 30 years. According to the nationality law of State B, everyone who is born on the territory of State B is automatically a national of that State. On the other hand, the nationality law of State A says that everyone who is born to a parent who is a national of State A is automatically a national of State A by birth. Nudi does not have any type of documentation of State A despite being born and having lived all his life there. Nudi recently decided to move to State C to look for better economic opportunities but was stopped and arrested shortly after entering the territory of State C because he does not possess any type of documentation.

*Answer for facilitator(s): Nudi is a stateless person*

### **Case 3: Michael**

Michael was arrested five years ago for illegal entry in State A and was issued a deportation order to his country of birth, State B. Michael does not have any type of documents with the exception of a birth certificate which states where and when he was born. While awaiting deportation he has been detained in State's A detention facilities. State A immigration authorities contacted State B's authorities to arrange his deportation; however, State B's authorities informed State A that Michael is not one of their nationals and therefore cannot be deported to their territory. State A authorities have tried to contact the authorities of other Countries where Michael resided or has family connections, however, they all replied that Michael is not one of their nationals. To date, Michael remains in detention awaiting deportation.

*Answer for facilitator(s): Michael is a stateless person. Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. It often occurs that the authorities of a country detain a stateless person with a view to preventing entry into or realizing expulsion from the State's territory, yet there may be no other country willing to accept the stateless person. Even if the country of former residence has been identified, often that country will not immediately accept the readmission of the individual. As a result, detention may become prolonged or even indefinite.*

#### **Case 4: Grace**

Grace is a 38 year old woman who was born in State A by a mother who is a national of State A and a father who is a national of State B. State A grants nationality by descent only (*jus sanguinis*), however, it does not allow women to pass on their citizenship to their children. State B, on the other hand, grants nationality on the basis of place of birth (*jus soli*) and, under its nationality law, children born to a national abroad do not acquire nationality in all circumstances. Grace never travelled outside State A, however, one day she went to visit her son who recently moved to the nearby village in State C. When she returned home, she was stopped by the authorities of State A and charged under immigration law for illegal entry in State A.

*Answer for facilitator(s): Grace is a stateless person. Of particular importance in this respect is the elaboration of the right to enter or return to – and thus also to remain in – a person's "own country" as found, for example, in Article 12 of the International Covenant on Civil and Political Rights and Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination. The interpretation of this norm put forward by the Human Rights Committee says: "The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language [...] moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence." At the same time, there are a number of other international norms that may play a part in securing entry into or, more often, protection from expulsion from a State for stateless persons. These include the overall prohibition of discrimination, the principle of non-refoulement, the right to family life and standards relating to the protection of non-nationals from arbitrary expulsion.*

### **Case 5: Wako**

Wako is a 25-year-old Ethiopian man. He has a passport but no visa. He comes from a very poor village in the south of the country. He is attempting to reach South Africa, hoping to earn money and send it back to his family. He sold all his possessions to pay for the trip but now is left with no money since he paid his smugglers in advance and was robbed few times along the way. He is sick with an illness that cannot be treated in Ethiopia, and is very weak when he is encountered by immigration authorities in Tanzania. He is separated from the rest of his group. He has no means to travel onwards to South Africa or to return home.

*Answer for facilitator(s): Wako is a stranded migrant. Due to his medical condition may need health assistance and assisted voluntary return and reintegration assistance. However, if he cannot be treated at home, assisted voluntary return and reintegration may not be an option and he may have grounds to remain.*

### **Case 6: Eduardo**

Eduardo is a 15-year-old boy from Mozambique. He comes from an abusive home and decided to run away. He managed to catch a ride with a truck driver travelling to the DRC. He helps the driver with different chores along the way in return for the ride and some food. He has no travel documents. He has no clear plans what to do. He hopes to arrive in a big city somewhere and find some work.

*Answer for facilitator(s): Eduardo is an unaccompanied child. Although the details provided do not indicate a case of human trafficking, further investigation is needed. Plus, even if not yet trafficked, Eduardo is in great danger of being trafficked.*

### **Case 7: Junta**

Junta is a 20-year-old woman who is travelling with an older woman, Agnes, who is in her fifties, and four other younger women and girls. Junta was selling fruits in a market in a small village in Tanzania when she was offered a job as a waitress in a bar in South Africa. She was told she would be paid 2000 USD per month, an amount she cannot dream off in Tanzania. The woman who offered the job, Faith, took her to Dar es Salaam and organized her documents. Another woman, Agnes, is now traveling with the Junta and the others. Agnes is holding all their documents and attempts to answer the questions asked by immigration on their behalf. Junta has no work contract. She has no idea where in South Africa she will be working or the name of the bar.

*Answer for facilitator(s): There are strong indications that Junta is a victim of human trafficking who would be exploited once she arrives at her destination. Therefore Junta can be considered a presumed victim of trafficking and be assisted accordingly.*

## **Case 8: Iso**

Iso is 18-year-old Eritrean. He finds the regime in his country oppressive and escaped Eritrea to avoid the lengthy and harsh compulsory military service. Since he left illegally he may face an additional punishment by the State if he goes back.

*Answer for facilitator(s): an asylum seeker who would likely receive asylum not as a refugee but on humanitarian grounds (because of the exclusion clause). His claim needs to be checked and until then he cannot be sent back or removed from the territory of the country where he asked for protection.*

## **Case 9: Pierre**

Pierre is a 15-year-old boy from the DRC. He has no papers as he lived in the forest. When he was 12 he was taken from his village in Eastern Congo, together with other children, by a militia group and forced to fight with them against the central government. He does not know how long he stayed with the group, but eventually he managed to escape. Now he is afraid to return because the militias may kill him for deserting. He has no idea how to contact his parents.

*Answer for facilitator(s): an unaccompanied child. Ex child soldier, this increases his vulnerability. Asylum seeker, his claim should be reviewed as well as options for safe return under State (DRC) protection. If security concerns surrounding the case permit investigation into locating his parents this can be done with the help of the International Red Cross.*

## **Case 10: Aklilu**

Aklilu is a 34-year-old Ethiopian man who travelled to Kenya intending to journey onwards to South Africa, where he has relatives. Aklilu had no job in Ethiopia and was always fearful of police harassment. His brother and cousin in South Africa sent him money to travel to join them. He met a man in Moyale, Ethiopia and paid him USD\$50 to help him travel across the border to Kenya, where he was given to another man who took him in a small van to Isiolo. In Isiolo, Aklilu was hidden by the man in a house for two days before travelling on to Nairobi by bus. Now Aklilu is waiting for someone to arrange his travel onwards to South Africa. Aklilu has heard that it is not easy as an Ethiopian to get papers to be a refugee and is worried about being found by police to be without papers and sent back to Ethiopia or put in jail. Aklilu is also scared of what will happen to him if he runs out of money.<sup>164</sup>

*Answer for facilitator(s): Aklilu is a smuggled migrant. Based on this information, he may or may not be a refugee but more information would need to be known about his situation, including in relation to his fear of police harassment. As an undocumented migrant he is vulnerable, and may become stranded if he runs out of money.*

<sup>164</sup>Adapted from the website of the Regional Mixed Migration Secretariat (RMMS), [http://www.regionalmms.org/index.php?id=50&tx\\_ttnews%5Btt\\_news%5D=36&cHash=86dffe0a210d131f50e492ef84529ab3](http://www.regionalmms.org/index.php?id=50&tx_ttnews%5Btt_news%5D=36&cHash=86dffe0a210d131f50e492ef84529ab3)

## ANNEX IV: Identification Checklist

### Procedural considerations

1. Know your referral and focal points, be well coordinated.
2. Unthreatening interview environment.
3. Use proper interpreters.
4. If there are urgent needs (health care, food) attend to them before interview.
5. Collect and record all needed case information.
6. Provide all relevant information to the interviewee.
7. If possible, allow the interviewee to contact his/her family.
8. Refer case for further determination after gaining interviewee's consent.
9. A specially trained staff should interview children.
10. Families should not be separated.
11. Detention of migrants, in particular children, should be avoided. There are alternatives.
12. As soon as an unaccompanied or separated migrant is identified, authorities need to be informed and processes started to appoint a guardian.

### During interview:

1. Check for external hints of vulnerability.
2. Respect privacy and confidentiality.
3. Maintain respectful and professional attitude.
4. Put interviewee at ease.
5. Ask open-ended questions.
6. Let the interviewee do the talking.
7. Be a good listener.
8. Use reassuring body language, do not be intimidating.
9. Be aware of and try to avoid stereotypical assumptions and biases.
10. Respect cultural differences.

12. Consider the best interests of the child in all your dealings with children.
13. If children are accompanied interview them with their parent or guardian, unless this does not appear to be in the best interest of the child.
14. Give a young person claiming to be a minor the benefit of the doubt.
15. Use language and questions that are easy for children to understand.
16. Be aware of psychological and emotional needs of vulnerable individuals in mixed migration flows.
17. Individuals seeking asylum and children, as well as migrants who appear to meet the non-refoulement criteria, should not be refused entry and should be referred for further examination of their claim and/or situation.
18. Look for sign(s) of human trafficking, remember that the possible victim might not be aware of his/her situation or might be too scared to talk.
19. Do no harm.
20. Focus your attention on the specific case and needs of the person in front of you.



## ANNEX V: Simulation Exercise

### Case 1

#### **Information for the group and first line officials:**

Approaching are a man and a child. They seem tired and scared. The boy appears to be between the age of 12 and 14. They are dressed in dirty clothes and are carrying plastic bags. They have no identification papers.

#### **Information only for the participants playing the man and boy (to be copied onto a card / sheet and only given to persons playing the migrants):**

You are a father and son, Yusuf and Mohammed Al Jalal. The boy is 13. You are coming from South Central Somalia, where you escaped heavy fighting including an attack on your village. You fear recruitment of the boy into a militia group. The wife/mother passed away a few years ago. First you crossed to Ethiopia, but conditions there were hard, and forced recruitment of boys and young men into the Somali Al Shabab militia was going on there too. You have an uncle who is an asylum seeker in South Africa and is operating a small shop, so you decided to travel there.

You travelled with the help of smugglers to whom you gave all the money you had. Along the way you had to walk in the bush and hide, going for days without food. Once you were encountered by corrupt officials that agreed to let you pass in return for your only precious possession - some jewellery you were carrying. Your original intention was to reach South Africa, but the father had become very sick and you could not keep up with the rest of the group. Now you are exhausted and starved. The father is still sick and weak.

You are both scared and suspicious. You speak very basic English.

### Case 2

#### **Information for the group and first line officials:**

Approaching is a young woman, about 20 years old. She seems excited although a bit confused and very naive. She carries a new suitcase and holds a new Tanzanian passport. She speaks English.

#### **Information only for the participant playing the woman (to be copied into a card and only given to the person playing migrant):**

You are Justa Mbeka. You are 20 years old. You come from Songea in Southern Tanzania. You have a baby at home which you left with your mother. In Songea you used to work as a domestic worker, but the money you earned was hardly enough for you, your baby, your mother and your two younger siblings. Tina, a well-dressed woman you met in the market, offered you a job in South Africa as a nanny. She promised you will be paid some 1500 USD per month and be able to send money home. You decided to go. You had no idea how to organize a trip abroad but Tina took care of everything and even gave you some money to give to your mother to cover until you receive your first payment. She said you would pay her back when you start earning money. She took you to have your passport photos taken, then to the Ministry of Interior to get the passport. She filled out the forms and paid for it. Tina travelled with you up to the border with Malawi, but there she said "you must cross alone and that a man called John is waiting for you and will take you the rest of the way". She even called John on her cell phone, confirmed that he was on the other side of the border and told him that you were about to cross over. You are surprised and confused, but you trust Tina. You have never crossed a border

before, and this is your first interview with immigration officials. You have no work contract, and you do not know where in South Africa you will be working or for which family.

**Comment for the facilitator:** This case raises suspicions of trafficking, however, it demonstrates the difficulties in identifying case when exploitation has not started and the victim is unaware. Discuss with the group what clues can identify a possible victim of trafficking.

### **Case 3**

#### **Information for the group and first line officials:**

Approaching is a man, about 30 years old. He looks tired; he wears dirty cloths and carries a small backpack. He carries a passport under the name of Israel Hersi. According to the information in the passport, it was issued in 2009. Looking at the passport, the photo does not fully resemble him.

#### **Information only for the participant playing the man (to be copied into a card and given to them only):**

You are Abel, a young man from Ethiopia. You are from a farming family in the south of the country. The past years brought droughts and floods, and for several years your family could not recover. Other young men are travelling from your village abroad and are sending money to their families. You decided to do the same. Selling your plot of land and using all of your parents' and parents-in-law's savings, you paid to be smuggled to South Africa where you have relatives that will help you find a job. You left behind a wife and two small children. The smugglers gave you a passport under the name of Israel Hersi. It looks like a used passport.

The journey has been long and difficult. You had to stay in several safe houses along the way and to walk at night through the bush. Each time a smuggler leads you and the group you travel with for a few days or weeks, then passes you on to another smuggler. Some of them are abusive, and in one case you were beaten and robbed. It has now been two months since you left home. After waiting for a smuggler in the bush for almost a week with hardly any food or water, you and few other men from your group decided to carry on. You have now arrived at the border of Tanzania, hoping to use your passport and be allowed to pass on. You are desperate to reach South Africa as the future of your family depends on it.

### **Case 4**

#### **Information for the group and first line officials:**

An injured young woman is brought to you. She was found by local resident in a ditch some 300 meters away from your post. She is weak and scared. She can hardly walk and has a big bruise on her face. She is wearing a dress that is dirty and torn.

#### **Information only for the participant playing the woman (to be copied into a card and given to them only):**

You are Mary, a 25 year- old woman from Zimbabwe. You were selling fruits in Harare until you were approached by a man, Isaac, who befriended you. After few weeks he invited you to go on a business trip with him to Malawi/Botswana.

Before and during the trip the man treated you very well, he bought you clothes and said he wanted you to look nice on your vacation together. After a day and a night, you stopped in a motel. Isaac asked you to rest and wait for him while he was going to attend to his business. An hour later, a stranger

knocked on the door and said Isaac sent him to pick you up and take you to dinner. You did not want to allow the man in, but he entered anyway. You then asked him to leave, but after a short conversation the man beat you up and raped you, saying you belonged to him now. You were shocked and scared. You could not understand what had suddenly happened to your romantic vacation. You were then drugged and taken in the boot of a car to another location. You have no idea where you were. There, you were locked in a house and raped for several days. You understood some of the people who came in were clients, while the men staying there most of the time were the owners of what you realized was a brothel. You were kept locked in your room. You kept on resisting, and therefore beaten and drugged again and again. The men said you belonged to them, that the police would not help you because you are in their country illegally and that they could kill you and no one would know. After few days you managed to escape through the bathroom window and ran away. You collapsed in a ditch on the side of a small road. A good Samaritan found you and brought you to the nearby border post. You have no idea where you are. You are very scared but on the other hand grateful to have managed to get away from the house and from your abusers. You have no belongings.

## **Case 5**

### **Information for the group and first line officials:**

Approaching are two young girls, one about 12 and one about 14. They look a bit timid and confused, they keep looking around as if they are searching for something or someone. They hold new Zambian passports that have their photos. The names in the passports are Trina and Thandi Chomba. The girls speak a bit of English, but with a heavy Congolese accent.

### **Information only for the participant playing the girls (to be copied into a card and given to them only):**

You are Mishupi and Katerina, you are 14 and 12 and you are sisters coming from a big family in DR Congo. You used to live with your mum in a small town in southern DR Congo. Your father did not live with his family as he had found employment in a town three hundred kilometers away from home. However, he kept in regular contact with his family.

One of your elder sisters married a businessman who was living in Botswana/Mozambique. Following her marriage, she moved to Botswana/Mozambique to be with him. She sent money home to help the family. Your parents thought that it would be good to send you to stay with your sister and attend a good school in Botswana/Mozambique. You were very happy about that.

Passports were very expensive in the DR Congo, but the family was determined send you to Botswana/Mozambique and was willing to use the small amount of savings they had for the journey. None of the remaining family members had travelled outside DR Congo before, so when they were approached by a 'relative' who offered to help procure the passports for Mishupi and Katrina, they were very pleased. The man was introduced to the family as their father's cousin, although you had not seen or heard of him before. Your 'uncle' told you he could get passports for you in Zambia, as this would be cheaper than getting them in Congo. Your mother was against the idea at first, fearing that the girls would get into trouble. However, the uncle convinced her that he had done this before and that her children would be safe.

Eventually, with contributions from local community members, as well as their savings, the family gave him USD 1,500 for your transport to Zambia, passport procurement and onward journey to Botswana/Mozambique where you were to join your sister. In Zambia, you spent over a month in a small apartment waiting for your travel documents. You had to stay indoors, you rarely saw your uncle and you were bored, but no one abused you in any way.

Then the two passports were ready and the 'uncle' arranged for you to proceed to Botswana/Mozambique (via Malawi). You travelled by bus. The 'uncle' did not travel on the bus but followed the bus in a taxi.

You are now alone at the border facing immigration. You are showing your Zambian passports, which have your photos but different names: Trina and Thandi Chomba. You look around but your uncle is nowhere to be found.

## **Case 6**

One participant to volunteer to act out a case of a migrant that he or she has come across in their work. Two other participants will act as border officials.

## ANNEX VI: Pre Training Questionnaire

### Addressing the Challenges of Mixed Migration: Protection and Assistance of Vulnerable Individuals

Thank you for taking the time to complete this questionnaire. Please feel free to mark more than one answer when appropriate and to write in comments. Your feedback will help us to improve the upcoming training. If you do not know the answers to any questions, simply say 'don't know'.

*All information will be kept confidential.*

#### Background information:

Gender	Age	Education Level
<input type="checkbox"/> Male	<input type="checkbox"/> 8-25	<input type="checkbox"/> No schooling
<input type="checkbox"/> Female	<input type="checkbox"/> 26-40	<input type="checkbox"/> Less than primary
	<input type="checkbox"/> 41-55	<input type="checkbox"/> Primary
	<input type="checkbox"/> 56-65	<input type="checkbox"/> Secondary
	<input type="checkbox"/> 65+	<input type="checkbox"/> Some technical
		<input type="checkbox"/> Technical degree
		<input type="checkbox"/> Advanced studies

Employment	Position
<input type="checkbox"/> Government agency	<input type="checkbox"/> Policy / Planning
Name of department: _____	<input type="checkbox"/> Administration
<input type="checkbox"/> Non-governmental organization	<input type="checkbox"/> Technical / Operations
<input type="checkbox"/> Academic institution	<input type="checkbox"/> Clerical / Secretarial
<input type="checkbox"/> Faith-based organization	<input type="checkbox"/> Other: _____
<input type="checkbox"/> International organization	
<input type="checkbox"/> Self-employed	
<input type="checkbox"/> Other: _____	

1. Have you ever participated in training on migrant’s rights? If yes, please describe (e.g. When? Who ran the training? What topics were addressed?):
  
2. Have you ever participated in training on refugees and asylum seekers? If yes, please describe (e.g. When? Who ran the training? What topics were addressed?):
  
3. What do you think of the following statements (please tick answers which most apply):

**a. “People arriving illegally into the country have no rights” Agree/Disagree/Don’t Know**

Agree completely	Agree somewhat	Disagree somewhat	Disagree completely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**b. “People coming from Somalia and Ethiopia are economic migrants” Agree/Disagree/Don’t know**

Agree completely	Agree somewhat	Disagree somewhat	Disagree completely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**c. “All people who enter the country illegally should be sent back to where they came from”  
Yes/No/**

**Don’t know**

Agree completely	Agree somewhat	Disagree somewhat	Disagree completely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**d. “It is the role of first line officials to identify refugees.” Yes/No/Don’t Know**

**e. “It is the role of first line officials to identify asylum seekers”. Yes/No/Don’t Know**

Agree completely	Agree somewhat	Disagree somewhat	Disagree completely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. **How would you describe the difference between an asylum seeker, refugee and an economic migrant?**
  
5. **Why do you think migrants come into your country?**
  
6. **Please list five which human rights of migrants you are aware of:**
  - 6.a.i.1. \_\_\_\_\_
  - 6.a.i.2. \_\_\_\_\_
  - 6.a.i.3. \_\_\_\_\_
  - 6.a.i.4. \_\_\_\_\_
  - 6.a.i.5. \_\_\_\_\_
  
7. **Please list three categories of migrants who may have special protection needs:**
  - 7.a.i.1. \_\_\_\_\_
  - 7.a.i.2. \_\_\_\_\_
  - 7.a.i.3. \_\_\_\_\_
  
8. **Do you know what the principle of *non-refoulement* means? If yes, please describe in your own words:**
  
9. **What is the basic principle to follow in interviewing children?**
10. **Does your country have a National Referral Mechanism? For:**
11. **Unaccompanied Migrant Children**
12. **Asylum Seekers**
13. **Refugees**
14. **Victims of Trafficking**
15. **Stateless persons**

Thank you for your time.  
Your feedback is valuable to us!

## ANNEX VII: Post-Training Questionnaire

### Addressing the Challenges of Mixed Migration: Protection and Assistance of Vulnerable Individuals in Mixed Migration Flows

Thank you for taking the time to complete this questionnaire. Please feel free to mark more than one answer when appropriate and to write in comments. Your feedback will help us to improve the upcoming training. If you do not know the answers to any questions, simply say 'don't know'.

*All information will be kept confidential.*

#### Background information:

Gender	Age	Education Level
<input type="checkbox"/> Male	<input type="checkbox"/> 8-25	<input type="checkbox"/> No schooling
<input type="checkbox"/> Female	<input type="checkbox"/> 26-40	<input type="checkbox"/> Less than primary
	<input type="checkbox"/> 41-55	<input type="checkbox"/> Primary
	<input type="checkbox"/> 56-65	<input type="checkbox"/> Secondary
	<input type="checkbox"/> 65+	<input type="checkbox"/> Some technical
		<input type="checkbox"/> Technical degree
		<input type="checkbox"/> Advanced studies

Employment	Position
<input type="checkbox"/> Government agency	<input type="checkbox"/> Policy / Planning
Name of department: _____	<input type="checkbox"/> Administration
	<input type="checkbox"/> Technical / Operations
<input type="checkbox"/> Non-governmental organization	<input type="checkbox"/> Clerical / Secretarial
<input type="checkbox"/> Academic institution	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Faith-based organization	
<input type="checkbox"/> International organization	
<input type="checkbox"/> Self-employed	
<input type="checkbox"/> Other: _____	

15.a.i.1. Please list the main topics of the training you just participated in:

15.a.i.2. What do you think of the following statements (please tick answers which most apply):

a. *“People arriving illegally into the country have no rights”*

Agree completely	Agree somewhat	Disagree somewhat	Disagree completely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

b. *“People coming from Somalia and Ethiopia are economic migrants”*

Agree completely	Agree somewhat	Disagree somewhat	Disagree completely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

c. *“All people who enter the country illegally should be sent back to where they came from”*

Agree completely	Agree somewhat	Disagree somewhat	Disagree completely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. *“It is the role of first line officials to identify refugees.”*

Agree completely	Agree somewhat	Disagree somewhat	Disagree completely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15.a.i.3. In your own words, how would you describe the difference between an asylum seeker and an economic migrant?

15.a.i.4. Why do you think migrants come into your country?

15.a.i.5. Please list five human rights of migrants:

- 2007..1. \_\_\_\_\_
- 2007..2. \_\_\_\_\_
- 2007..3. \_\_\_\_\_
- 2007..4. \_\_\_\_\_
- 2007..5. \_\_\_\_\_

**1. Please list three categories of migrants who may have special protection needs:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

**1. In your own words, please describe what the principle of *non-refoulement* means:**

**2. In your own words, describe what the purpose of first line officials is in interviewing migrants:**

**3. Describe the most essential principles to follow in carrying out interviews with migrants who are children:**

**4. Please attempt to categorize the following migrants:**

**a) Robert:** Robert is from the Democratic Republic of Congo. He is 16 years old. His mother is a widow who could hardly support her four children and Robert left school to work and bring home some money. As he was not making much money close to home, he decided to travel further to find a job. He does not have a passport but a truck driver agreed to take him to South Africa in return to performing some chores for the driver during the trip. When they crossed the border into Zambia, Robert hid with the cargo in the back of the truck and Immigration Officials did not see him. One night the driver got very drunk and upset with Robert, accused him of stealing money, severely beat him up and left him injured on the side of the road where authorities found him.

*3.a.i. What category of vulnerable migrant would Robert fall under?*

*3.a.ii. Do you think Robert has special protection needs? Why or why not?*

*3.a.iii. Who would you refer Robert to provide him with appropriate protection and assistance?*

**b) Christina:** Christina is a 22-year-old woman from Rwanda. She used to work for a family in Kigali as a housemaid since she was 15. When Christina was 17 the family she was working for moved to Malawi/Botswana and took her with them. They moved her without organizing for her passport. Christina was not paid but only given some pocket money. She was allowed one free day a week, Sunday, which she used to go to church with the family. There she met George, a refugee from Burundi. Christina fell in love with him and after few months became pregnant. Hearing the news, George disappeared. When her employer found out she was pregnant, he kicked her out of the house with only the clothes on her back, saying that she was a whore and that he had no intention to raise and finance a bastard under his roof.

*1.a.i. What category of vulnerable migrant would Christina fall under?*

*1.a.ii. Do you think Christina has special protection needs? Why or why not?*

*1.a.iii. Who would you refer Christina to provide her with appropriate protection and assistance?*

1. Which part of the training did you find the most useful and relevant to your work? Why?
2. Which part of the training did you find the least useful and relevant to your work? Why?
3. Do you have comments and recommendations on the workshop?
4. Can you tell us if there are any topics that you wish had been included in the -training that were not? Which are these?
5. Do you have any other suggestions for us to improve the training?

Thank you for taking the time to complete this questionnaire. Your feedback will help us to improve the training. If you do not know the answers to any questions, simply say 'don't know'.

***All information will be kept confidential.***

Your feedback is valuable to us!

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