

## The principle of *non-refoulement* under international human rights law

*Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.*

**What is the principle of *non-refoulement*?** The principle of *non-refoulement* forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations. Under international human rights law the prohibition of *refoulement* is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). In regional instruments the principle is explicitly found in the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. International human rights bodies, regional human rights courts, as well as national courts have guided that this principle is an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights. Human rights treaty bodies regularly receive individual petitions concerning non-refoulement, including the Committee Against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child.

**What is the scope of the principle of *non-refoulement*?** The prohibition of *refoulement* under international human rights law applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment or other serious breaches of human rights obligations. As an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of *non-refoulement* is characterised by its absolute nature without any exception. In this respect, the scope of this principle under relevant human rights law treaties is broader than that contained in international refugee law. The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status, and it applies wherever a State exercises jurisdiction or effective control, even when outside of that State's territory.

The prohibition of *refoulement* has been interpreted by some courts and international human rights mechanisms to apply to a range of serious human rights violations, including torture, and other cruel, inhuman or degrading treatment, flagrant denial of the right to a fair trial<sup>i</sup>, risks of violations to the rights to life<sup>ii</sup>, integrity and/or freedom of the person<sup>iii</sup>, serious forms of sexual and gender-based violence<sup>iv</sup>, death penalty or death row<sup>v</sup>, female genital mutilation<sup>vi</sup>, or prolonged solitary confinement<sup>vii</sup>, among others. Some courts and some international human rights mechanisms have further interpreted severe violations of economic, social and cultural rights to fall within the scope of the prohibition of *non-refoulement* because they would represent a severe violation of the right to life or freedom from torture or other cruel, inhuman or degrading treatment or punishment. For example, degrading living conditions<sup>viii</sup>, lack of medical treatment<sup>ix</sup>, or mental illness<sup>x</sup> have been found to prevent return of persons.

Heightened consideration must also be given to children in the context of non-refoulement, whereby actions of the State must be taken in accordance with the best interests of the child. In particular, a child should not be returned if such return would result in the violation of their fundamental human rights, including if there is a risk of insufficient provision of food or health services.<sup>xi</sup>

**How to respond to the protection needs of migrants according to the principle of *non-refoulement*?** States have a legal obligation under international human rights law to uphold the principle of *non-refoulement*, including to ensure that a range of practical and human rights-based protection mechanisms are in place:

**1. Mechanisms for assessment related to the principle of non-refoulement.** States should put in place mechanisms and allocate resources to ensure that the IHRL protection needs of all migrants can be assessed individually and with due process, including as a supplement to asylum determination mechanisms.<sup>xii</sup>

**2. Mechanisms for entry and stay related to the principle of non-refoulement.** States should establish mechanisms for entry and stay for those migrants who are unable to return under IHRL, in order to ensure the principle of *non-refoulement*, as well as on other grounds such as ensuring torture rehabilitation.<sup>xiii</sup> Administrative and legislative mechanisms should be set up to grant legal status to migrants who cannot return, in the form of temporary, long-term or permanent status.<sup>xiv</sup>

#### **OBJECTIVE 8: Save lives and establish coordinated international efforts on missing migrants**

- *Commit to search and rescue operations that uphold the principle of non-refoulement, the prohibition of collective expulsion, and ensure the human rights, safety and dignity of persons rescued.*

#### **OBJECTIVE 11: Manage borders in an integrated, secure and coordinated manner**

- *Commit to ensure due process at international borders and that all migrants are treated in accordance with international human rights law including the principle of non-refoulement.*

#### **OBJECTIVE 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration**

- *Commit to upholding the fundamental international human rights law principle of non-refoulement and the prohibition of collective expulsion.*

#### **For more information, see:**

OHCHR, [What do we mean by protection for migrants?](#) (2018)

OHCHR, [Recommended Principles and Guidelines on Human Rights at International Borders](#) (2014)

<sup>i</sup> ECtHR, *Othman (Abu Qatada) v United Kingdom*, No. 8139/09, 17 January 2012, para 235, 258.

<sup>ii</sup> Human Rights Committee, *General Comment No. 31*, para 12.

<sup>iii</sup> Inter American Convention on Human Rights, art. 22(8). IACtHR, *Pacheco Tineo Family v. Bolivia*, Judgment of November 25, 2013, para 135.

<sup>iv</sup> CAT, *Njamba and Balikosa v Sweden*, No. 322/2007, 3 June 2010, para 9.5; CEDAW, *General Recommendation No. 32*, para 23.

<sup>v</sup> Human Rights Committee, *Judge v Canada*, No. 829/1998, 20 October 2003, para 10.3; ECtHR, *Soering v United Kingdom*, No. 14038/88, 7 July 1989, para 111.

<sup>vi</sup> Human Rights Committee, *Kaba v Canada*, 21 May 2010, para 10.1; CEDAW, *General Recommendation No. 32*, para 23..

<sup>vii</sup> Human Rights Committee, *General Comment No. 20*, 1994, para 6.

<sup>viii</sup> ECtHR, *MSS v Belgium and Greece*, 30696/09, 21 January 2011.

<sup>ix</sup> Human Rights Committee, *C v Australia*, No. 900/1999; ECtHR, *Paposhvili v Belgium*, 41738/10, 13 December 2016, IACtHR, *Advisory Opinion OC-21/14*, 19 August 2014, para 229.

<sup>x</sup> Human Rights Committee, *A.H.G. v Canada*, No. 2091/2011, 5 June 2015, para 10.4.

<sup>xi</sup> CRC, *General Comment No. 6*, para 27 (see also para 84).

<sup>xii</sup> CAT, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*. Para. 13.

<sup>xiii</sup> Report of the Special Rapporteur on Torture, A/HRC/37/50 26 February 2018, para. 40; CAT, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, para 22.

<sup>xiv</sup> CAT, *Seid Mortesa Aemei v Switzerland (1997)*, Comm. No. 34/1995.