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## Migrant definition

### Key points

- Do not ignore mixed movements or migration. Mixed movements may include asylum-seekers and refugees. Movements that are characterised as 'migration' may in reality be refugee or mixed movements.
- Implement and support protection-sensitive entry systems that refer those who arrive in mixed movements to processes, procedures and services that respond appropriately to their needs.
- Do not forget that mixed and migratory movements involve countries of origin, countries of 'transit' and countries of 'destination', each in different ways. Response strategies must take all three into account.
- Collaborate with State authorities, IOM, and other partners on responses mixed movements, including in some appropriate cases on the evacuation of non-nationals and safeguards for those who may be in need of international protection.
- Ensure that refugee protection principles are respected in all inter-agency and State responses to migration and mixed movements.

### 1. Overview

There are important differences between the terms 'migrant' and 'refugee', which cannot be used interchangeably. Refugees are outside their own country because of a threat to their lives or freedom. They are defined and protected by a specific international legal framework. The term 'migrant', on the other hand, is not defined under international law, and is sometimes used differently by different stakeholders. Traditionally, the word 'migrant' has been used to designate people who move by choice rather than to escape conflict or persecution, usually across an international border ('international migrants'), for instance to join family members already abroad, to search for a livelihood, or for a range of other purposes. The term is increasingly used as an umbrella term to refer to any person who moves away from their usual place of residence, whether internally or across a border, and regardless of whether the movement is 'forced' or voluntary.

UNHCR recommends that people who are likely to be asylum-seekers or refugees are referred to as such, and that the word 'migrant' should not be used as a catchall term to refer to refugees or to people

who are likely to need international protection. Doing so can risk undermining access to the specific legal protections that states are obliged to provide to refugees.

UNHCR supports rights-based approaches to all people on the move, both because all people are entitled to protection of their human rights, and because improved human rights protection for migrants will have a positive effect on refugees. Refugees and migrants often employ the same routes, modes of transport, and networks. Cross-border movements involving both refugees and migrants are referred to as 'mixed movements'. Distinguishing appropriately between different categories of person in mixed movements is not an aim in itself, but should assist in bringing to bear the appropriate framework of rights, responsibilities and protection. When the movement is composed of refugee, it shouldn't be characterised as a 'mixed movement'.

UNHCR's underlying mandate interest in engaging with mixed movements and international migration is to ensure that protection is available to persons who are moving for reasons that are relevant to refugee status, who may be stateless or at risk of statelessness. To do this, UNHCR needs to remain abreast of broader migration dynamics in the region, and to work closely with a wide range of partners.

## **2. Protection objectives**

- Effective entry systems need to include mechanisms to identify, among arrivals, persons who may wish to seek or be in need of international protection, such as refugees and asylum-seekers, as well as others who may require protection or assistance, such as stateless persons, victims of trafficking, or vulnerable children.
- Access to asylum procedures or other forms of international protection must be available for refugees, asylum-seekers and stateless persons.
- Effective safeguards are required to ensure that border-control measures are not applied arbitrarily and do not lead to refoulement (or frustrate access to asylum).
- Where cross-border displacement situations or other population movements, such as mixed flows, are complex and traditional approaches are not suitable, Temporary Protection or Stay Arrangements (TPSA) may be a useful tool for ensuring access to international protection.
- Alternative mechanisms must be available for those who are not refugees or asylum-seekers or stateless but who need protection, including victims of trafficking and unaccompanied and separated children (UASC). It should always be recalled that people with other needs—such as victims of trafficking, stateless people, or unaccompanied children—may also require international protection as refugees. Cross-referral pathways between different services and procedures are important.

## **3. Underlying principles and standards**

UNHCR, Convention Relating to the Status of Refugees, 1951

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UNHCR, *The 10-point plan in action: refugee protection and mixed migration – 2016 update*, December

2016.

UNHCR, Protocol relating to the Status of Refugees, 1967

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UNHCR, *'Refugees' and 'Migrants' - Frequently Asked Questions (FAQs)*, 31 August 2018

UNHCR, Persons in need of international protection, June 2017

UNHCR, 'Migrants in vulnerable situations' UNHCR's perspective, June 2017

UNHCR, *Guidance on responding to irregular onward movement of refugees and asylum-Seekers*, September 2019

#### **4. Protection Risks**

- When refugees and asylum-seekers move in mixed flows, their international protection needs may not be identified.
- When refugees and asylum-seekers move in mixed flows, they may be at higher risk of refoulement.
- Mixed flows may include asylum-seekers, refugees, stateless persons, trafficked persons, unaccompanied/separated children (UASC), smuggled migrants, and migrants in an irregular situation. Each group has different protection needs and entitlements (though some overlap); different responses to their situations are appropriate.
- Individuals who travel in mixed flows may, at different points on their journey, fall into more than one category. (A child may simultaneously be a UASC and a victim of trafficking; an adult woman may at different times be a smuggled person or a victim of trafficking; a stateless person outside their country of habitual residence may also be a refugee.) Categories exist to ensure appropriate protection responses, and are not always mutually exclusive..
- Persons travelling in mixed flows will often be vulnerable. However they are classified, they may need immediate physical and psycho-social attention to meet their basic needs. This does not mean that all qualify for the specific form of ongoing protection and rights ("international protection") to which refugees and asylum-seekers are entitled. Some people—such as victims of trafficking—are nonetheless recognized under international law as being in need of particular forms of protection and assistance, whether or not they are additionally entitled to international protection as refugees.

#### **5. Other risks**

- When the presence of refugees and asylum-seekers in mixed flows is not effectively detected, States cannot meet their refugee-protection obligations, and UNHCR may not be able to fulfil its protection mandate.
- If UNHCR fails to identify and draw attention to the presence and needs of refugees in mixed movements, the tendency of some Governments, other agencies and publics to conflate all those who move across international borders as 'migrants'—even when large numbers may be refugees, asylum-seekers or stateless persons—can undermine access to international protection.
- Everyone has the right to seek and enjoy asylum if they need it, and to procedural safeguards if they do apply for asylum. However, failing to differentiate effectively between the different needs and situations of people who arrive in mixed flows can overburden asylum systems with asylum claims by people whose situation means that they are unlikely to have grounds for claiming the specific protections afforded to refugees and asylum-seekers, and whose needs may be best met in some other way. This can also strain public support for asylum systems.

## 6. Key decision points

- Address the basic physical and psycho-social needs of all persons at reception.
- Put in place border entry systems to identify new arrivals who may seek or require international protection, or have other specific needs.
- Establish different approaches for individuals who qualify for international protection as asylum-seekers or refugees and individuals who do not; apply appropriate processes and procedures.
- Address the basic physical and psycho-social needs of all persons at reception.
- Set up simple systems for data collection and analysis.
- Ensure that the protection profiles of new arrivals are soundly defined, and that arrivals are classified correctly. Make sure that needs-based referrals, to partner organisations such as IOM and State agencies among others, are appropriate and consistent.
- Develop information strategies with partners (NGOs, international organizations, States) that will effectively reach persons of concern who are likely to travel in mixed flows.

## 7. Key steps

### Protection-sensitive entry systems

The objective is to ensure that legitimate measures to control movement across borders are not applied arbitrarily, and that border entry procedures identify refugees, asylum-seekers and other groups who are entitled to specific forms of protection, grant them access to the territory in question, and make sure that their needs are properly assessed and addressed.

- Communicate protection obligations to border and other entry officials. Assist them to establish processes for identifying potential refugees and asylum-seekers in mixed flows.

- Assist entry officials to identify and refer potential asylum-seekers and other persons who may be entitled to specific protection to the responsible authorities.
- Build dialogue and cooperation between entry officials and humanitarian actors. Help them work together to identify and address shortcomings in procedures for identifying persons entitled to international protection. This may be especially relevant where referral mechanisms for persons not claiming asylum are weak.
- Set up independent monitoring mechanisms that can help to identify problems, gaps and training needs with respect to protection.

### **Appropriate mechanisms for screening and referral**

The objectives are to ensure that specific protection needs are quickly identified and promptly addressed, and also to reduce the number of individuals who are channelled into the wrong procedures.

- Set up mechanisms to separate new arrivals into appropriate categories according to likely needs and profiles. Establishing these mechanisms will require collaboration with a range of stakeholders, and should result in a flexible, non-binding and provisional process which will happen before any formal status determination.
- Such a process:
  - o provides information to new arrivals;
  - o gathers information through questionnaires and informal interviews;
  - o establishes a preliminary profile of each person;
  - o offers counselling; and
  - o refers individuals to the procedure(s) that corresponds to their profile.
- Placing individuals in categories is a particularly challenging task because all individuals will have many needs, which may or may not be met under the status they are allocated. Because so much is at stake, individuals may withhold information, proffer incorrect information, or self-identify with a particular category. Above all, the categories themselves are not mutually exclusive. (A UASC who is an asylum-seeker may also be a victim of trafficking; a woman who is a victim of trafficking may or may not also be an asylum seeker.)
- Screening or profiling at arrival may categorise individuals incorrectly, or fail to identify all their needs. There therefore must be a degree of flexibility to ensure that persons can be referred to appropriate procedures at any stage of their processing.

### **Differentiated processes and procedures**

The objective is to provide tailored and appropriate responses to the needs and profiles of people involved in mixed flows.

- Procedures address: asylum; trafficked persons; child protection; family tracing; women and girls at heightened risk; support for individuals who have experienced torture or trauma; regularization in the host country or migration options, or assisted voluntary return for people who do not seek or are found not to be in need of international protection.
- Mixed movements may include refugees who have moved onwards from another country other than their country of origin.. Individuals may have transited through several countries for varying lengths of time, possibly without having access to international protection[, or without seeking it in those

countries for a range of reasons]. Addressing onward movements requires a strategy based on careful and informed analysis of causes, which takes into account the legitimate concerns of relevant States and the well-being and protection needs of asylum-seekers and refugees.

- To maintain credible asylum systems and address irregular migration, it is vital to deal fairly and efficiently with persons who are not refugees. This requires collaboration with IOM, States and other stakeholders. Many people travelling in a mixed flow will not be classified in a category that meets their needs or expectations. Alternative procedures (including voluntary return for those entitled to refugee protection) may assist authorities to manage mixed movements fairly, address the immediate needs of arrivals, and facilitate longer-term solutions.

### **Data and information collection**

The objective is to make sound use of data and information to understand, categorize and meet the needs of persons involved in mixed movements.

- Having access to accurate, up to date information on mixed movements makes it possible to assess their scale and trends, to establish a basic profile of arrivals including likely international protection needs, identify routes and means of transport, and to design, implement and evaluate policy responses and pragmatic interventions.
- Both qualitative and quantitative data and information should be collected.
- National and regional strategies and policies – which need also to take account of and prioritize protection issues - should be developed to address the various dimensions of mixed movements.
- The different actors involved in responding to mixed movements should agree what data and information they collect, and standards, so that information can be collated and compared.

### **Information strategies**

Effective and well designed information strategies may help to limit irregular movements and associated harms, in some circumstances. If potential travellers are informed about the risks, they may not be entirely reliant on rumours or the advice of smugglers or traffickers. Information can also inform host communities about the causes and nature of mixed movements.

- Information alone is very unlikely to prevent irregular movements, if "push" or "pull factors" are powerful. However, it may enable individuals to take more informed decisions (when they have a choice).
- Messages should not inadvertently discourage persons who affected by conflict or persecution from seeking asylum abroad. They should provide information about legal migration opportunities if available.
- Information strategies should raise awareness of human trafficking and the risks associated with human smuggling.
- It is useful to produce information leaflets that explain the obligations and basic rights of persons who arrive in a host country. These should include information about the different procedures available to new arrivals (notably asylum procedures), including when and where they can be accessed.

## 8. Key management considerations

- Collaborate appropriately with key stakeholders, including relevant State authorities, IOM, and relevant international organizations and NGOs.
- Advocate for sufficient staff and resources (for all concerned agencies) to process and meet the needs of persons travelling in mixed flows, and ensure needs of asylum-seekers, refugees and people who may be stateless or at risk of statelessness in mixed flows are addressed.

## 9. Resources and partnerships

### Partners

- International organizations such as IOM, NGOs, community-based organizations (CBOs), other implementing partners.
- Government officials and border management authorities.

## 10. Links

UNHCR, Asylum and migration webpage

UNHCR and Human Trafficking webpage

UNHCR, Refugees and Asylum-Seekers in Distress at Sea – how best to respond? Summary Conclusions ('Djibouti Conclusions')

UNHCR, Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing

UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol

UNHCR, The 10-point plan in action: refugee protection and mixed migration – 2016 update, December 2016

### Need help?

**CONTACT** As first port of call, the UNHCR Dep. Representative (Protection), UNHCR Asst. Rep. (Protection), and/or Snr Protection Officer in the country; or The UNHCR Regional Asst./Dep Rep (Protection) and/or Snr. Regional Protection Officer at the regional office (if applicable); or The Snr. Regional Legal Advisor in the respective UNHCR regional bureau, covering the respective country region, who in turn will liaise as required with the parent unit at UNHCR DIP. Contact the Asylum and Migration Unit, Service 1, DIP, HQ, Geneva.

## **Annexes**

- SAR leaflet - - UNHCR, IMO, ICS, Rescue at sea - A guide to principles and practice as applied to refugees and migrants, January 2015
- UNHCR, Rescue at Sea, Stowaways and Maritime Interception- Selected Reference Materials, December 2011, 2nd Edition
- UNHCR, Global Initiative on Protection at Sea, 2014
- UNHCR, Refugee Protection and Human Trafficking, Selected Legal Reference Materials, 2008
- UNHCR, Guidelines on Temporary Protection or Stay Arrangements, 2014

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