

Distr.
LIMITED

RC/Migration/2017/Brief.3
4 September 2017
Advance copy

Regional Consultation on International Migration in the Arab Region

In preparation for the Global Compact for Safe, Orderly and Regular Migration

Beirut, 26-27 September 2017

Regional Issue Brief no. 3ⁱ

Protection of Migrants in Vulnerable Situations¹

Migration in the Arab region² is dynamic and complex, with at least 35 million migrants³ in the region and tens of thousands more transiting through or staying for short periods. Additionally, more than 26 million migrants from the Arab region were living outside their country of birth in 2015, half of them having migrated to countries outside the region.⁴ While migration can be positive for migrants and their families as well as their origin and host communities, in the wrong conditions it can also create vulnerabilities. While there is not yet an internationally recognized definition of migrants in vulnerable situations, the International Organization for Migration (IOM) proposes that vulnerability be defined as the diminished capacity of an individual or group to resist, cope with or recover from violence, exploitation, abuse and/or rights violations. This vulnerability is determined by the presence, absence and interaction of factors or circumstances that increase the risk of and exposure to, or protect against, violence, exploitation, abuse and rights violations.

With limited legal migration options available, migrants may turn to irregular and unsafe methods, often relying on smugglers, and heightening their risk of being trafficked or suffering other abuses and human rights violations. During their journey, migrants may also transit through or be directed to countries that are experiencing conflict and may remain trapped or become more vulnerable due to the chaos, the lack

¹ Key points based on GCM issues briefs developed by the UN and by IOM. See, respectively: UN Issue Brief 1 “Human rights of all migrants, social inclusion, cohesion and all forms of discrimination, including racism, xenophobia and intolerance”; and IOM Thematic Paper: Protection of the Human Rights and Fundamental Freedoms of Migrants and the Specific Needs of Migrants in Vulnerable Situations.

² Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, State of Palestine, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen.

³ Based on UN DESA Data, which includes refugees registered with UNHCR.

⁴ 2017 Situation Report on International Migration in the Arab Region, forthcoming. Working Group on International Migration in the Arab Region.

of normal law and order, and other impacts of the crisis. For example, although the civil war has ravaged Yemen since 2015, the country still receives a monthly average of 10,000 migrants from the Horn of Africa. In 2016, over 360,000 migrants crossed the Mediterranean by boat to reach Europe.⁵ Children, including those unaccompanied and separated from their guardians, have comprised an increasing share of these flows, particularly along the Central Mediterranean where 92 per cent of the 28,000 children who arrived in Italy in 2016 were unaccompanied.⁶ An unknown number of migrants remain stranded for varying periods of time in North Africa and other sub-regions, at times in highly vulnerable situations, including in situations of arbitrary or indefinite detention. Based on interviews with migrants who had recently arrived irregularly in Italy, IOM found that the majority had directly experienced some form of exploitation along their journeys, including being held against their will (64%) and forced to work (49%).⁷ In 2016, IOM recorded over 5,100 migrant deaths in the Mediterranean Sea, and more than 1,500 during transit through North Africa and the Middle East, although these numbers remain minimum estimates.⁸

Migrants living in the Arab region, but also those who migrate to Europe and other destinations, may continue to face violence, abuse, and other rights violations upon arrival at their destination. Migrants tend to be disproportionately vulnerable to discrimination, exploitation and marginalization with reduced, or non-existent, means of redress – particularly those in irregular situations. Language barriers, xenophobia, and other challenges to integration also affect migrant communities, at times compelling migrants to settle in unsafe or at-risk areas. Often, irregular migrants are unable or unwilling to access social services due to fear of becoming visible, even if they are legally entitled to them. This marginalization not only affects the well-being of migrants themselves, but hinders their ability to contribute positively to development and cohesion in the local community, as well as to the development of origin communities. Limited access to the labour market, education systems and other basic services puts migrants at a disadvantage, pushes them into informal labour, and reduces their ability to utilize and enhance their skills.

The fundamental importance of rights in migration governance lies at the core of various international agreements and processes, including in the New York Declaration for Refugees and Migrants, through which States reaffirmed and committed to fully protect the safety, dignity and human rights and fundamental freedoms of all migrants and refugees, regardless of their migratory status, at all times, in full respect for international human rights law and other relevant standards (paras 5 and 41). Through the Declaration, UN Member States also strongly condemned acts of racism, xenophobia and intolerance (para 14), as well as pledged to combat abuses and exploitation suffered by migrants in vulnerable situations, and to address their special needs in accordance with obligations under international law (paras 10 and 23). The 2030 Agenda for Sustainable Development also contains at its core the recognition that social inclusion and respect for human rights are fundamental to achieving sustainable development for all. Various targets are directly relevant to protecting the rights of migrants, including migrant workers and victims of trafficking, and to reducing inequality. The adherence to international standards and fulfilment of migrants' rights is one of three core principles of IOM's Migration Governance Framework.

⁵ Data from national authorities of Italy, Greece and Spain, and IOM.

⁶ UNHCR, UNICEF, IOM (2017) "Refugee and Migrant Children - Including Unaccompanied and Separated Children - in Europe: Overview of Trends in 2016". <http://reliefweb.int/sites/reliefweb.int/files/resources/55971.pdf>.

⁷ IOM DTM (2017) *Flow Monitoring Surveys: The Human Trafficking and other Exploitative Practices Prevalence Indication Survey April 2017*.

⁸ IOM Missing Migrants Project: <https://missingmigrants.iom.int/>.

Furthermore, States are bound by numerous international legal instruments that protect the rights of migrants, including under international human rights law, international humanitarian law, international labour law and transnational criminal law.

Priority areas for the Arab region

Protecting the human rights of all migrants

Respecting and protecting the rights of migrants is not only an obligation of States, but is a basis for promoting social cohesion, economic integration and harnessing the positive development impacts of migrants for both host and origin communities.

Fundamental to this objective is to **ensure legal frameworks exist** that enforce respect for rights in compliance with international rights standards, and that ensure migrants' access to justice.

Irregular migrants in the Arab region may face various forms of unjust **detention, often for extended periods**, and at times enduring extremely poor conditions. Rather than being used as a last resort, automatic immigration detention may be used as a routine measure to manage migration, with migrants left with little or no legal and procedural safeguards to protect them from arbitrary arrest and long periods of detention. Although comprehensive figures on immigration detention in the region are not available, existing data for North Africa indicate an increase over recent years.⁹ While States hold the sovereign right and duty to manage migration, this must be considered simultaneously with obligations concerning the human rights of individual migrants in their territory. It is important that migrants are not criminalized solely for reasons of illegal entry or presence in the country. In the case of children migrants, there is strong legal guidance from international human rights monitoring mechanisms as well as from regional courts that children should never be detained, that immigration detention often constitutes a child rights violation and contravenes the principle of the best interests of the child.¹⁰ It is relevant in the Arab region to consider more alternatives to immigration detention, particularly when dealing with children.

Attention to migrants in vulnerable situations While much of the human rights frameworks to protect and assist migrants tend to be structured around particular categories of protected persons (e.g. refugees, asylum seekers, trafficked persons), IOM cautions against strictly framing vulnerability around membership within a specific group. Such approaches can obscure the many factors that protect an individual from, or expose him or her to violence, exploitation and rights violations that may have to do

⁹ Preliminary findings on alternatives to detention in North Africa, undertaken by International Detention Coalition, commissioned by the Mixed Migration Hub on behalf of the North Africa Mixed Migration Task Force, 2017.

¹⁰ See, for instance: Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, para. 40; The Rights of All Children in the Context of International Migration, 2012 Day of General Discussion Background Paper, Geneva, September 2012. UN Special Rapporteur on Torture Thematic Report on torture and ill-treatment of children deprived of their liberty, 5 March 2015 (A/HRC/28/68) – para.80. Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, UN Doc. A/HRC/20/24, 2 April 2012, para.40. and Inter-American Court of Human Rights Advisory Opinion OC-21/14 Rights and Guarantees of Children in the Context of Migration and/ or in Need of International Protection, August 19, 2014, para. 159.

with factors beyond belonging to a certain group.¹¹ Rather there is a need for a more nuanced understanding of the risk and protective factors that contribute to the vulnerability and resilience of individual migrants, families and communities. This does not mean that measures should not be taken to protect against certain vulnerabilities – for instance in the case of UASC the Mixed Migration Hub found a key challenge in North Africa was to strengthen legal guardianship options, the lack of which detrimentally affected children’s capacity to regularize their stay in host countries, access basic services, and establish secure accommodation arrangements.¹²

Ensuring social inclusion and cohesion

Whether speaking of migrants in the Arab region, or Arab migrants abroad, the **inclusion of migrants** should be in accordance with the international human rights framework, including the protection of economic, social, and cultural rights. Such inclusion is in the interest of not only the human dignity and rights of migrants themselves, but also of States, which stand to benefit from the contributions of well-integrated migrants. This includes particularly facilitating access to education, health care, basic social protections, justice and security. In order to avoid a financial burden, States may take measures to integrate individuals into social and economic life, including through the removal of barriers, as quickly as possible to ensure migrants can support themselves and contribute back to the host society. The presence of large numbers of migrants without legal status in the Arab region, enhances challenges to social inclusion and integration. One solution that has been used in the Arab region is regularization, with Morocco, as an example, engaging in two regularization campaigns in recent years.

Migrants in irregular situations often end up working in the informal sector, in jobs that may be dangerous and grueling and in which they are highly vulnerable to exploitation without recourse to remedies. The governance and rights of migrant workers, including those working regularly and irregularly is discussed in detail in Briefing Paper #2 – “*Decent Work and Labour Mobility: Background Note*”.

Along with social and economic marginalization, migrants tend to be **more vulnerable to discrimination**, including racism, xenophobia and intolerance contributing to social fracturing and community tensions. This is a challenge not only for migrants living in the Arab region, but also for Arab migrants in Europe, where tensions have been particularly high in recent years. Attacks on migrants have increased in a number of countries in Europe, including in main refugee hosting countries. Actions to address issues of social cohesion and integration can include things like the organization of public spaces and services, including for instance public transport systems that link migrant communities and other areas of cities, sensitization of media to promote fair and accurate reporting, production and dissemination of strong data and research on migration realities and impacts, as well as the inclusion of migrant children in public education systems, language training for new immigrants and other programming to facilitate integration.

Addressing the needs of migrants caught in emergency situations

The Arab region is also faced with the challenges of addressing the particular needs and capacities of **migrants caught in emergency situations**, as shown over the past decade in various conflicts in the region, including in Lebanon, Libya, Syria, and Yemen, where the conflicts that ravaged these countries affected

¹¹ See IOM Global Compact Thematic Paper: Protection of Human Rights and Fundamental Freedoms of Migrants and the Specific Needs of Migrants in Vulnerable Situations.

¹² North Africa Mixed Migration Hub. Forthcoming. Unaccompanied and separated children on the move to, through and from North Africa.

large numbers of migrants. Shortly after the Libyan civil war erupted in 2011, IOM Member States endorsed the Migration Crisis Operational Framework (MCOF) which functions as an operational and institution-wide tool to improve and systematize the way in which IOM supports Member States and partners to better prepare for and respond to migration crises. In 2014, the governments of the United States and the Philippines, in partnership with IOM, launched the State-led Migrants in Countries in Crisis Initiative (MICIC), and following a global and inclusive consultative process released Guidelines that collect concrete recommendations regarding preparing for and responding to crises in such a way that empowers and protects migrants.¹³

Migrants are often disproportionately affected during emergencies, when existing vulnerabilities are amplified and migrants may experience specific barriers to accessing targeted humanitarian aid or recovery support. In the Arab region in particular, migrants' safety and protection in crises may be hindered by restrictions on mobility for non-nationals, unavailability of identity or travel documents that may be held by employers or lost, irregular immigration status, limited social networks, isolation, discrimination and limited or no inclusion into emergency response plans.

States bear the primary responsibility to protect migrants within their territories and their own citizens, including when they are abroad. Other States, including those in the same region as the country experiencing a crisis, may be called to provide support. To **address existing protection gaps** for migrants in the context of crises more efforts are needed to improve responses and ensure that emergency management structures are prepared to assist diverse populations including non-nationals or nationals abroad, including through proactive measures, capacity building, direct engagement of migrants, partnerships with other stakeholders and enhanced bilateral and regional coordination.

Reducing migrants' vulnerability to crises of all kinds depends on improving their living conditions and access to services and resources in normal times. Due consideration of migrants' longer-term needs and challenges once the acute phase of a crisis subsides – and in particular for those who find themselves in an irregular situation, is a key component of a country's recovery and reconstruction plans and programmes at the national and local levels. States should support migrants to rebuild their lives in their host countries. When this is not possible, or migrants are unwilling or unable to remain, States should support migrants to reintegrate in their countries of origin.

ⁱ This brief was drafted by the International Organization for Migration team in preparation for the Regional Consultation on International Migration in the Arab Region.

¹³ See <https://micicinitiative.iom.int/>.