

Differentiation between migrants and refugees

What is the definition of a migrant? There is no universal, legal definition of a ‘migrant’. In accordance with the mandate of the High Commissioner to promote and protect the human rights of all persons, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has described an international migrant as “any person who is outside a State of which they are a citizen or national, or, in the case of a stateless person, their State of birth or habitual residence”. ‘Migrant’ is thereby used as a neutral term to describe a group of people who have in common a lack of citizenship attachment to their host country. It is without prejudice to the protection regimes that exist under international law for specific legal categories of people, such as refugees, stateless persons, trafficked persons and migrant workers.

What is the difference between a ‘refugee’ and a ‘migrant’? A refugee is strictly defined in international law as a person who is fleeing persecution or conflict in her or his country of origin. As noted above, there is no such precise and universal definition of a migrant. It is important to underline that refugees are entitled to the full protection of refugee law, including protection from expulsion or return to situations of persecution where their life and freedom are at risk.

At the same time, it is similarly important to recall that international human rights law protects all individuals, regardless of their status. As recognised in the New York Declaration, there can be important overlaps in the challenges and vulnerabilities faced by people who move along the same routes, use the same forms of transport, and are similarly exposed to human rights violations, abuse and xenophobia. Moreover, today, and notwithstanding the gradual expansion of refugee protection, many people are compelled to leave their homes for reasons that do not fall within the refugee definitions, such as the adverse impacts of climate change including slow-onset processes or flight from food insecurity.

Who are migrants in vulnerable situations? The concept of migrants in vulnerable situations has emerged to address the human rights situation of those migrants who do not qualify as refugees, but who are nevertheless in need of specific protection interventions. Migrants are not inherently vulnerable, but they can find themselves in vulnerable situations arising from the reasons for leaving their country of origin, the circumstances in which they travel or the conditions they face on arrival, or because of personal circumstances such as their age, disability or health status. Migrants in vulnerable situations are thus persons who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer’s heightened duty of care.

Does the principle of non-refoulement apply to migrants? Yes. Under international human rights law, including the Convention against Torture, the principle of non-refoulement applies to all persons under the jurisdiction or effective control of a state, whatever their status. The scope of non-refoulement under international human rights law is broader than article 33 of the 1951 Refugee Convention. Under international human rights law, non-refoulement entails an absolute prohibition on removing a person to a country where they are at risk of torture or cruel, inhuman and degrading treatment or punishment or other serious human rights violations such as enforced disappearance, risks to life in the absence of necessary medical care and violations of the rights of the child. States should guarantee that all migrants who require protection in this context are not left in a legal limbo, and should ensure that they are granted a legal status.

Are migrants entitled to “protection”? Yes. All migrants are entitled to the protection as well as respect and fulfilment of all human rights, regardless of status, with only narrowly defined and limited exceptions. As explained above, and although different from the protection that must be granted to refugees, other migrants may also be entitled to protection from return to their country of origin or removal from the host country based on human rights grounds. For example, states have put place in mechanisms to grant protection and legal status to:

- Migrant victims of crimes, to ensure their access to justice
- Migrant victims of torture in transit, to ensure their recovery and rehabilitation
- Migrants with serious health conditions that cannot be treated in the country of origin
- Migrant children whose return would be contrary to the best interests of the child
- Migrants whose right to family life depends on their remaining in the host country