



## Global Migration Group Practitioners Symposium Geneva, 27-28 May 2010

### BACKGROUND PAPER

#### Building partnerships for identifying, protecting, assisting and resolving the situation of stranded and vulnerable migrants

Prepared by UNHCR with contributions from the GMG<sup>1</sup>

#### *Introduction*

The growing movement of people across international borders in an unregulated and often clandestine manner has given rise to a series of new protection and human rights challenges, transcending the distinction that has traditionally been made between refugees and other migrants. Of particular concern in this context are people who are sometimes referred to as 'stranded and vulnerable migrants'.<sup>2</sup>

As this concept does not have a formal or legal definition, for the purpose of this paper, stranded and vulnerable migrants will be described as people who leave their own country for reasons unrelated to refugee status, but who become subject to human rights abuses in the course of their journey, at least part of which is usually undertaken in an irregular manner. Such people are 'stranded' in the sense that they are unable or unwilling to return to their country of origin, cannot regularize their status in the country where they reside, and do not have access to legal migration opportunities that would enable them to move on to another state.

While stranded and vulnerable migrants must be distinguished from recognized refugees, people with pending asylum applications and those whose claims have been rejected may fall into this category. Given the regularity with which the issue of trafficking is discussed in other fora, this background paper for the GMG Symposium does not address the specific situation of stranded and vulnerable migrants who are victims of trafficking.

#### *The situation of stranded and vulnerable migrants*

Stranded and vulnerable migrants are often to be found in 'transit' states, especially those which form a bridge between poor and instable regions of origin, and more prosperous and secure regions of intended destination. Mexico, Morocco, Turkey, Indonesia, Somalia and Ukraine provide just six examples from different parts of the world where stranded and

<sup>1</sup> This paper was prepared by Jeff Crisp and Angela Li Rosi, UNHCR, Policy Development and Evaluation Service, with contributions from IOM, UNFPA, UNICEF and UNODC.

<sup>2</sup> See, for example, Rebecca Dowd, 'Trapped in transit: the plight and rights of stranded migrants' *New Issues in Refugee Research*, No. 156, June 2008; Stefanie Grant, 'The legal protection of stranded migrants,' in *International Migration Law: Developing Paradigms and Key Challenges*, R. Cholewinski, R. Perruchoud and E. MacDonald (eds), IOM, 2007.

vulnerable migrants are to be found. Stranded and vulnerable migrants may also be found in 'destination' countries, amongst those foreign nationals who do not have authorization to enter and remain legally, who have overstayed their visa, or who have lost their job, work permit and residency entitlement.<sup>3</sup>

Migrants who become stranded are commonly subject to a wide range of abuses and human rights violations, committed by a range of different actors, including smugglers, traffickers and transport agents, border guards and immigration officials, the police and security services, as well as members of local society. Those violations include (but are not limited to) physical abuse and harassment; extortion and exploitation; lack of due process; arbitrary detention in inhumane conditions; deprivation of access to basic services, xenophobia, racial and ethnic discrimination; interception and abandonment at sea, as well as forced return or transfer to remote and dangerous locations.

Needless to say, stranded and vulnerable migrants usually have very limited assets and may not have access to supportive social networks or legal aid services. They are consequently limited in their ability to defend their own human rights, to meet their basic needs and to resolve their situation. Stranded migrants, including children, may be forced into sex work and exposed to the risks of gender-based violence, sexually transmitted infections, HIV-AIDS and unwanted pregnancies.

At the same time, stranded and vulnerable migrants are generally not a priority concern for their countries of origin or for the countries in which they reside. Indeed, the principle that states have a responsibility towards their citizens, wherever they are to be found, and that states have a duty to protect the human rights of all people within their jurisdiction, irrespective of their legal status, is frequently disregarded in relation to these people.

The common but false assumption that such migrants are overwhelmingly adult men has exacerbated this situation. Stranded and vulnerable migrant populations typically (and increasingly) include families, women, children and other people who have specific needs to be met. According to UNFPA, "women and girls suffer from a double jeopardy of being female and migrant and are more vulnerable to exploitation, discrimination and abuse, including trafficking and smuggling."<sup>4</sup> Adult males who start their journey in a relatively good state of physical and mental health may well become progressively debilitated once they become stranded.

The number of stranded and vulnerable migrants around the world would appear to be growing, in part because of increasingly restrictive border controls which prevent onward movement and create the conditions for criminal groups to engage in the smuggling of people, but also because the drivers of irregular migration, including climate change and income disparities, are growing in intensity. For a variety of reasons, including restrictions on family reunification in destination countries, as well as the belief by parents that minors (and those claiming to be minors) will not be subject to deportation, the number of unaccompanied children becoming stranded and vulnerable is rising.

While international organizations such as IOM, OHCHR, UNFPA, UNHCR, UNICEF and the Red Cross movement have started to develop a more active interest and involvement with stranded and vulnerable migrants, such people often have to rely on their own initiative, the support of other migrants and the goodwill of local NGOs, civil society and community-based organizations. The GMG Practitioners Symposium thus has an important role to play in addressing this situation and in building more effective partnerships for identifying, protecting, assisting and resolving the situation of vulnerable and stranded migrants in a rights-based manner.

## ***Key themes for discussion***

### **1. Understanding the phenomenon**

There is probably little to be gained from any attempt to formulate a precise and internationally agreed definition of the 'stranded and vulnerable migrant' concept, which is an admittedly loose and descriptive one, focusing on the circumstances and predicament of certain people who are (or who would like to be) on the move, rather than their legal status and entitlements.

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<sup>3</sup> While this paper employs the concepts of countries of origin, transit and destination, it recognizes that this categorization is an increasingly unsatisfactory one.

<sup>4</sup> Personal communication.

At the same time, if effective action is to be taken in relation to their predicament, then it would be useful to gain a more detailed understanding of why some migrants become stranded and vulnerable. Initial research undertaken on this issue suggests that the Symposium's discussion of this matter might focus on the following issues:

- a. the role of border controls, readmission agreements and declining regular migration opportunities in fuelling irregular migration, increasing the reliance of migrants on smugglers and prompting them to embark upon ever more complex, costly and difficult journeys;
- b. the serious consequences that can ensue when migrants lose or destroy their identity documents or have them confiscated by smugglers or state agents, especially when they have no other means of establishing their identity and/or nationality;
- c. the inability of many stranded and vulnerable migrants to support themselves, often because they have expended or been robbed of their assets; because they do not have access to income-generating opportunities; and because of the limited assistance available to them from official bodies and other organizations.
- d. the growth of official and popular xenophobia, manifested in the inhumane and discriminatory treatment of foreign nationals who are distinguished by their race, ethnicity, cultural background, poverty and irregularity.
- e. the inability or unwillingness of countries of origin to assume responsibility for nationals who have become stranded and vulnerable in other states, as well as the inability or unwillingness of migrants themselves to return to their country of origin, even when they have no other realistic migration options.
- f. the failure of national asylum systems (where they exist at all) to examine claims to refugee status in a manner that is thorough, fair, effective and expeditious, and the concomitant absence of mechanisms to resolve the situation of rejected cases;

## **2. Policy, law and protection practice**

The policies and laws of many states in relation to the situation of stranded and vulnerable migrants are often inadequate or ineffectively implemented. This may be because they consider low standards of treatment to act as a deterrent to the arrival of irregular migrants, because they are under pressure from more powerful and prosperous neighbours to prevent or discourage such new arrivals, or because they lack the capacity and commitment required to address the issue in a humane and effective manner. As suggested already, the uncooperative attitude of certain countries of origin (and sometimes that of migrants themselves) may also act as a disincentive for states to take coherent and constructive measures in relation to this issue.

In view of these circumstances, and in the context of the GMG Symposium, there is a particular need to examine the contribution that GMG members and other international organizations can make to the development of rights-based policy, law and practice in relation to stranded and vulnerable migrants.

More specifically, the Symposium may wish to consider:

- a. what mechanisms can be established to identify migrants who are actually or potentially stranded and which consequently refer them to appropriate structures and processes;
- b. how to convince states of the basic principle that a person who enters another country in violation of immigration laws, or who otherwise obtains irregular status within a country, continues to enjoy fundamental human rights, including access to judicial procedures;
- c. what alternatives can and should be found to negative practices such as detention, prosecution and imprisonment, summary deportation and relocation;
- d. whether there is a need to develop some guiding principles in relation to the treatment of stranded and vulnerable migrants – and if so, how to anchor those principles in existing norms, rights, standards and obligations;
- e. the arrangements that are required to address the situation of stranded and vulnerable migrants with specific needs, such as children (including those who are unaccompanied), women, the elderly, as well as those with physical and mental difficulties;
- f. how to provide stranded and vulnerable migrants with age, gender and culturally-sensitive forms of support in areas such as shelter, healthcare, reproductive health services, education (in the case of children), counselling and free legal aid;

- g. whether it is possible to prevent stranded and vulnerable migrants from being exploited in the labour market, especially when (as is often the case) they are obliged to seek opportunities in the informal sector;
- h. what steps can be taken in relation to the birth registration, documentation, citizenship and nationality status of children born to stranded migrants, as well as the status of their parents: and,
- i. the initiatives that have already been taken by GMG members and other stakeholders in relation to the protection of stranded and vulnerable migrants.

### **3. Resolving the situation of stranded and vulnerable migrants**

As indicated already, stranded migrants are usually unable to regularize their status in the country where they have taken up residence, do not have an opportunity to move on in a legal or regular manner to another state, and are unable for practical reasons such as a lack of documents or money, or unwilling for reasons of personal choice, to return to their country of origin.

In its examination of this third theme, the GMG Symposium may wish to focus its discussion on the following issues:

- a. what can be done to address the root causes of irregular and transit migration, including the provision of regular migration opportunities and the prosecution of smugglers and traffickers;
- b. whether migration information initiatives and pre-departure programmes in countries of origin and transit can help to limit the number of people who find themselves in stranded and vulnerable circumstances;
- c. the extent to which transit countries might provide stranded and vulnerable migrants with livelihoods and regularization opportunities, access to the labour market and the prospect of local integration;
- d. the extent to which stranded and vulnerable migrants might be incorporated into regular migration programmes, taking due account of the fact that the nationals of transit countries might be hostile to such initiatives,
- e. the specific challenges encountered in resolving the plight of stranded unaccompanied children, including the complex issues of age assessment, best interest determination, conditions of return in countries of origin, as well as the question of family reunification;
- f. the role played by embassies and consulates of countries of origin in finding solutions for stranded nationals, particularly in the context of detention and deportation;
- g. whether stranded and vulnerable migrants can be counselled to return to their country of origin, especially when their journey, often undertaken at great expense, has been sponsored by family and community members;
- h. whether effective action can be taken to persuade countries of origin to readmit their nationals and to provide them with the documentation required for them to return; and,
- i. the extent to and ways in which GMG members and other international organizations might assist in the return and initial reintegration of stranded and vulnerable migrants.

### **4. Partnerships and the GMG**

As this paper has sought to emphasize, stranded and irregular migrants fall into a serious protection and human rights gap. To the extent that they come to the attention of the authorities and society in the countries where they reside, they tend to be perceived in negative terms and treated poorly, in the hope that they will go away. Such attitudes are sometimes fostered by countries of intended destination, who are eager to ensure that such migrants are unable to continue on their journey.

Stranded and vulnerable people, moreover, are not the type of migrant (i.e. legally contracted workers who send remittances home and intend to eventually go back there) who normally come under the protective umbrella established by states that have large numbers of citizens living and working abroad. Exacerbating the situation, most vulnerable and stranded migrants are not covered by the provisions of the international refugee protection regime. It is for these reasons that the issue of stranded and vulnerable migrants constitutes such an appropriate and important item for discussion at the GMG Symposium.

As this paper is not intended to pre-empt or anticipate the outcome of that discussion, it will refrain from making detailed recommendations with regard to the future action of the GMG and its member agencies in relation to this issue. To conclude, therefore, the paper simply raises some general suggestions with regard to the way that this issue might potentially be taken forward:

- a. is there a need to have a continued and specific discourse on the issue of stranded and vulnerable migrants that is distinct from the broader discourse on irregular migration, smuggling and trafficking?
- b. whether the notion of stranded and vulnerable migrant is too broad, encompassing individuals and groups of people who find themselves in very different situations;
- c. should a stakeholder analysis be undertaken to identify actors in countries of origin, transit and destination that have an interest and involvement in this issue?
- d. would there be a value in having this matter discussed at the level of the GMG Principals?
- e. if they have not already done so, should GMG member agencies bring this issue to the attention of their senior management and governing bodies?
- f. would it be of any use for GMG members to compile an inventory of their activities in relation to the issue of stranded and vulnerable migrants?
- g. what examples of good practice can GMG members bring to this Practitioners Workshop, and whether the GMG should endeavour to publish a collection of papers and/or a compilation of these practices?
- h. should the GMG establish a (probably Geneva-based) working group on the issue of stranded and vulnerable migrants, possibly involving other agencies with an active interest in this issue (the International Federation of Red Cross and Red Crescent Societies, for example, and the International Catholic Migration Commission)?

**For further information:** [www.globalmigrationgroup.org](http://www.globalmigrationgroup.org)

#### About the GMG

The GMG is an inter-agency coordination group, established by the United Nations Secretary-General in early 2006. It brings together the Heads of agency and technical level experts of 14 UN organizations, the IOM and the World Bank and aims to enhance the overall effectiveness and coherence of the normative and operational response of its members and member states to the opportunities and challenges presented by international migration. The GMG has produced a number of joint outputs, including compilations and guidance material, and its members regularly work together in different constellations to provide countries with operational support. Apart from sustaining inter-agency cooperation in the field of international migration, the GMG and its members regularly contribute to the Global Forum on Migration and Development (GFMD), the United Nations periodical deliberations on international migration and development, and to regional cooperation processes and fora.