



THE PERMANENT MISSION  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

August 31, 2017

Office of the United Nations High Commissioner  
for Human Rights

Dear High Commissioner:

Please find attached the U.S. response to the June 29, 2017 communication, requesting information regarding existing principles, good practices, and policies on safe, regular and orderly migration. We are grateful for the work you do across the globe to promote respect for human rights, and for the opportunity to provide the attached information concerning U.S. law, policy, and practice in the six thematic areas you identified.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason R. Mack".

Jason R. Mack  
U.S. Deputy Permanent  
Representative to the UN Human  
Rights Council

**SUBJECT: U.S. Response to OHCHR inquiry regarding the protection of the human rights of migrants**

***1. The promotion and protection of the human rights of all migrants, regardless of status, as well as ensuring social inclusion and cohesion and addressing all forms of discrimination, including racism, xenophobia and intolerance:***

Migration policies should be consistent with human rights and should respect the dignity of migrants while also preserving states' abilities to enforce their immigration laws. Humanitarian and law enforcement objectives can, and must work in tandem. Human rights defenders play a critical role in advocating for the human rights of migrants. The United States has a long history of partnering with civil society to promote the human rights of migrants around the world.

Furthermore, states must maintain the ability to enforce their immigration laws, including by detaining and returning to their country of origin individuals who are not entitled to international protection or who are otherwise ineligible to remain. At the same time, states can take practical actions to reaffirm in policy and practice the fundamental importance of respecting and protecting the human rights of all migrants. States can accomplish this by taking into account humanitarian considerations in their approaches to migration, including by considering the development of state-led processes to develop non-binding guiding principles and voluntary guidelines, particularly the treatment of migrants in vulnerable situations; and by developing voluntary guidelines or principles on the detention of migrant children, including minimizing the time children spend in the custody of law enforcement. These types of practices ensure safety and appropriate care for migrant children.

A practical model for developing voluntary guidelines that address human rights can be seen from the experience of the United States and the Philippines in co-leading a multi-stakeholder process that culminated in the production of the Guidelines to Protect Migrants in Countries Experiencing Crisis, the MICIC initiative. While these Guidelines address specific situations of crisis and the impact of crises on migrants, many of the principles, guidelines, and practices identified in the MICIC initiative can be useful within a broader migration context

related to the protection of human rights and social inclusion of migrants. Some examples include:

- Principle 2: all migrants are entitled to human rights, regardless of their migration status;
- Principle 7: migrants strengthening in multiple ways the vitality of both their host States and States of origin;
- Principle 9: partnerships, cooperation, and coordination;
- Guidelines 6 and 9: communicating effectively with migrants; and
- Guideline 11: non-discrimination in the provision of humanitarian assistance.

States are encouraged to support efforts by local governments, civil society, and the private sector to discourage xenophobia and intolerance against migrants, as well as to combat discrimination. They should also enforce laws that hold accountable those responsible for crimes against migrants, including kidnapping, extortion, robbery, sexual assault, trafficking in persons, murder, hate crimes, or other crimes; and they should raise awareness about effective victim identification and appropriate assistance.

***2. Addressing drivers of migration, including the adverse effects of climate change, natural disasters and human-made crises, through protection and assistance, poverty eradication, conflict prevention and resolution:***

Development planning and support is critical for alleviating poverty, providing economic opportunity, reducing corruption, combatting crime and community violence, and ensuring accountable governance and respect for the rule of law and human rights. All of these factors are among the drivers of irregular and forced migration. Development planning also supports disaster risk reduction, and disaster mitigation and preparedness measures that reduce disaster-based reasons to migrate. Humanitarian assistance and appropriate protection for migrants caught up in conflicts or disasters in their host countries are important to stabilize the overall situation, protect the human rights of migrants, and reduce irregular, forced, or dangerous migration.

***3. International cooperation and governance of migration at borders, in transit, at entry, and in relation to return, readmission, integration and reintegration:***

States should maintain the ability to enforce their immigration laws, and to detain and return individuals to their country of origin when they are in violation of a country's immigration laws. In support of that end, international cooperation and governance of migration should encourage effective migration management policies, as well as coordination mechanisms and initiatives that facilitate safe, regular, and orderly migration and repatriation while simultaneously respecting the dignity and human rights of migrants. This cooperation should further support bilateral, regional, and global coordination through dialogue and migration forums that aim to find practical solutions and initiatives to address issues of common concern, including irregular migration and strengthening migration management with full respect for the human rights of migrants, as well as the management of the repatriation process.

***4. Sustainable development and migration, including harnessing the contributions of all migrants and ensuring portability of earned benefits:***

Governments and other stakeholders should engage in development activities that support longer term consideration of refugee, stateless, internally displaced, and migrant populations in host country development planning and budgeting processes, including development assistance programs and dialogues. Humanitarian assistance and longer-term development investments can also reduce the need to migrate during disasters and conflict. Temporary or permanent migration should also be acknowledged as a legitimate coping mechanism in some cases. Assistance should help mitigate risks associated with migration, particularly for vulnerable populations.

Furthermore, it is important to examine social inclusion and cohesion through a development lens. To help address vulnerabilities and protection issues, states should consider supporting cross-sectoral development projects in countries of origin, transit, and destination. States should also take into account issues of livelihood, education, and health, with a particular focus on integration of migrant and host communities.

***5. Identification, protection and assistance in the context of smuggling of migrants, trafficking in persons and contemporary forms of slavery:***

States that are party to the UN Convention against Transnational Organized Crime (UNTOC) and its Protocol on Trafficking in Persons, as well as other relevant international instruments, are obligated to take appropriate measures to assist and protect trafficking victims. As such, states have a responsibility to develop, implement, and collaborate on effective measures to identify human trafficking victims among migrant flows, and to assist them in accordance with our respective international obligations and national policies.

In particular, states should not penalize trafficking victims for crimes committed as a result of being subjected to trafficking; such victims should not be prosecuted, and to the extent trafficking victims have been prosecuted and convicted, their sentences should be vacated. Victims of trafficking in persons are entitled to protection under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UNTOC, as well as other relevant international instruments. We encourage all countries that have not yet done so to ratify or accede to the UNTOC, its Protocol against Trafficking in Persons, and its Protocol against the Smuggling of Migrants by Land, Sea, and Air. We also encourage States that are parties to these instruments to more effectively implement them.

States have a responsibility to develop, implement, and collaborate on effective measures to identify human trafficking victims among migrant flows, and to assist them in accordance with the respective international obligations, ensuring that victims are not penalized for crimes committed as a result of being subjected to trafficking. States should also ensure that when developing and improving national laws, strategies, and policies, they distinguish carefully between trafficking in persons and smuggling of migrants, which are two separate and distinct forms of crime, as defined by the UNTOC and its Protocols.

Migrants are also targeted by transnational organized criminal groups as potential victims of trafficking in persons; therefore, states have a collective responsibility to

put in place procedures to identify and assist vulnerable migrants, especially forced migrants, refugees and internally displaced persons, and victims of human trafficking. States also have a collective responsibility to more proactively prevent, investigate, and prosecute the criminal groups that engage in human trafficking and migrant smuggling.

It is important to note that trafficking in persons does not require movement or the crossing of an international border – it can also be a domestic problem occurring entirely within the borders of one state. As such, states need to integrate responses to international trafficking with how they are responding to trafficking within their countries. Desperate circumstances lead potential trafficking victims to take greater risks, making them more vulnerable to trafficking. Poor living conditions also create incentives for smuggling of migrants. Supporting economic development in communities of origin can help prevent both the smuggling of migrants and trafficking in persons.

***6. Decent work, labor mobility, recognition of skills and qualifications and other relevant measures, as well as ensuring regular pathways for migration:***

Fundamental principles and rights at work should be respected for all persons. These rights include freedom of association and the effective recognition of the right to collective bargaining, the elimination of discrimination in respect of employment and occupation, the elimination of all forms of forced or compulsory labor, and the effective abolition of child labor. This point is consistent with general principles that are commonly promoted within the international community on decent work and economic growth.

Protecting and promoting workers' rights is key to preventing exploitation and empowering individuals, enabling them to contribute to and benefit from development. Likewise, enforcing labor and employment laws for all workers decreases various forms of vulnerabilities, such as exploitation, to include human trafficking. These laws also protect host country workers from depressed wages and poor working conditions, as well as the potential to be passed over where unscrupulous employers might gain an unfair competitive advantage by hiring foreign workers willing to work for lower wages or in inferior working conditions.

Labor and employment laws further level the playing field for employers who meet their obligations under the law.