

Examining the protection of migrants in vulnerable situations in the contexts of Jordan and Lebanon

Initial research findings and summary of roundtable

What protection regime exists for irregular migrants? To what extent are the rights of migrants who cannot be categorised as either refugees or regular migrants upheld? Where are the gaps when comparing international with domestic protection frameworks?

The Mixed Migration Platform (MMP) hosted a private roundtable on 28 September 2017 to share initial findings of a study designed to address these questions. Its specific objectives were to:

1. Analyse the relevance of global principles and guidelines on protecting migrants in vulnerable situations in Jordan and Lebanon
2. Contribute to ongoing discussions around non-binding principles on protecting migrants in vulnerable situations at the global, regional and national levels
3. Inform alternative initiatives that seek to protect the human rights of migrants in vulnerable situations

This paper shares the findings of our upcoming research on existing international protection frameworks for the human rights of migrants in vulnerable situations, and how these are adhered to (or otherwise) at the country level in Jordan and Lebanon. Led by INTERSOS, the research investigates two key areas of rights for people on the move – decent work and human rights-based returns.

Background to the MMP research study

The research began with a broad secondary review of existing frameworks seeking to promote the protection of vulnerable migrants. This was complemented by primary data collection in the two case study countries, Jordan and Lebanon, through semi-structured Key Informant Interviews (KIIs) with relevant policy makers, humanitarian workers and research institutes from August to September 2017.

Background to the Global Migration Group/OHCHR principles

In 2016, the Global Migration Group (GMG) commissioned OHCHR to draft non-binding principles and guidelines on the human rights protection of migrants in vulnerable situations. The document has gone through several drafts and is nearing finalisation. “The framework attempts to provide guidance to states and other stakeholders on how to implement obligations and duties to respect, protect and fulfil the rights of those persons who are moving in vulnerable

situations within large and/or mixed movements who might not fulfil the conditions of the refugee definition”, according to OHCHR.

The framework was designed with the successes and shortcomings of previous non-binding frameworks designed by OHCHR, and the UN member state uptake of such frameworks, taken into consideration. These include the recent OHCHR principles and guidelines on human rights at international borders designed primarily to protect and respect the rights of refugees and other migrants by using exclusively a human rights approach. Much like the draft GMG/OHCHR guidelines on the human rights protection of migrants in vulnerable situations, this document is comprised of a compilation of existing normative frameworks and conventions that are in place to protect the rights of those crossing borders. The principles and guidelines do not sufficiently reference these conventions in the document, however, which led to reservations on the part of states (some of whom felt they were being pushed into the adoption of new legal instruments). To avoid a repetition of this reticence to welcome a new framework, the GMG-commissioned principles and guidelines do clearly reference the existing legal basis upon which they are established.

Initial findings

JORDAN

During interviews, national stakeholders shared the following conclusions:

- There was no awareness among stakeholders of the current GMG/OHCHR process of drafting principles and guidelines on human rights protection of migrants in vulnerable situations
 - A soft law framework for promoting migrant rights in Jordan, which would have had similarities to the principles, was considered less of a priority in promoting migrant rights
- Local lawyers placed particular stress on the need for amendments to national legislation in order to address protection gaps for migrant workers. INGOs, on the other hand, tended to stress the need for state adherence to international human rights treaties relevant to their particular field of intervention
- Application of labour law to domestic and agricultural workers as per the Jordanian Labour Code was cited as a major protection gap (a separate regulation for agricultural workers has not yet been issued and monitoring and oversight of the situation of domestic workers was also cited a major concern)
- Amendments of, and/or improvements to, the sponsorship system for migrant residency and work permits were flagged by many interviewees (as well as its proposed abolishment)
- All interviewees stressed the need for better implementation and awareness of existing provisions for the protection of migrants via both domestic and international law

recognised by Jordan. Few stakeholders interviewed (with some exceptions) stated that they normally refer to international legal instruments when advocating with national authorities in the field of migrant protection

- Earmarked donor funding (according to nationality) was identified as:
 - Exacerbating discriminatory practices between migrants and refugees
 - Leading to discrimination in treatment among migrants and refugees of different nationalities
- A lack of coordination between humanitarian and development actors in the field of migration and the labour/livelihoods sector was also cited as a concern by several interlocutors
- There was a low level of awareness of states' consideration to develop non-binding principles on the treatment of migrants in vulnerable situations within the New York Declaration on Refugees and Migrants (NYD). A global framework for the protection of migrants in the Jordanian context was generally considered useful but few actors considered it a priority within their field.

LEBANON

- There was no awareness of the GMG/OHCHR draft principles and guidelines on human rights protection for migrants in vulnerable situations, with some stakeholders directly questioning the relevance of creating such a document. Generally, stakeholders were more concerned about the lack of a domestic framework for refugees and migrants than the need for an international soft law normative framework on migration
- Interviewees identified a need for increased awareness of existing provisions for the protection of migrants and refugees according to international law. Most of the lawyers interviewed said that they rarely utilise international legal instruments in advocating with national authorities for the rights of refugees or other migrants. INGOs and other international organisations have, however, utilised a number of legal instruments in their respective fields
- As in Jordan, the lack of effective and transparent coordination between humanitarian/livelihood and development actors in the field of migration and development was cited as an issue
- Stakeholders reported that general tension exists between some host communities and migrant/refugee communities. This comes as a result of the perception that the arrival of refugees and other migrants has led to unfair competition in the labour market and a reduction in wages. The perception among host communities that refugees and other migrants posed a security threat was stated more frequently in Lebanon than in Jordan

- The gaps in the regulatory environment for refugees and other migrants, as well as the absence of a single framework, was described as a major challenge to the protection of their rights in Lebanon. A related concern was the lack of governmental oversight and monitoring of the situation of migrant workers

Summary of the roundtable discussion

Following a presentation of the research findings, a panel of experts delivered statements based on their work in the two case study countries, Jordan and Lebanon. This panel was composed of the following people:

- Hani Okasheh, Research Unit, Arab Renaissance for Democracy and Development (ARDD) Legal Aid¹
- Anwar Gubara, Human Rights Officer, the Office of the United Nations High Commissioner for Human Rights (OHCHR), Office for MENA Region²
- Marie-José Tayah, Regional Coordinator, MENA, International Domestic Workers Federation (IDWF), Lebanon³
- Mariela Acuña, INSAN Association, Lebanon⁴

The panellists' statements and the subsequent discussion among participants are summarised below.

Overall migration context

JORDAN

The panellists illustrated how the lines between migration categories in Jordan are becoming increasingly blurred, particularly considering the national legal context: Jordan is not a signatory to the 1951 Refugee Convention, allowing the country more flexibility in the domestic interpretation and implementation of international refugee law. Despite the fact that a series of rights are provided to refugees through a Memorandum of Understanding (MoU) with UNHCR, donor funding and the impact of European policy agreements, such as the Jordan Compact, have influenced the segmentation of humanitarian assistance and the labour sector in favour of Syrian refugees and other Syrian migrants. Yet, there are over 48 nationalities of refugees and other migrants living and working in Jordan, whose presence is often overlooked. Foreign nationals

¹ ARDD Legal Aid aims to help communities and individuals access justice and enable them to use the law as a mechanism of empowerment, by raising legal awareness among vulnerable communities in Jordan. ARDD Legal Aid fights impunity by seeking remedies and redress for victims and by holding offenders accountable through free litigation.

² OHCHR's Regional Office continues to advocate for the rights of vulnerable groups, minorities and non-citizens, whose legal status and rights are rarely discussed, let alone protected. In addressing these issues, the Regional Office provides technical advice to governments in the field of human rights with regard to, inter alia, the ratification of human rights treaties, and encourages states to establish national human rights institutions (NHRIs) and to reinforce existing institutions, especially with respect to their independence and ability to take action when violations occur.

³ The IDWF is a membership-based global organisation of domestic and household workers, representing 63 organizations in 51 countries. Affiliates are primarily trade unions, but also cooperatives and member-based associations.

⁴ Established in 1998 by a group of Human Rights activists, Insan Association is a Lebanese non-profit organisation officially registered at the Ministry of Justice and at the Ministry of Interior.

account for one third of the overall population and should, as such, be reflected in domestic policy and bilateral and multilateral policies pertaining to Jordan. For example, there are lessons to be learned from the Syrian Work Permit Scheme, as part of the Jordan Compact, which could be applicable to other nationalities residing in Jordan who are in need of labour market access and employment support.⁵

LEBANON

It was highlighted that laws pertaining to refugee and migrant protection are not compiled in one document, but spread across three to four different laws and agreements:

- Nationality law 1925
- Anti-trafficking law 2011
- The 1962 law on the Entry, Stay and Exit of Foreigners
- A bilateral labour migration agreement between Lebanon and Syria from 1993, regulating the entry, stay and exit of Lebanese and Syrians for the purpose of employment

Lebanon has not signed the 1951 Convention but made a strong commitment during the OHCHR Universal Periodic Review (UPR) second cycle to collaborate with the international community on enhancing the protection of refugees and other migrants. The panellists stressed that the International Convention on the Protection of all Migrant Workers and their Family Members (2003) remains one of the central documents designed to protect migrant rights and allows for the assessment of their rights in all countries, regardless of whether a particular state, such as Lebanon, has ratified the convention or not. Limited movement of refugees and other migrants, together with abuse and exploitation affecting migrants linked to legal and residency status, continue to obstruct the provision of human rights for these communities.

Decent work in Jordan and Lebanon

The impact of the Syrian crisis on migrant workers

Jordan's labour law does not recognise refugees as a distinct group. Within the context of the Jordan Compact, it is therefore important to consider where and how Syrian refugees interact with refugees and migrants of other nationalities in the labour market. The panellists highlighted how protection gaps have arisen for migrant workers in the Middle East due to donor funding being newly prioritised for Syrians. Funding dedicated to building the capacity of NGOs to provide services for labour migrants, received for many years, has suddenly dried up. This raises the question of the sustainability of such initiatives. There has also been a crackdown by authorities on migrant domestic workers following the Syrian crisis. The panellists attributed this

⁵ The Jordan Compact details a series of strategic objectives to improve work and livelihoods opportunities for Syrians in Jordan, as a result of the London Syria Conference in 2016. Together with the government of Jordan, ILO and the UK Foreign and Commonwealth Office (FCO) pledged, amongst other commitments, to formalise work permits for Syrian refugees. This component of the Compact proposed to create 200,000 jobs (measured by the number of work permits issued) in construction, agriculture and manufacturing.

in part to key figures from the migrant domestic worker community successfully organising labour unions. Many migrant workers seeking to renew their work permits have also been deported (in part due to the principle of *non-refoulement* not pertaining to them as regular migrants).

Policy versus reality

In Lebanon, a mismatch between the labour migration governance framework and the reality on the ground has led to an imbalance between the supply of foreign labour and demand within the sector. Foreign nationals are reportedly competing with Lebanese nationals for work, heightening tensions with the host community and exacerbating xenophobia towards foreigners. Further compounding this challenge is the structure of the *Kefala* sponsorship system that continues to place migrant workers at risk of rights violations. The system is predicated on a range of bilateral agreements that the country of destination (i.e. Lebanon) has with individual governments in countries of origin, which guarantee various levels of protection and wage segmentation according to nationality (and the length of stay of the migrant in question in the country).

The panellists explained how Lebanon is facing a high demand for freelance or temporary workers, while the *Kefala* system requires that contracts are more fixed and bilateral in nature (between a single employer and worker). The Government of Lebanon has reportedly granted permits to increasing numbers of recruitment agencies, but a question remains regarding workers already in the country, who are without work due to a lack of demand. This combination of factors, coupled with the risk of financial, physical and psychological abuse inherent to the worker-employer sponsorship relationship for foreign labour migrants, is leading to an increase in informal labour.

Further, labour migration policies in countries of destination are reportedly gender-blind, failing to recognise that many women are in Jordan and Lebanon during the time when they might be considering to have children. Laws instead have a tendency to criminalise women who assert their right to form a family, pushing them into irregular arrangements to avoid being arrested and deported. Conversely, foreign labour policies in country of origin may impose mobility restrictions on female migrants in particular, under the guise of ‘protection’.

Another catalyst pushing migrant workers into irregular labour in these two countries is the transition from temporary to permanent arrangements. According to IDWF, many workers suffer family dislocation after spending decades in Lebanon and Jordan even during their old age, after overstaying their work and residence permits.

Despite such challenges, the labour market does represent a potential area of human rights reform that may be more appealing and less politicised to governments than refugee protection reform. Revision of the domestic labour market could lead to reform of the *Kefala* system, particularly if spearheaded by trade unions.

Ongoing advocacy initiatives

As the consultations for the Global Compact on Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR) draw to a close, advocacy efforts on behalf of civil society and INGOs are ongoing. Regional civil society initiatives, global union alliances and policy organisations represent examples of key actors undertaking continued advocacy for the human rights of migrants.

The INSAN Association introduced the Cross Regional Centre for Refugees and Migrants (CRRM), a regional civil society network working to promote the rights of refugees and migrants in the Euro-Mediterranean and Arab regions and to amplify local, regional and international advocacy work on refugees and migrants. The INSAN representative provided updates on the recent regional civil society consultations for the GCM, which approximately 50 NGOs attended. The main focus of these consultations centred around mixed migration and the use of return by governments as a political bargaining tool (and the subsequent need for increased ‘voluntary return’). The consultations have reflected a concerted attempt to engage regional civil society in the Compact, but have highlighted the continued need for contextualised and strong regional messages.

OHCHR made reference to a similar event organised in April by the Building and Woodworkers International, an alliance of unions and federations working to promote migrant rights. Human rights training delivered in May 2017 by the International Centre for Migration Policy Development (ICMPD) to 17 officers from the Directorate General of the General Security (DGSG), to which OHCHR contributed, was highlighted as another example.

Conclusions and recommendations

The MMP research study was designed to provoke questions regarding the role and applicability of high level, non-binding frameworks such as the GMG/OHCHR draft principles and guidelines in a national and regional context. The following conclusions were reached at the roundtable:

- The OHCHR principles and guidelines could be useful as a reference document to support work at the national level. They could also be helpful as an advocacy tool, but every context is different and they thus need to be contextualised
- Domestic policy, and not international treaties, is the ultimate reference for lawyers working on cases of migrant protection
- Tools such as these can be used to justify the mandates of different UN agencies, which can result in the politicisation of migration, detracting from the purpose of such frameworks in upholding human rights
 - There can be a mismatch between agencies coming together at the Geneva level to develop something like the OHCHR principles and guidelines and the distinct mandates that these same agencies face at field level

- Existing human rights mechanisms could be used – the OHCHR principles and guidelines simply package these within a particular frame. The principles themselves will not create a new protection regime
- A “how-to guide” which documents good practices and case studies is needed
- There is a need for clarity on who these principles are for, be it states, INGOs, civil society, or migrants themselves

The initial findings of the study and the roundtable discussion also raised a number of overarching questions:

- What role does international soft law on protecting the human rights of migrants in vulnerable situations play in a regional context?
- How is it possible to ensure ongoing dialogue between what is needed by stakeholders at the national level and what is being developed at the global level?
- How to reconcile the tension between
 - International policy initiatives and regional and national priorities
 - The need for ratification of conventions and the gaps in adherence to and implementation of these conventions
- Do frameworks generate political will?

Next steps

- MMP will finalise and publish the study in October 2017. The platform will continue engagement with actors at the global, regional and national level through dialogue and joint advocacy
- MMP is seeking to conduct a follow-up study on local-/municipal-level policy best practices to protect the human rights of migrants in vulnerable situations, in order to complement global, regional and national perspectives. Potential research areas to explore, include:
 - How are migrant rights being upheld through supra-legal initiatives such as Sanctuary Cities, firewalls and direct public action?
 - How do these different levels of human rights advocacy interact, from the hyper-local to the international?