

**OBJECTIVE 12: STRENGTHEN CERTAINTY AND
PREDICTABILITY IN MIGRATION PROCEDURES FOR
APPROPRIATE SCREENING, ASSESSMENT AND
REFERRAL**

UNCERTAIN TARGET, OPAQUE LANGUAGE

Presentation by
Boldizsár Nagy

at the conference,

**THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION:
PROGRESS, CHALLENGES AND THE WAY FORWARD TO A PRINCIPLED
IMPLEMENTATION**

Geneva Graduate Institute of International and Development Studies

Objective 12: the stepchild

- SG in his 2021 on the GCM report **does not mention**
- **Voluntary state reports** to the International Migration

Review Forum of 2022 **frequently ignore**

- **Academic** commentaries are **practically non-existent**
- **Here**, at our conference it is the **last item ;)**

Why? – see the last slide!

The content of Objective 12, condensed

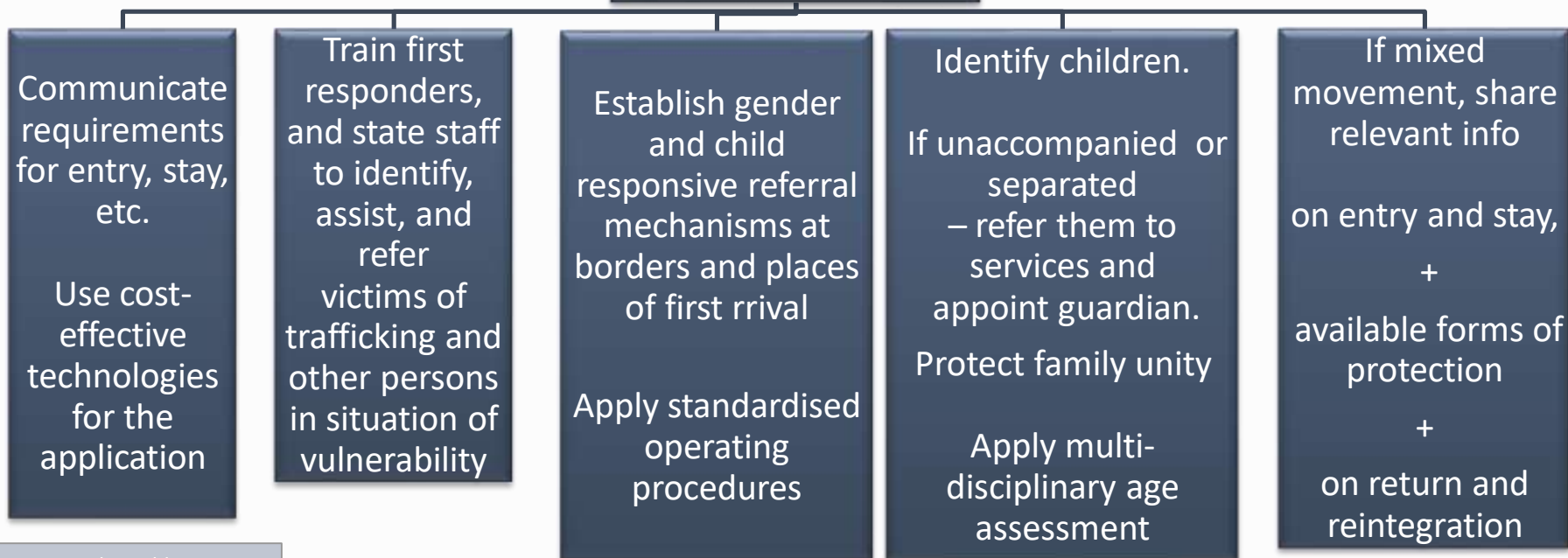
Objective 12: Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

Commitment:

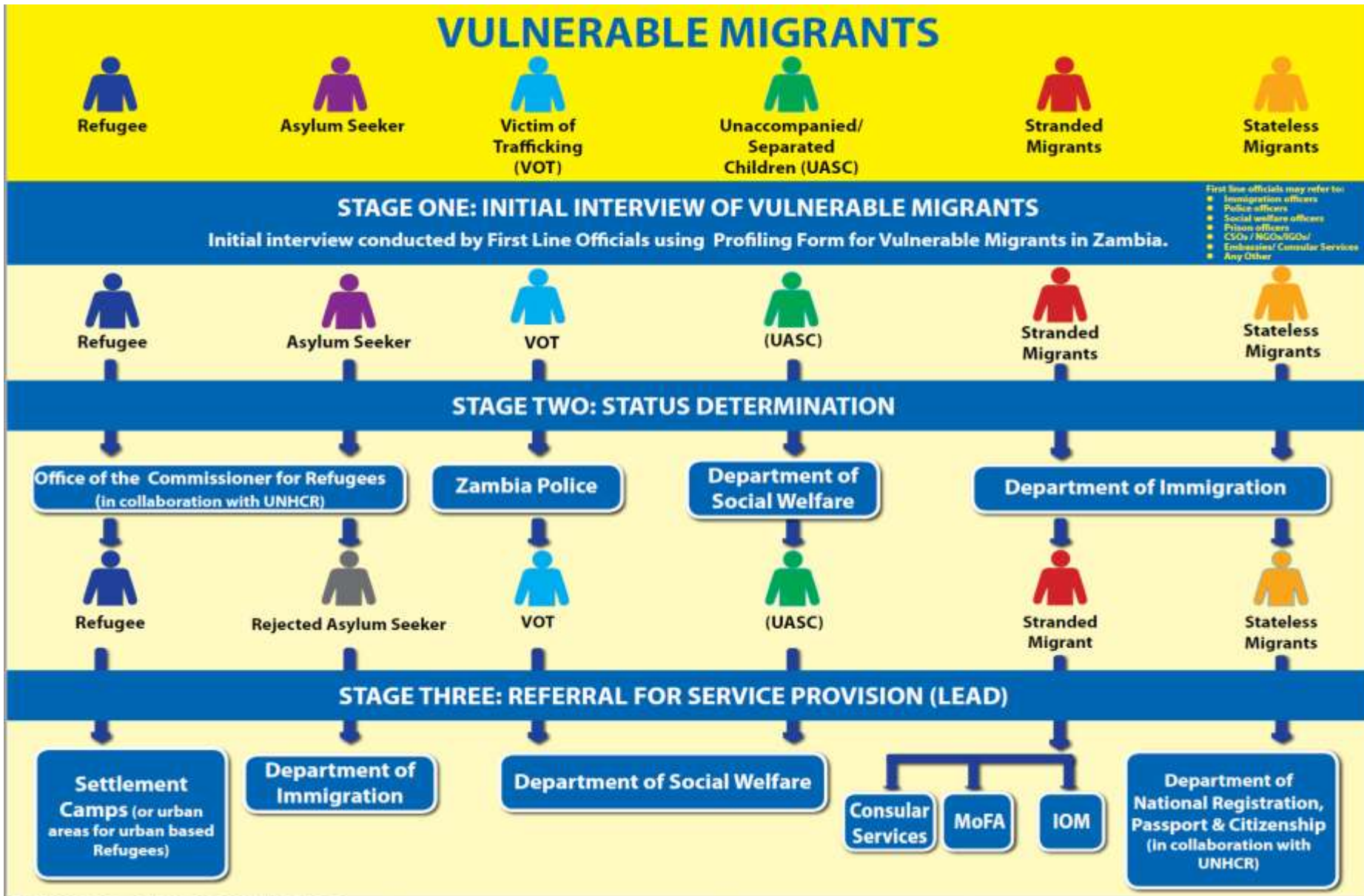
apply **effective** and human rights-based **mechanisms** for the adequate and timely **screening and** individual **assessment of all migrants** in order to direct them to appropriate **referral procedures**, in accordance with international law.

Goal:

increase **legal certainty** **Actions** of migration **procedures**



What does this mean in practice? The Zambian National Referral Mechanism



The goal

The duality of the overarching goals reflected in the objective

Overarching:

shared responsibility to
address risks and challenges for

Communities

Reduce the incidence
and impact of irregular m.

Individual migrants

Facilitate safe, orderly
and regular (SOR) m.

In Objective 12

- Adequate, effective and timely
screening of ALL migrants
in order to control („Assess”)
(inherent suspicion)

- human rights based
- international law respecting
- individual assessment
- referral of m. in vulnerable
situation, especially
children

The short but winding road of drafting

Zero draft 2018 February 5:

„Strengthen procedures and mechanisms for status determination”

We commit to develop and strengthen effective, human rights-based and ~~protection-sensitive~~ mechanisms and procedures for the identification and status determination of all migrants, in order to ensure adequate and timely referral, and assistance at all stages of the migration cycle, as well as to distinguish clearly between migrants and refugees.

Green – identical

Beige - more or less equivalent

Red, strikethrough – lost

Blue - added

Adopted text, 2018 July 13

Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

We commit to increase legal certainty and predictability of migration procedures by developing and strengthening effective and human rights-based mechanisms for the adequate and timely screening and individual assessment of all migrants for the purpose of identifying and facilitating access to the appropriate referral procedures, in accordance with international law.

The short and winding road of drafting

Two conceptual changes:

1) Elimination of all direct references to asylum seekers, refugees and asylum.

Zero Draft, action 1: „ promote effective and **swift status determination**, protection and **referral of asylum seekers, refugees** and migrants, including those displaced in the context of **disasters and crisis.**”

action 5: „ Ensure that information **on the right to asylum or other forms of international protection** are appropriately and **effectively communicated...**”

2) Elimination of reference to status determination

Zero and zero+ „ We commit to ... protection-sensitive ... status determination of all migrants,...”

Draft, 2nd revision (May 2018)

„effective and protection-sensitive mechanisms ...screening and individual assessment of all migrants for the purpose of ... facilitating access to the appropriate determination”

Action 5: Ensure that information on access to the right to seek asylum or other adequate forms of protection, ...are communicated, and accessible to all migrants, including in the context of mixed movements, in order to facilitate access to the appropriate determination and referral procedures”

The words could be eliminated, but the inherent duality in „mixed movements” - the presence of refugees awaiting identification and recognition - not!

The normative environment - examples

	Hard law	Soft law / Policy document
Universal	<p>ICCPR, 1966, Convention on the Elimination of All Forms of Discrimination against Women (1979) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Convention on the Rights of the Child (1989) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) „Palermo” Protocols to the UN Convention against Transnational Organized Crimes on trafficking and on smuggling, 2000</p>	<p>New York Declaration 2016 UN Global Plan of Action to Combat Trafficking in persons, 2010 UN HCHR Recommended Principles and Guidelines on Human Rights at International Borders 2014 UN Counter-Terrorism Implementation Task Force (CTITF) Working Group on Protecting Human Rights while Countering Terrorism: Handbook on human rights and screening in border security and management</p>
Regional	<p>Regional Human Rights Conventions (Africa, Americas, Europe) Council of Europe, Convention on Action against Trafficking in Human Beings, 2005 EU Visa Code; EU Schengen Borders Code; EU GDPR regulation; EU Return directive; EU Screening regulation [New Pact, 2020 proposed] (when adopted) Return and readmission agreements</p>	<p>Group of Experts on Action against Trafficking in Human Beings (GRETA) (CoE): Guidance Note on the Entitlement of Victims of Trafficking, and Persons at Risk of Being Trafficked, to International Protection</p>
National	<p>Rules on immigration procedures, asylum procedures, border controls, non-discrimination, child protection</p>	<p>e.g. National Referral Mechanism (NRM) for the Protection of Vulnerable Migrants in Zambia</p>

Jurisprudence and treaty bodies' output interpreting and applying the normative instruments, e.g. *Chowdury and others v. Greece*. ECtHR. Application no. 21884/15. 30 March

Links to other objectives („O”)

Direct link

O3 [Information] Accurate and timely info at all stages of migration – predictability and certainty

- Labour market and visa info a)
- Information points along the migration route –referral to child and gender responsive support and counselling c)
- Child sensitive and gender responsive info for „newly arrived migrants”

Q7 [Vulnerabilities]

- uphold best interest of the child, apply gender responsive approach „including in responses to mixed movements”
- Identification and assistance, protection of their HR „regardless of their migration status” b)
- Unaccompanied and separated children: establish „specialized procedures for their identification, referral, care and family reunification” f)
- Access to public or affordable legal assistance „in legal proceedings” g)
- Involve local authorities and stakeholders in the identification, referral and assistance of migrants in situation of vulnerability k)

Remote link

O1 [Data collection]

O5 [Enhance regular m]

- reduce visa processing time
- admit persons compelled to

leave due to sudden onset natural disaster or „other precarious situation” – provide humanitarian visa

- devise planned relocation and visa options for victims of slow onset environmental change, including climate change

O17 [Eliminate discrimination]

O23 [International cooperation]

- Capacity building, mobilizing technical and financial resources

Links to other objectives

O9 [Smuggling]

- Identification of smuggled migrants, attention to special needs of women and children.
- Provide training on smuggling f)

O10 [Trafficking]

- enhance the identification and protection of, and assistance to victims of trafficking, paying particular attention to women and children.
- Train public officials and law enforcement officers to identify signs of trafficking in persons
- Raise awareness of prospective migrants by info campaigns

O11 [Integrated, secure and coordinated border management]

- Cooperate on on „proper identification, timely and efficient referral, assistance and appropriate protection of migrants in situations of vulnerability” a)
- Effective border management by pre-screening of arriving persons, pre-reporting by carriers b)
- Apply due process in screening, in individual assessment and interview
- If unaccompanied or separated child crosses the border: promptly inform and involve the child protection authority

O13 [Detention]

- Detention be a last resort, necessary, proportionate, based on individual assessment, for the shortest possible period, not a deterrent
- Respect the best interest of the child /No prohibition of detention!/
/

Links to other objectives

O14 [**Consular protection**] Strengthen consular capacities in order to identify, protect and assist nationals abroad who are in a situation of vulnerability, including ... victims of trafficking in persons, migrants subject to smuggling under aggravating circumstances; d)

Provide consular support to our nationals through advice, including on local laws and customs, ... as well as through the issuance of relevant documentation, such as travel documents and consular identity documents... f)

O 21 [**Return and readmission**]

Uphold the prohibition of returning migrants when there is a real and foreseeable risk of death, torture and other cruel, inhuman and degrading treatment or punishment, or other irreparable harm, in accordance with our obligations under international human rights law.

- Uphold procedural safeguards and individual assessment as well as legal certainty
- Promote gender-responsive and child sensitive return programmes
- Cooperate on identification of nationals and issuance of travel document

Focal points of the analysis, the good and the bad

The good

The text makes reference to **culturally sensitive counselling** and calls for **training to recognise signs of trauma**.

It focuses on persons with special needs or “migrants in situations of vulnerability”, reflecting in a compressed form ideas expressed in much more detail in the “[Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations](#)” produced by the UNHCHR and the Global Group on Migration.

It aims at **producing certainty and predictability** in all **migration procedures**, based on human rights and conducted in an **effective, fast, individualised and non-costly way**.

It requires relevant **information to be made available** for all migrants, in an **appropriate, timely and effective way**.

Focal points of the analysis, the good and the bad

The bad

Asylum seekers are not treated as a separate subgroup, the key concept of the New York Declaration – mixed movement – is mostly eliminated - therefore the problem unaddressed

Irregular migrants not in a situation of vulnerability get little attention

There is no word about civil society presence at the border or in these procedures.

Objective 12 remains fully silent about access to legal representation and the preconditions of free legal aid.

No word is devoted to the interview situation, language, interpreters, or legal remedies against the outcome of the „assessment“.

Issues with profiling, data mining, trespassing privacy, use of AI in pre-screening and screening, uncontrollable information exchange within the country and between states, in general the whole arsenal of the securitizing establishment is unreflected.

Focal points of the analysis, the indeterminate

Indeterminacy

Legal **certainty and predictability for whom?**

Screening and assessment serve the state.

The migrant – whether regular or part of the mixed flow – **can not better predict whether**

she'll get the visa

will be detained,

residence right/work permit will be extended next time, etc.

Screening and individual assessment of „all migrants”

- **Why? What for?** Is a conference attendee a migrant to be screened?

How much control has the migrant **over the data gained by screening?**

Evaluation:

Janus faced, random, opaque, partly redundant

Janus faced: O12 serves two lords



The **securitizing forces** aimed at a Foucauldian panopticon, wishing to see and know everything about everybody crossing (or attempting to cross) the border

The **migrant** whose human right and situation of vulnerability ought to be acknowledged and responded to without delay

Random

The actions collected under the Objective 12 are incongruent. The utilitarian rules on streamlining regular migration – for work, e.g. – are followed by protecting people in vulnerable situation and steps related to refusal. **Neither the persons affected, nor the types of migration, nor the place of action unite the five actions.**

Opaque

The language is obscure „screening and assessment of all migrants”; relevant information on „available forms of protection”. The underlying cause is that the genuine nature of mixed movements, that includes refugees arriving as **asylum seekers** is **not expressly mentioned**.

Partly redundant

Overlaps with Objectives 3, 7, 9-11, 13, 14, 21.

THANKS!

BOLDIZSÁR NAGY

E-mail: nagyb at ceu.edu

CEU IR Department

Vienna