
SIGNIFICANCE OF PRIVACY IN TRANSIT: PROTECTING MIGRANTS AND REFUGEES UNDER INTERNATIONAL LAW

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ABSTRACT

The broader global phenomenon of migration and displacement underscores key challenges to migrant's and refugees' right to privacy in transit. According to international law, privacy is one of the ornaments of human dignity and autonomy that remains threatened within the context of migration. This paper analyses the importance of transit privacy and its role in enabling individuals on the move to exercise dignity, security, and autonomy. This research underscores the obligations of states and international organizations regarding privacy rights by examining international legal instruments and case studies.

It further goes into the paper, including practical challenges, which are surveillance technologies, mishandling of data, and breach of physical privacy in refugee camps. Case studies on migration crises further depict the real-world implications of the violations. Best practices from states and international organizations are showcased to illustrate innovative approaches to data protection, community engagement, and technological safeguards.

This research by adopting doctrine research methodology calls for a harmonized international response to privacy protection, focusing on strong legal frameworks, capacity building of officials, and transparent data practices. Privacy will help stakeholders create trust, respect human dignity, and adhere to international law. The findings indicate that privacy is not a negotiable human right; it is crucial for migrants and refugees in uncertain and vulnerable situations.

Keywords: International law, Migrants, Privacy, Transit.

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1. Introduction

Migration and displacement are defining challenges of our era, driven by complex factors such as armed conflict, persecution, environmental crises, or economic inequalities. In 2020, the United Nations mentioned that there are more than 280 million international migrants, and more than 100 million people are internally displaced due to conflict or disaster³. These statistics depict the scale of human movements never known before and for which migrants and refugees face unique challenges. The transit stage is perilous, with the dangers of exploitation, violence, and denial of fundamental rights.

The patterns of migration and displacement expose how most migrants move under compulsion, fleeing life-threatening situations with resources and destinations that are unpredictable. While flows from conflict zones like Syria, Afghanistan, and Myanmar demonstrate the varied pushes, environmental migration due to rising sea levels and extreme weather also underlines the diverse motivations driving mobility. Transit phases often exacerbate vulnerabilities since migrants and refugees experience overcrowded but under-resourced shelters, precarious legal protections, and institutional disregard. These challenges require multifaceted answers from the world community to safety, dignity, and rights upon transit.

As part and parcel of human dignity, the right to privacy is one of the fundamental rights that guarantee safety, security, and autonomy, and it also provides safety and protection for migrants and refugees. This is guaranteed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights⁴, and so on, that arbitrary interference, data misuse, and any form of violation are to be prohibited. During transit, privacy ensures personal information is protected, intruding surveillance is reduced, and people's physical and psychological well-being is respected.

However, migrants and refugees often face heightened threats to their privacy rights. Systematic data collection at borders, the use of advanced surveillance technologies, and inadequate privacy safeguards in detention centers and camps expose them to risks of exploitation, stigmatization, and harm. Addressing these privacy challenges is essential to

³ United Nations Department of Economic and Social Affairs, "International Migration 2020 Highlights," January 15, 2021, <https://www.un.org/en/desa/international-migration-2020-highlights>.

⁴ United Nations, *International Covenant on Civil and Political Rights*, 1966

upholding international legal obligations and fostering a more humane and rights-centered approach to migration governance.

In this world on the issue of privacy measurements and the rights of migrants, a lot of research has been done. Some of the research is:

- Hathaway, J. C. "The Rights of Refugees under International Law" 2018⁵: This paper will consider the state obligations of the 1951 Refugee Convention and the 1967 Protocol, in the context of a requirement for respect for refugee privacy in transit. Hathaway claims that invasion of privacy violates refugees' dignity and security due to unmerited surveillance and collection of personal information.
- United Nations High Commissioner for Refugees (UNHCR) Report on Privacy and Data Protection in Refugee Operations (2022)⁶: This report assesses the impact of digital data collection on refugee privacy. It provides recommendations for states and international organizations to strengthen legal frameworks that protect refugees' personal information while ensuring operational efficiency.
- Gregor Noll's article, "Seeking Asylum at Embassies: A Right to Entry under International Law?"⁷ explores the legal ambiguity surrounding asylum claims made at foreign embassies. Noll argues that no explicit right to enter an embassy for asylum exists in current international law, as the Refugee Convention primarily addresses state obligations within their territory. However, he probes whether such a right can be constructed through the interpretation of extant principles such as non-refoulement and human rights, which he finds to be insufficient to establish a general right, though they may be relevant in extreme circumstances. Examining state practice, he finds it too inconsistent to support a customary law. Noll puts forward a "functional" approach: states would be allowed access to their embassies as a last resort when other forms of protection are not possible and the danger is imminent. This will then balance the state sovereignty against the humanitarian imperative. Ultimately, Noll concludes that although a general right of entry does not exist, a case-by-case

⁵ Hathaway, James C. *The Rights of Refugees under International Law*. 2nd ed. Cambridge: Cambridge University Press, 2018

⁶ United Nations High Commissioner for Refugees (UNHCR), *Privacy and Data Protection in Refugee Operations* (Geneva: UNHCR, 2022)

⁷ Gregor Noll, "Seeking Asylum at Embassies: A Right to Entry under International Law?" *International Journal of Refugee Law* 17, no. 3 (2005): 542–573.

approach is essential, and further development in international law and practice is also necessary to give greater protection to those fleeing persecution.

- Erika Feller's article, "Asylum, Migration, and Refugee Protection: Realities, Myths and the Promise of Things to Come,"⁸ delves into the intricate relationship between asylum, migration, and refugee protection, examining prevailing myths and offering insights into future directions. Feller argues against conflating refugees with other migrants and emphasizes the specific legal basis for refugee protection that is grounded in the 1951 Refugee Convention. She is critical of states' restrictive interpretations and practices, which are hostile to the very core of the Convention, specifically non-refoulement, and points out that the gap between legal obligations and on-the-ground realities for refugees is increasing. Feller deconstructs the "abusive" asylum seeker and "economic migrant" storylines used to justify restrictive policies and argues that a more complex understanding of the reasons for human movement is required. She calls for international cooperation and burden sharing in the management of the current global refugee situation, challenging states to transcend parochial national interests to find a more humane and principled approach to refugee protection. This article concludes by calling for a renewed commitment to the Refugee Convention and a more robust international framework addressing the root issue in transit.
- Pécoud and de Guchteneire's article, "International migration, border controls, and human rights: Assessing the relevance of a right to mobility,"⁹ looks into the complex relationship between international migration, state border controls, and fundamental human rights. The authors pose a challenge to the observation that states have absolute sovereignty over their borders by arguing that border controls must be balanced against the rights of human migrants. They discuss constraints on state prerogatives posed by international law of human rights, specifically by rules on the non-refoulement principle and by the bar against arbitrary detentions and, especially, rights to family unification. Criticizing greater border securitization at times and damaging human rights practices regarding migrants migrating legally or

⁸ Erika Feller, "Asylum, Migration and Refugee Protection: Realities, Myths and the Promise of Things to Come," *International Journal of Refugee Law* 18, no. 3–4 (2006): 509–536.

⁹ Pécoud, Antoine, and Paul de Guchteneire. "International Migration, Border Controls and Human Rights: Assessing the Relevance of a Right to Mobility." *Third World Quarterly* 29, no. 7 (2008): 1521–1539.

clandestinely, one focuses on vulnerability issues in connection with irregular migrants. Acknowledging the prerogative of the state to regulate entry and stay, the authors argue that such regulations must be proportionate and non-discriminatory, respecting the inherent dignity and rights of all individuals. Ultimately, they propose that a sophisticated understanding of a qualified "right to mobility" may be coming into view, not as an absolute right to cross borders unimpeded, but as a principle that circumscribes the extent to which states may legally restrict movement and underscores the imperative of respecting human rights in the context of migration control.

- Alexander Betts's article, "Towards a 'Soft Law' Framework for the Protection of Vulnerable Irregular Migrants,"¹⁰ discusses the protection gap of irregular migrants who do not qualify under the refugee definition but are vulnerable to human rights violations. According to Betts, current international legal frameworks do not provide much protection for this group because they are mostly outside the purview of the 1951 Refugee Convention and other human rights treaties. He proposes that there be a form of "soft law" that could potentially reinforce the protection of vulnerable irregular migrants. In this framework, nonbinding principles, guidelines, and best practices will be developed and adopted by States so that irregular migrants are treated with dignity, especially about their treatment in detention, access to basic services, and protection from exploitation. Betts emphasizes that, although soft law instruments are not legally binding in the same way as treaties, they can still play a crucial role in shaping state practice and promoting a more rights-based approach to migration management. He suggests that such a framework could be developed through collaboration between states, international organizations, and civil society, gradually building consensus around minimum standards for the treatment of vulnerable irregular migrants.
- This paper by Saskia Witteborn, titled "Data Privacy and Displacement: A Cultural Approach,"¹¹ traces how data privacy issues and displacement come together for arguing in a culturally sensitive context in protection that could work appropriately

¹⁰ Alexander Betts, "Towards a 'Soft Law' Framework for the Protection of Vulnerable Irregular Migrants," *International Journal of Refugee Law* 22, no. 2 (2010): 209–236.

¹¹ Saskia Witteborn, "Data Privacy and Displacement: A Cultural Approach," *Journal of Refugee Studies* 34, no. 2 (June 2021): 2291–2307, <https://doi.org/10.1093/jrs/feaa004>.

within the contexts of humanitarian approaches. In discussing privacy, Saskia challenges this understanding because such perspectives, generally often very Euro-American-centric in origin, don't account well for all forms of diverse cultural norms and values toward the sharing of data and information. She points out that data privacy is not abstractly legal and is, to a large degree, embedded with social relations of trust and the dynamics of power in these groups. The authors further discuss other possible dangers linked to data compilation and usage upon the displaced and vulnerable persons, security, and human dignity are vulnerable to risk within such an undesirable position. Witteborn advocates for a more nuanced understanding of data privacy that acknowledges the cultural context of displacement and incorporates the perspectives and agency of displaced communities in the design and implementation of data protection policies and practices. This culturally informed approach, she argues, is crucial for ensuring that data collection and management in huma

- “Wendy Vogt's *Lives in Transit: Violence and Intimacy on the Migrant Journey*”¹² offers a nuanced, ethnographic study of the perilous journeys of Central American migrants traveling through Mexico to the United States. Vogt extends the project of recording violence faced by migrants beyond a simple documentation of it, digging deep into complex social dynamics and intimate relationships in situations of extreme precarity. She shows how migrants move beyond physical danger into emotional vulnerability as they forge relations of solidarity, love, and exploitation during their journeys. The book highlights migrants' agency vis-à-vis systemic violence; it is testimony to the resourcefulness and resilience of people forging new forms of community and kinship in transit. In the end, Vogt's work brings out the cost in human terms for such restrictive immigration policies and points out the intimate, often ignored experiences of migrants, whose lives enter suspended animation due to constant movement and uncertainty.
- This master thesis by Anna Bohlin is titled “Protection at the cost of privacy? - A study of the biometric registration of refugees.”¹³ The author studies the conflict between the protection needs of refugees and biometric registration which crosses the

¹² Wendy Vogt, *Lives in Transit: Violence and Intimacy on the Migrant Journey* (Oakland: University of California Press, 2018). 40

¹³ A. Bohlin, “Protection at the Cost of Privacy? A Study of the Biometric Registration of Refugees” (2008), <https://lup.lub.lu.se/record/533287>

parameter of privacy. Under the supervision of Gregor Noll, it examines the issue of collecting and storing the biometrics of refugees while analysing whether heightened identification and protection outweigh the loss of privacy concerns. Under this line, Bohlin was probably analyzing if the legal protections of data over refugees were solidly set for practical application against biometric registration programs. Most likely, the author has explored this in the areas of potential biometric data abuse, lack of informed consent, and long-term effects on refugee autonomy and dignity. Ultimately, Bohlin must ask whether seeking to protect the refugees through technologies such as biometrics is acceptable if it diminishes their absolute right to privacy.

- The paper by Karolina La Fors-Owczynik- "Monitoring migrants or making migrants 'misfit'? Data protection and human rights perspectives on Dutch identity management practices regarding migrants"¹⁴ -seeks to examine the human rights implications of Dutch identity management systems as they come to bear on migrants. This paper likely analyzes how these data collection, storage, and processing impact migrants' privacy and other fundamental rights. La Fors-Owczynik probably inquires if such practices meant to monitor and control end up making the migrant feel excluded socially or like a "misfit." The research probably is an investigation of potential discrimination, profiling, and negative effects arising from the use of migrant data in Dutch administrative and law enforcement contexts. Ultimately, it probably questions if Dutch identity management practices find a proper balance between security objectives and the protection of migrants' human rights, potentially suggesting reforms for greater respect towards data privacy and preventing the further marginalization of migrant populations.
- European Parliament Report on Migration and Privacy (2021)¹⁵: The report evaluates the European Union's border policies and their implications for privacy rights. It discusses legislative gaps and suggests reforms to align migration policies with international privacy standards.

¹⁴ K. La Fors-Owczynik, "Monitoring Migrants or Making Migrants 'Misfit'? Data Protection and Human Rights Perspectives on Dutch Identity Management Practices Regarding Migrants," *Computer Law & Security Review* (2016), <https://doi.org/10.1016/j.clsr.2016.06.001>

¹⁵ European Parliament, *Report on Migration and Privacy*, 2021, <https://www.europarl.europa.eu/...>

But, still, something is lacking. We didn't confine the complete definition of privacy. The significance of privacy has not yet been explored. The right to privacy is different from any other fundamental right. The quality and quantity of this right are decided by the individual himself. It is the individual only who decides how much privacy he requires for his individuality. The quantity of this privacy also varies in different circumstances and front of a different person

In this way, this research is going to fill the lacking in case of privacy and analyse the current situation to fully understand these certain objectives: -

1. To analyse the meaning and significance of the right to privacy in transit.
2. To analyse the efficacy of the current international legislative framework in the protection of the privacy of migrants

2. Legal materials and methods

This study uses doctrinal legal analysis, and a thorough review of relevant literature, including academic articles, research papers, reports, and legal documents, was conducted to gain an understanding of the current state of migrants concerning the protection of human rights and individuality. This study explores the meaning and significance of privacy by analysing different research work and case studies on the matter of privacy. This study analyses the problems in data management and management of privacy during transit by doing case studies of different international mass migrations. The study incorporates the analysis of international statutes and conventions concerning the protection of privacy and the basic human rights of migrants.

This study makes a descriptive case study of matters related to the issue of migration and protection measures concerning the human rights of refugees. This study includes the analysis of newspapers, reports, and journals available on that issue. The study incorporates the thematic analysis of ground position based on available documented data.

The study makes a conclusive approach to formulate the technology and law concerning creating better conditions for migrants. Studies make a harmonious construction between the border security of a nation and the fundamental rights of migrants. The study looks at the perception of nations on carelessness towards the rights of migrants and unethical treatment

too them. And in last, by adopting thematic analysis this study tried to conclude the result of research and suggest some key ideas for the protection of the right to privacy during transit.

3. Result and Discussion

3.1 Meaning and Significance of Privacy

Privacy in migration means the right of individuals to control their personal information, to keep it confidential, and to maintain their physical and psychological autonomy throughout all stages of movement. It covers protection from intrusive surveillance, unauthorized data collection, and unwarranted physical searches. To migrants and refugees, privacy means dignity and respect without coercion or exploitation.

1.	Alan Westin (1967):	“Privacy is the claim of individuals to determine for themselves when, how, and to what extent information about them is communicated to others” ¹⁶ .
2.	Ruth Gavison (1980):	“Privacy is a condition where one is protected from unwanted access by others, ensuring autonomy and freedom” ¹⁷ .
3.	Daniel Solove (2006):	“Privacy is not a single concept but a family of related problems involving control over personal information and protection from intrusion” ¹⁸ .
4.	Hyman Gross (1967):	“Privacy involves the ability to control what others know about you and to limit their access to your personal life.” ¹⁹
5.	Fried Charles	“Privacy is rooted in the respect for persons and is essential for

¹⁶ Alan Westin, *Privacy and Freedom* (New York: Atheneum, 1967), 7.

¹⁷ Ruth Gavison, "Privacy and the Limits of Law," *Yale Law Journal* 89, no. 3 (1980): 423.

¹⁸ Daniel J. Solove, *The Digital Person: Technology and Privacy in the Information Age* (New York: New York University Press, 2006)

¹⁹ Hyman Gross, *The Concept of Privacy* (New York: Anchor Books, 1967)

	(1970):	intimacy and relationships.” ²⁰
6.	Judith DeCew (1997):	“Privacy encompasses informational, accessibility, and decisional control dimensions.” ²¹
7.	Anita Allen (1988):	“Privacy is crucial for self-development and maintaining personal dignity.” ²²
8.	Julie Inness (1992):	“Privacy is based on the idea of respect for personal boundaries and control over intimate decisions.” ²³
9.	Adam Moore (2003):	“Privacy involves a realm where individuals can make personal decisions free from interference.” ²⁴
10.	Beate Roessler (2005):	“Privacy ensures personal space for self-expression and development of autonomy.” ²⁵
11.	Edward Bloustein (1964):	“Privacy protects human dignity by shielding individuals from public scrutiny.” ²⁶

²⁰ Charles Fried, *An Anatomy of Values: Problems in the Philosophy of Law* (Cambridge, MA: Harvard University Press, 1970)

²¹ Judith DeCew, *In Pursuit of Privacy: Law, Ethics, and the Rise of Technology* (Ithaca: Cornell University Press, 1997)

²² Anita Allen, *Privacy: Philosophical Dimensions of the Law* (New York: Oxford University Press, 1988)

²³ Julie Inness, *Privacy: A Tradition in Crisis* (New York: Oxford University Press, 1992)

²⁴ Adam Moore, *Privacy Rights: Moral and Legal Foundations* (University of Pennsylvania Press, 2003), 45

²⁵ Beate Roessler, *The Value of Privacy* (Cambridge: Cambridge University Press, 2005)

²⁶ Edward Bloustein, "Privacy and Personality," *Journal of Social Philosophy* 4, no. 1 (1964): 22.

12.	Neil Richards (2015):	“Privacy is a necessary precondition for intellectual freedom and autonomy.” ²⁷
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By going with all these definitions of privacy we can conclude the right to privacy means, **“No one can be known about another without his consent, except the procedure prescribed by law”**

Privacy is a small word with a big impact. It is the basic personality of an individual and, this is the individual only who decides how much can know about this personality. It's not like any other fundamental human rights on which we can do calculative analysis. It's a psychology, it's an idea of living life, it's a thought process and it's an aura of an individual where he can allow or disallow another to enter in it. Privacy rights play a very vital role in the life of human beings which are defined below: -

- a) **Protection of Dignity and Autonomy:** Privacy protects the private space, information, and decision-making of individuals, thus their dignity and autonomy.
- b) **Security Against Exploitation:** Strong privacy controls minimize the possibilities of data exploitation, identity theft, and other forms of exploitation that are widespread in vulnerable groups.
- c) **Trust in Legal and Institutional Frameworks:** Respect for privacy fosters trust among migrants, refugees, and the structures intended to safeguard them.
- d) **Prevention of Discrimination:** The anonymity of privacy is less likely to be stigmatized or targeted because of sensitive personal information.
- e) **Mental and Physical Well-being:** The feeling of security and control afforded by privacy is essential to mental and physical well-being during a journey.
- f) **Supporting Safe Communication:** Privacy means that migrants may communicate securely with families, legal representatives, and support networks free from the possibility of interception and reprisal.

²⁷ Neil Richards, *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age* (Oxford: Oxford University Press, 2015)

- g) **Safeguarding Vulnerable Groups:** Some groups, like women, children, and members of the LGBTQ+ community, are more targeted for abuse. Privacy protections significantly benefit these groups.
- h) **Reduced Coercion:** Safeguarding privacy helps prevent coercive practices such as forced data disclosure or invasive interrogations that can compromise individual autonomy.
- i) **Legal Recourse and Accountability:** Privacy protections allow individuals to seek redress and hold violators accountable when abuse or data breaches occur.
- j) **Long-term Resettlement:** Privacy in transit provides the basis for effective integration and rehabilitation, creating confidence in host communities and institutions.

In this digital world survival of privacy become very difficult. With the internet and technology virtual privacy always be in threat. Unwanted surveillance by administrators, unrequired data collection, unauthorized use of data, and digital breaches are the major reasons for the invasion of privacy. To counter all these difficulties first required to understand privacy and its key concept in this digital world. Privacy security can be improved by these three key points: -

- a) **Data Protection:** Authorities collect migrants' data, such as biometric data, along the way. Such data must be collected, stored, and used in a manner that transparently, securely, and only for a lawful purpose. Adequate protection must be offered to prevent a violation of misuse or wrongful access.
- b) **Physical Autonomy:** Privacy guarantees that detainees are not subjected to invasive physical treatments, for example, strip searches or crowded accommodation in detention centers and camps. Respect for physical autonomy is a guarantee for the dignity of individuals and avoidance of abuses.
- c) **Confidentiality:** The personal and legal information of migrants should be kept confidential to avoid discrimination, persecution, or stigmatization. This means that the communication channels between migrants and legal representatives, family

members, and humanitarian organizations should be secure so that migrants are not under surveillance or interception.

3.2. Efficiency of International Framework for protection of privacy in transit

Privacy in transit is a complex concept that includes integrating protection of personal information, physical autonomy, and confidentiality. It is important for preserving the dignity, security, and autonomy of migrants and refugees. By using privacy as both legal and ethical, it advances stakeholder case work with specific vulnerabilities that arise during migration. Guaranteeing privacy goes beyond compliance with international standards but still, it increases trust, reduces harm, and respects general principles of human rights.

This protection of privacy during migration and transit is solidly grounded on international legal instruments that standardize the treatment of persons and guard their rights.

1.	Universal Declaration of Human Rights (UDHR) - Article 12:	“Article 12 of the UDHR sets out that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks." This is a basic principle in the establishment of privacy as a universal human right, with protection against arbitrary intrusions that are especially pertinent to migrants due to increased vulnerabilities during transit.” ²⁸
2.	International Covenant on Civil and Political Rights (ICCPR) – Article 17:	“Article 17 of the ICCPR further fleshes out this provision made by the UDHR by stating that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor unlawful attacks on his honor and reputation”. Further, an important obligation bestowed on states relates to

²⁸ United Nations, *Universal Declaration of Human Rights*, adopted December 10, 1948, Article 12, <https://www.un.org/en/universal-declaration-human-rights/>.

		legislation for protection and promotion measures against the aforesaid interferences.” ²⁹
3.	Regional Instruments:	“Regional frameworks also fill the gaps by supplementing global standards, as seen with the European Convention on Human Rights (ECHR). Article 8 ECHR protects respect for private and family life, home, and correspondence, again subject to restrictions that are permissible in a democratic society.” ³⁰ “Similar privacy protections have been incorporated in the African Charter on Human and Peoples' Rights and the American Convention on Human Rights, as regional challenges unique to migrants and refugees.” ³¹
4.	1951 The Refugee Convention:	“The 1951 Refugee Convention and its 1967 Protocol emphasize the obligations of states to respect and uphold the rights of refugees, including privacy. Although privacy is not mentioned per se, the principles of it are implicit in the provisions of the treatment accorded to refugees, such as non-discrimination, protection of identity, and family unity. These obligations also include ensuring that personal data gathered during asylum processes is treated strictly and confidentially so as not to be exploited or persecuted.” ³²

²⁹ International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171 (adopted December 16, 1966, entered into force March 23, 1976).

³⁰ European Convention on Human Rights, Article 8, "Right to respect for private and family life, home, and correspondence," Council of Europe, 1950, https://www.echr.coe.int/documents/convention_eng.pdf.

³¹ African Charter on Human and Peoples' Rights, art. 9, and American Convention on Human Rights, art. 11; United Nations High Commissioner for Refugees, "Regional Protection Challenges for Migrants and Refugees," 2020, 12.

³² United Nations, *Convention Relating to the Status of Refugees*, 1951, 189 U.N.T.S. 137, accessed February 1, 2025, <https://www.unhcr.org/3b66c2aa10>; *Protocol Relating to the Status of Refugees*, 1967, 606 U.N.T.S. 267, accessed February 1, 2025, <https://www.unhcr.org/3b66c2aa10>.

5.	General Data Protection Regulation (GDPR):	“The GDPR offers a strong legal framework for the protection of personal data for migrants entering European Union member states. This regulation applies to entities processing personal information, ensuring transparency, accountability, and the rights of individuals to access, correct, and delete their data”. ³³
6.	UN Guiding Principles on Business and Human Rights:	“These principles affirm the role of businesses, particularly those technology-based companies that engage in data gathering and processing, to respect individual privacy and ensure that no form of harm affects individuals, be they migrants or refugees.” ³⁴
7.	Cartagena Declaration:	“While this document is mainly based on the rights of refugees within Latin America, it emphasizes human dignity, in which respect is given to ensuring privacy for these refugees and other displaced persons.” ³⁵
8.	IASC Guidelines:	“The IASC guidelines on data protection in humanitarian action outline the issue of personal data in crises and the need to protect it. They are recommendations from organizations managing information about vulnerable populations, including migrants.” ³⁶

³³ European Parliament and Council, "General Data Protection Regulation (GDPR)," Regulation (EU) 2016/679, April 27, 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679>

³⁴ United Nations, *UN Guiding Principles on Business and Human Rights*, A/HRC/17/31 (New York: United Nations, 2011), 14, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

³⁵ Cartagena Declaration on Refugees, "Cartagena Declaration," 1984.

³⁶ International Association of Secretaries of the Conference (IASC), *Guidelines on Data Protection in Humanitarian Action*, (Geneva: IASC, 2018)

These instruments together form a strong framework of protection for privacy in migration and transit. However, the actual implementation of these provisions requires harmonization of practices among states and international organizations, strengthening of enforcement mechanisms, and the addressing of emerging challenges like digital surveillance and data misuse.

The transit phase of migration is quite challenging to privacy and, in a way, exacerbates the vulnerabilities of migrants and refugees. Such challenges are derived from technological, legal, and systemic issues that break the barriers of protecting personal data, physical autonomy, and confidentiality.

- a) Surveillance Technologies and Their Impact on Migrants:** Border checkpoints and transit hubs have become commonplace sites of advanced surveillance technologies, such as facial recognition, drones, and biometric scanning. While their advocates speak of them regarding security and the proper administration of borders, the indiscriminate collection of personal data often ensues. Migrants are subjected to intrusive monitoring when there is little transparency about how their data will be used, stored, or shared. This lack of accountability erodes trust and opens up a void for misuse.
- b) Data Collection Practices at Borders:** Border crossing officials commonly gather personal information, including fingerprints, photographs, and in-depth personal histories. Such practices often occur without the knowledge of migrants or appropriate safeguards, thereby making them vulnerable to identity theft, discrimination, and profiling. The lack of standardized protocols for data protection aggravates these risks, especially in regions with weak legal frameworks or limited technical capacity.
- c) Lack of Consent and Information Misuse:** Migrants and refugees, in many situations, are without the power of informed consent about data collection. Compounding the difficulty is language and coercion and an urgent situation as they pass through transit. Increasing the risk for stigmatization, exploitation, or retaliation are instances of misuse of information-such as passing on personal information to third parties without consent as they transit back to their home countries.
- d) Physical Privacy Issues in Refugee Camps and Detention Centres:** The

overcrowded and poorly managed refugee camps and detention centres raise severe concerns over physical privacy. Most migrants face unsanitary conditions, and few have private space for personal hygiene, medical consultation, or family interaction. This not only hurts their dignity but also subjects them to harassment, abuse, and psychological trauma.

- e) **Lack of International Supervision:** Many regions of transit have weak international oversight, which in turn causes regulatory gaps that enable unbridled privacy violations. International law's poor enforcement of privacy obligations exacerbates such issues.
- f) **Rising Technologies and AI:** The use of artificial intelligence (AI) in migration management introduces additional complexities. Predictive analytics, while intended to streamline border control processes, can perpetuate biases, leading to unfair targeting or profiling of migrants. Without stringent safeguards, these technologies risk further infringing on privacy rights
- g) **Legal and Policy Inconsistencies:** The lack of a cohesive international policy on data protection during migration creates discrepancies in how privacy is addressed across jurisdictions. This patchwork approach leaves migrants uncertain about their rights and exposes them to potential harm.

Invasion of privacy in transit is become common for all nations. There is always a conflict between national security and privacy management. Every nation gives more importance to its security and interests. The major, problem is that nations treated well these migrants. They are not such concerned about their rights and privacy. They primarily focused on own interests and security. Some of the recent case studies of migration observed shows the situation of right of privacy:-

S.NO.	CASE	CONCLUSION
1.	Syrian Refugee Crisis The Syrian refugee crisis	Biometric Data Collection: Fingerprinting, iris scanning, and other biometric data were frequently collected from refugees at the time of

	that started in 2011 resulted in displacing more than 13 million individuals, of whom millions had fled to neighboring nations and Europe in search of asylum. The arrival of the refugees caused great difficulty in the handling of personal information, particularly when crossing borders, applying for asylum, and the resettlement procedure. Cases of privacy violations were recorded, such as:	registration. United Nations High Commissioner for Refugees (UNHCR)³⁷ and International Organization for Migration (IOM)³⁸ reports expressed concerns regarding an absence of uniform data protection practices at the time of information sharing between agencies and between host countries. Digital Surveillance: The social media use of refugees was tracked to review asylum applications, frequently without their knowledge or consent, contravening principles set in the 2013 UN General Assembly Resolution on the Right to Privacy in the Digital Age³⁹. Data Security Violations: In a 2017 report⁴⁰, Human Rights Watch detailed cases where refugee information held by NGOs and host governments was being hacked, subjecting individuals to threats of exploitation and reprisals.
2.	Rohingya Displacement The mass forced migration of the Rohingya people	Consent Issues: Refugees' data, including biometric and demographic information, was collected without clear communication regarding

³⁷ United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2015* (Geneva: UNHCR, 2016), 5

³⁸ International Organization for Migration (IOM), *World Migration Report 2018* (Geneva: IOM, 2018), 34

³⁹ United Nations General Assembly, "Resolution 68/167: The Right to Privacy in the Digital Age," December 18, 2013

⁴⁰ Human Rights Watch, *No Safe Place: Refugees and Asylum Seekers in Europe* (New York: Human Rights Watch, 2017), 22

	from Myanmar to Bangladesh in 2017 created one of the worst humanitarian crises in recent times. The necessity to deal with more than a million displaced individuals gave rise to large-scale data collection, at the cost of privacy often:	its use. A 2021 study by Privacy International highlighted⁴¹ the lack of consent mechanisms during data collection processes. Sharing with Third Parties: Exposés by the Rohingya Human Rights Initiative⁴² indicated that information gathered by relief agencies was being shared with the Myanmar government, which could jeopardize refugees upon repatriation. Absence of Regulation: Amnesty International reports⁴³ in 2019 described disparate data protection policies among NGOs and global organizations and the need for an integrated privacy framework as a matter of urgency.
3.	Central American Migrant Caravans The Central American migration of caravans to the United States, especially in 2018 and 2019, raised serious privacy issues for those who were escaping	Invasive Data Gathering: The Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) needed extensive biometric and personal data from asylum applicants. American Civil Liberties Union (ACLU)⁴⁴ reports decried the practice as lacking transparency and adequate data protection. Application of Surveillance Technology: Drone monitoring and facial recognition technologies

⁴¹ Privacy International, "The Rohingya Crisis and Data Privacy: A Study on the Forced Migration of the Rohingya People," 2021, <https://privacyinternational.org/report/rohingya-crisis-and-data-privacy-study-forced-migration-rohingya-people>

⁴² Rohingya Human Rights Initiative, "The Rohingya Exodus: Privacy Violations and Human Rights," 2020, <https://www.rohingyahumanrights.org/privacy-violations>.

⁴³ Amnesty International, "The Rohingya Refugee Crisis: A Call for Privacy Protections," 2019, <https://www.amnesty.org/en/documents/rohingya-privacy-crisis-2019>.

⁴⁴ American Civil Liberties Union (ACLU), "The Border Surveillance State: How the U.S. Is Expanding Its Border Surveillance Programs," last modified March 5, 2020, <https://www.aclu.org/issues/national-security/privacy-and-surveillance/border-surveillance-state>.

	violence and poverty:	were utilized along the U.S.-Mexico border. Such practices, according to a 2020 report by the Electronic Frontier Foundation (EFF)⁴⁵, brought into question the proportionality and necessity of such invasive practices. Possible Data Exploitation: Data-exchange deals between the U.S. and Central American governments posed threats of data abuse, including in countries with limited legal institutions to safeguard individual data.
4.	Afghan Evacuation Crisis (2021) After the Taliban takeover of Afghanistan in 2021, thousands of Afghans were airlifted in a hurry under emergent conditions. The emergency evacuation procedure unveiled serious privacy risks:	Inadequate Handling of Data: The process of evacuation involved gathering sensitive individual information, including biometric data and family information, for resettlement purposes. In 2022, a report by Human Rights First⁴⁶ identified concerns regarding insufficient secure storage means for the data. Risk of Misuse of Data: Taliban troops allegedly captured biometric equipment abandoned by the U.S. military, as reported in an Associated Press probe⁴⁷. The equipment had data on Afghan partners, making them vulnerable to targeting and persecution. International Coordination Gaps: The

⁴⁵ Electronic Frontier Foundation (EFF), "The Impact of Facial Recognition on Privacy: A 2020 Report on U.S.-Mexico Border Surveillance," last modified August 12, 2020, <https://www.eff.org/deeplinks/2020/08/surveillance-technologies-border>.

⁴⁶ Human Rights First, *The Afghan Evacuation Crisis: Protecting the Data of Vulnerable Afghans* (2022), <https://www.humanrightsfirst.org/report/afghan-evacuation-crisis>.

⁴⁷ Associated Press, "Taliban Captures Biometric Equipment Left by U.S. Military," *Associated Press*, August 2022, <https://apnews.com/afghanistan-biometrics>.

		International Committee of the Red Cross (ICRC) ⁴⁸ highlighted the need for unified international data protection standards to safeguard evacuees' information during and after the crisis.
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After concluding all these international instruments and case studies it can be concluded that there is still something lacking. Only these are not sufficient to ensure the privacy of migrants. It required something more in respect of supervision, awareness, and accountability.

- a) **Informed Consent and Transparency:** Policies must ensure that migrants and refugees fully understand why their data is being collected, how it will be used, and with whom it will be shared. The UNHCR Data Protection Policy (2015)⁴⁹ provides a model framework for transparency and informed consent.
- b) **Strengthening Data Protection Frameworks:** Strong legal and technical structures should be embraced by governments and international bodies. The General Data Protection Regulation (GDPR)⁵⁰ of the European Union is a model for guaranteeing the privacy and security of personal information.
- c) **Accountability Mechanisms:** Independent oversight bodies should monitor data collection and sharing practices. Recommendations from the UN Special Rapporteur on the Right to Privacy (2019)⁵¹ advocate for clear accountability mechanisms to build trust and reduce misuse.
- d) **Minimization of Data Collection:** Following the data minimization principle, as stipulated

⁴⁸ International Committee of the Red Cross (ICRC), *Data Protection and Humanitarian Action: Recommendations for International Cooperation* (2022), <https://www.icrc.org/en/document/data-protection-humanitarian-action>

⁴⁹ UNHCR, *Data Protection Policy*, 2015, <https://www.unhcr.org/protection/data-protection-policy.html>.

⁵⁰ European Union, *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)*, Official Journal of the European Union, L 119, May 4, 2016, <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

⁵¹ United Nations, *Report of the UN Special Rapporteur on the Right to Privacy*, 2019, <https://www.ohchr.org/en/special-procedures/sr-privacy> (accessed February 1, 2025).

in the 2019 IOM Data Protection Manual⁵², can minimize the chances of privacy violations and misuse by limiting the amount of data collected to the essentials.

- e) Inclusive Policy Formulation: The Global Compact on Refugees (2018)⁵³ highlights the need to engage affected communities in policymaking to hear their concerns and views.
- f) Cross-Border Cooperation: Harmonizing data protection practices across borders is essential. The 2020 joint report by the UNHCR and the International Data Protection and Privacy Commissioners Conference⁵⁴ highlights the need for international cooperation in safeguarding refugee data.

By addressing these lessons, policymakers can seek to achieve an equilibrium between the necessity of good migration management and the protection of the right to privacy of refugees and migrants. This equilibrium is essential in upholding human dignity and compliance with international human rights law.

3. Conclusion and Suggestions

3.1. Conclusion

The right to privacy is a basic human right, which is underlined in international law, protecting the dignity, safety, and autonomy of individuals. Of course, the protection of personal data for migrants and refugees is critical, not only in preventing them from exploitation and discrimination but also in preserving trust with systems and host governments. A violation of privacy would lead to extremely serious consequences such as persecution, trafficking, and denial of asylum; therefore, there is a need for strong privacy safeguards.

Violations of privacy contravene the principles of non-discrimination and equality, which are cornerstones of international human rights law as enshrined in the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966)⁵⁵.

⁵² International Organization for Migration (IOM), *Data Protection Manual* (2019)

⁵³ United Nations General Assembly, *Global Compact on Refugees*, A/73/12 (Part II) (New York: United Nations, 2018), https://www.unhcr.org/gcr/GCR_English.pdf.

⁵⁴ United Nations High Commissioner for Refugees (UNHCR) and International Data Protection and Privacy Commissioners Conference, *2020 Joint Report on Safeguarding Refugee Data* (2020), <https://www.privacyconference20.org/2020-report>.

⁵⁵ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1)

With the growing tide of migration flows due to conflicts, climate change, and socio-economic disparities, the need to prioritize data protection is of the utmost urgency.

- Call to Action for States, Organizations, and Policymakers to Uphold International Obligations. States, international organizations, and policymakers must take the protection of privacy rights in migration contexts seriously by:
- Strengthening adherence to international legal frameworks, such as the GDPR, the Global Compact on Migration, and the UNHCR Data Protection Policy.
- Enhancing international cooperation and fostering trust among stakeholders to harmonize privacy standards globally.
- Ensuring transparency, accountability, and informed consent in all data collection and sharing practices.
- Providing sufficient funds for training, technology, and oversight mechanisms for protecting migrant and refugee data.

Privacy should be considered a bedrock of human dignity and a precondition for the achievement of fair and effective governance of migration. It is not only a tool to protect the most vulnerable but also to maintain the credibility and integrity of international humanitarian efforts. The global community can uphold its moral and legal obligations to protect the privacy and dignity of migrants and refugees by refusing to push them into detention camps and adopting these measures.

3.2 Suggestion

1. Strengthening International Cooperation and Harmonization of Legal Systems

- Promote states to ratify and enact global treaties like the 1990 UN Migrant Workers Convention⁵⁶ and the Global Compact on Migration (2018)⁵⁷.

⁵⁶ United Nations, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, December 18, 1990, <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.

⁵⁷ United Nations, *Global Compact for Safe, Orderly and Regular Migration*, December 2018, <https://www.un.org/en/contingency-plans/global-compact-safe-orderly-and-regular-migration>.

- Encourage cooperation through regional systems like the European Convention on Human Rights (ECHR)⁵⁸ and the African Charter on Human and Peoples' Rights (ACHPR)⁵⁹.
- Set common global standards for data protection in accordance with GDPR and the UN Guidelines for the Regulation of Computerized Personal Data Files (1990)⁶⁰.

2. Encouraging Transparency in Data Management and Surveillance Activities

- Establish sound policies for migrant data collection, storage, and sharing, as advised in the UNHCR Data Protection Policy (2015).
- Demand governments and organizations to report surveillance activities and data-sharing arrangements in accordance with international human rights obligations.
- Improve public reporting channels on the utilization of data collected, with independent bodies such as national human rights commissions providing oversight.

3. Capacity-building and Training for Asylum and Border Officials

- Institute training initiatives on data protection legislation and ethical conduct, as informed by the IOM Data Protection Manual (2019).
- Arm officials with an understanding of global standards of privacy, such as the guidelines contained in the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980)⁶¹.
- Offer technical resources to enhance secure data gathering and management systems, compliant with international standards.

⁵⁸ European Convention on Human Rights (ECHR)

⁵⁹ African Charter on Human and Peoples' Rights, 1981, Organization of African Unity, <http://www.achpr.org/instruments/achpr/>.

⁶⁰ United Nations, *Guidelines for the Regulation of Computerized Personal Data Files* (1990)

⁶¹ OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980).

4. Enhancing the International Organization's Role in Monitoring and Enforcement

- Extend the mandate of bodies such as the ICRC, UNHCR, and IOM to include routine audits of data protection mechanisms in migration environments.
- Support the creation of a global monitoring system under the UN Special Rapporteur on the Right to Privacy.
- Enhance funding to international organizations for the creation of privacy-focused tools and frameworks for refugee and migrant data management.

5. Leveraging Technology for Data Protection

- Invest in encryption and blockchain technologies to provide safe storage and transfer of migrant information.
- Encourage the creation of privacy-protecting digital identification systems, while adhering to human rights norms.

6. Regular Review and Policy Revisions

- Carry out regular analysis of data protection policies and schemes to mitigate novel threats.
- Create international platforms for sharing best practices and innovations in data protection.
- Encourage adaptive regulatory strategies to keep pace with technological developments and changing migration patterns.

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