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“Addressing Irregular Migration Through a Human Rights Based Approach”

Migration is one of six thematic priorities of the Office of the High Commissioner for Human Rights (OHCHR). The Office’s revised strategy on migration for 2012-2013 centres on promoting and contributing to the protection of the human rights of all migrants, regardless of their legal status. The strategy recognises that migrants in an irregular situation are more likely to face discrimination, exclusion, exploitation and abuse, and are less likely to be able to seek redress for such violations out of fear of detection and deportation. They are more likely to be targeted by xenophobes and racists, victimized by unscrupulous employers, subject to prolonged or even mandatory detention, and are more vulnerable to criminal traffickers.

In 2010, under the leadership of OHCHR, in a landmark joint statement, the international organisations comprising the Global Migration Group (GMG) expressed their deep concern about the human rights of international migrants in an irregular situation. The GMG noted that the irregular situation in which international migrants may find themselves should not deprive them either of their humanity or of their human rights.

Before making some brief remarks on the human rights-based approach, I would like to emphasise that, in the view of OHCHR, international human rights law provides that all persons, without discrimination, must have access to all fundamental human rights provided in the international bill of human rights. Where differential treatment is contemplated, between citizens and non-citizens or between different groups of non-citizens, this must be undertaken for a legitimate objective, and the course of action taken to achieve this objective must be proportionate and reasonable. In other words, irregular migrants are human beings, and as human beings they are protected by international human rights law.

OHCHR believes that migrants whose rights are protected, are able to live in dignity and security and, in turn, are better able to contribute to society both economically and socially than those who are exploited, marginalised and excluded.

This brings us to the human rights-based approach.

What is the human rights-based approach?

The human rights-based approach

- Is based on the international framework of human rights law as provided in the international bill of rights and the core human rights instruments
- Establishes accountability between duty-bearers and rights-holders
- Focuses on vulnerability, marginalisation and exclusion
- Emphasises participation and empowerment

A human rights-based approach emphasises that human rights are interdependent and inalienable, and that there is no hierarchy between different sets of rights.

What does this mean for migrants in an irregular situation?

Under a human rights-based approach, States are obliged to *respect, protect* and *fulfil* human rights. In other words, each human right has a specific content and claim – they are not just abstract slogans.

In the context of migration, this could mean that a State will not do something, such as subject an irregular migrant to indefinite immigration detention. It could mean that a State will do something, such as enacting laws to enable irregular migrants to access public housing. And it means that the State is required to take action when private actors, such as employers or recruitment agencies, abuse the rights of irregular migrants.

A human rights-based approach to irregular migration means that policy-makers cannot turn a blind eye to the presence in the country of vulnerable irregular migrants. It means that actions to “combat” irregular migration or “fight” against human smuggling cannot violate the rights of migrants. It means that while governments are entitled to defend the sovereignty of the State, they must do so in full respect of their human rights obligations. And, most importantly, it means that all irregular migrants are rights-holders, and therefore they are entitled to challenge abuse and human rights violations, and to demand accountability.

But the human rights approach to migration provides more than just a list of “don’ts” to States.

The human rights-based approach constitutes a framework of action, as well as a set of guidelines and tools for migration policy-makers. Remember that a rights-based approach develops the capacity of duty-bearers to meet their obligations at the same time as it enables rights holders to claim their rights.

Using a human rights-based approach will therefore enable policy-makers to identify who are the most vulnerable groups within their society, and to target their policy actions towards alleviating this vulnerability and promoting empowerment. Migrant women in an irregular situation who are vulnerable to domestic violence should, for example, be provided with information on protection and access to justice. Irregular migrant communities who are targets of xenophobic violence should be included in national plans of action to combat racism and hate crimes.

It will ensure that migrants in an irregular situation are consulted by policy-makers, and that they are enabled to participate when decisions are made that directly concern them, such as the provision of education facilities at the local level or community policing guidelines.

A rights-based approach will enable policy-makers to define the parameters of what would constitute adequate healthcare for irregular migrants, or provide guidance on how to ensure that all migrant children can have access to primary education that is culturally appropriate.

Such actions are not just legal requirements based on the international instruments which States have ratified. These actions make sense from the point of view of public policy.

Human rights are, therefore, not mere aspirations. They can be powerful programmatic and methodological tools. They are not a matter of charity, nor are they a reward for obeying immigration rules. Human rights are inalienable entitlements of every human being, wherever they are and whatever their status.

Thank you.