

INTERNATIONAL DIALOGUE ON MIGRATION 2009

Human Rights and Migration: Working Together for Safe, Dignified and Secure Migration

Effective Approaches for Policy Makers

I. INTRODUCTION

1. Human rights, as expressed in international and regional instruments, have entered all spheres of policymaking and migration is no exception. Nevertheless, migrants continue to be disproportionately affected by human rights violations. This is due principally to their status as non-nationals in the country in which they reside, but also occurs during their often perilous journeys and during or upon return to their home country. Contrary to common assumptions, documented migrants are not immune to abuse of their human rights, but migrants in irregular situations generally face higher levels of vulnerability, as they encounter greater barriers in accessing the protection to which they are entitled. It is of paramount importance to stress that human rights apply to all migrants, irrespective of their migratory status. Certain specific conditions or circumstances require particular attention because of the high risk of human rights abuse that they entail: hazardous modes of travel and abuse at the hands of smugglers; discrimination, racism and xenophobic violence; *de facto* or *de jure* prevention from access to health and education; detention; exploitation in the workplace; age- and gender-specific vulnerabilities; and human trafficking situations.

2. The International Dialogue on Migration (IDM) was dedicated in 2009 to addressing these challenges and identifying practical solutions with a view to giving effect to the human rights of migrants at all stages of the migration process. A summary follows of the general conclusions which emerged from the discussions and exchanges between policy makers and practitioners at two intersessional workshops held as part of the IDM, "Effective Respect for the Human Rights of Migrants: A Shared Responsibility" (25-26 March 2009)¹ and "Trafficking in Persons and Exploitation of Migrants: Ensuring the Protection of Human Rights" (9-10 July 2009).²

II. LESSONS LEARNED

3. *First*, human rights are crucial components of effective and comprehensive migration governance. Human rights form the baseline for interactions between States and migrants, but they also enter into the relationships between migrants and other players in areas such as recruitment, employment, integration and return of migrants.

4. *Second*, the universal principle of non-discrimination underlies and governs the application of human rights to migrants.

5. *Third*, violations of the human rights of migrants stem less often from shortcomings in existing laws and frameworks than from obstacles to their effective implementation.

¹ For further information on this workshop, including the agenda, background paper, list of participants and additional material, please visit www.iom.int/idmhumanrights.

² For further information on this workshop, including the agenda, background paper, list of participants and additional material, please visit www.iom.int/idmtrafexp.

Establishing and ensuring effective capacity, policy coherence, awareness-raising and partnerships are key to fully implementing the human rights of migrants and avoiding all forms of structural discrimination.

6. *Fourth*, migration for work, irregular migration flows, trafficking in persons, smuggling of migrants, mixed migration, and the accessibility of legal migration options are interdependent phenomena. From a human rights perspective and in terms of comprehensive migration governance, they cannot be treated in isolation from each other. Therefore, a solid overarching framework that ensures respect for the human rights of *all* migrants combined with a balanced approach to preventing irregular migration and opening adequate legal migration channels will benefit migrants and societies as a whole. Such a framework will also enhance protection of the most vulnerable groups, such as trafficked persons, sick migrants, migrant children and unaccompanied minors.

7. *Fifth*, identification of a trafficking situation presents a complicated task in practice. While migrant exploitation may not necessarily be related to human trafficking, the protection and assistance needs of victims of exploitation and trafficking are likely to be similar, whether or not the persons concerned have been formally identified and recognized as trafficked persons.

8. *Sixth*, the “four P approach” – prevention, protection, prosecution and partnership – has proven an effective formula for counter-trafficking activities, but its success is predicated on striking the right balance between the four components.

9. *Seventh*, protection of the human rights of migrants matters along the entire migration cycle, from pre-departure to return. Hence, governments of origin, transit and destination countries share responsibility for the protection of the human rights of migrants. Non-State actors, and the private sector in particular, also have an essential role to play in effectively implementing human rights standards.

III. EFFECTIVE APPROACHES

Putting in place comprehensive legal frameworks to protect the human rights of migrants

10. Human rights standards need to be transposed in domestic legislation, where it is particularly important to eliminate gaps that may arise with respect to migrants. A rigorous application of the principle of non-discrimination explicitly to address the situation of non-nationals is essential. While human rights form the core of international migration law³ – a body of norms governing the legal relationships between States and those between States and individuals involved in international migration – there are other branches of law, including labour law, the law of the sea, consular law, refugee and humanitarian law, and international criminal law, which underpin the protection the human rights of migrants in different contexts. In addition, certain groups of migrants are covered by dedicated instruments, such as the 2000 United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (one of the two Palermo Protocols), which address the case of trafficked persons. While the Protocol is primarily a criminal justice instrument, trafficking in persons is

³ Please refer to IOM, *Compendium of International Migration Law Instruments*, Richard Perruchoud and Katarína Tömolöva eds., T.M.C. Asser Press, 2007, for a compilation of the relevant instruments.

also a grave violation of human rights and the Protocol includes specific protection provisions to that effect. The existence of special protection regimes for some groups should, however, reinforce overall respect for human rights, not inadvertently detract from the protection of others to whom those regimes do not apply, which is what too often occurs today.⁴

Creating institutions and mechanisms with effective capacity for implementation

11. The implementation of human rights principles with respect to migrants is a multifaceted and ongoing task for States and non-State actors alike, but can be conceptualized as encompassing the following key elements: (1) promotion of human rights, (2) prevention of abuses, and (3) protection and redress where violations have occurred. To this end, it has proven useful to establish specific institutions and mechanisms to implement human rights standards and monitor adherence to those standards. Effective practices include the creation of accessible complaints mechanisms for regular and irregular migrants, emergency hotlines for victims of trafficking or exploitation, migration focal points in national human rights councils, independent ombudspersons with a mandate for the protection of migrants, anti-discrimination monitoring bodies, and/or a human rights section in the principal agency or ministry in charge of migration policy. Consular services have become increasingly important mechanisms by which countries of origin can monitor the human rights situation of migrants and provide actual protection. Migrant resource centres can also serve as a useful first port-of-call and source of information and assistance for a country's nationals abroad. Many such institutions and mechanisms work best if they engage in partnerships with other actors and play to their respective strengths: for example, migrant associations may be well placed to assess the obstacles or discrimination migrants face on a day-to-day basis in areas such as access to and conditions of housing, health, education and employment. NGOs can help educate migrants about their rights, for instance vis-à-vis employers or State authorities, provide direct assistance and facilitate access to legal counselling, where necessary.

Reinforcing effectiveness by ensuring policy coherence on issues of migration and human rights

12. The complexity of migration and the interconnectedness of human rights mean that a segmented approach to human rights protection for migrants may lead to gaps and contradictions. In addition to dedicating specific institutions to implementation of the human rights of migrants, consideration of human rights also needs to be mainstreamed in other policy areas and institutions which affect migrants and migration, directly or indirectly, in order to achieve maximum coherence. The creation of multiagency taskforces, or otherwise reinforcing inter-ministerial coordination and cooperation between different levels of government on matters relating to human rights and migration so as to ensure a whole-of-government approach, is an important step in that direction. Other critical measures include the training of social workers, the police, government officials, professionals in the areas of housing, education and health and others. Such individuals, who interact with migrants in a variety of contexts, need to be able to recognize a trafficking situation, be aware of the special challenges facing migrants, and have ways to overcome barriers to effective realization of rights at their disposal. As far as irregular migrants and trafficked persons are concerned, collaboration between law enforcement agencies, social services (education and health in particular) and human rights bodies, at national and local level, is particularly relevant. Lastly,

⁴ Among the instruments relevant to the migration process it is worth highlighting in particular the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

policy coherence also implies making an honest assessment of the potential effect of restrictive migration policies on the occurrence of human trafficking, irregular migration and the exploitation of migrants, and the human rights violations and criminal activity that may be associated with these phenomena.

Meeting the protection and assistance needs of trafficked persons and exploited migrants

13. Trafficking in human beings is both a crime and a gross violation of the human rights of the victims. The complexity of the crime, the multiplicity of perpetrators and the trauma it entails for its victims, however, can make it difficult to identify trafficked persons as such. This, as a result, may impede the effective application of the aforementioned Palermo Protocol and of the protection and assistance provisions contained therein. A human rights-based approach would, in the first instance, aim to meet the protection and assistance needs – legal, social, health, humanitarian and otherwise – of all abused and exploited migrants. Such an approach can be particularly useful in situations of mixed migration flows which consist of a variety of individuals with different needs who are all entitled to respect for their human rights. Should a trafficking situation be identified in the process, the relevant additional protection mechanisms would need to take effect. Assistance to trafficked persons encompasses short-term protection, for instance in the form of safe houses and medical and psychological services, and medium- and long-term protection opportunities, including reflection periods, access to the right to seek asylum, effective realization of the right to health, working and residency rights, and safe and dignified return to the country of origin.

Considering the rights of migrant workers in all aspects of labour market policy

14. Many human rights abuses suffered by migrants, including exploitation, are intimately linked with the position of migrants in the labour market. Irregular migrant workers, temporary migrant workers, and migrants engaged in informal or unregulated sectors of the economy, such as domestic work, are particularly vulnerable. These sectors are also critical in the effort to combat human trafficking. Governments need to take direct measures to prevent exploitation of migrants, for instance by explicitly including migrants in labour codes and defining exploitation in domestic legislation. At the same time, measures can be taken to mitigate the circumstances that make migrants susceptible to exploitation: this includes regulating contracts, preventing fraudulent and unethical recruitment practices and their consequences such as debt bondage, prohibiting document confiscation, eliminating “sponsorship systems”, and monitoring working conditions. Certain groups of migrant workers may require special consideration. Among these are migrants engaged in domestic work, often women who face gender-specific vulnerabilities to abuse. Effective policy approaches in the realm of migration for work call for partnerships with other actors: recruiters, private sector employers, labour courts and trade unions have a role in ensuring equal access to employment for migrants and respect for their rights, such as the right to decent work and to freedom of association for migrant workers, irrespective of their migratory status. Awareness-raising among migrants and employers about their respective rights and responsibilities is particularly important.

Integrating human rights into policies all along the migration cycle

15. Human rights concerns may arise at any stage of the migration process. Partnerships between countries of origin, transit and destination are thus of primary importance in ensuring safe and dignified migration. Entering into bilateral and regional dialogue can help States base their policies on a common understanding of the issues of concern and the vulnerabilities of particular groups and foster greater cooperation on various aspects of migrant protection. Labour migration programmes involving private sector recruiters and employers, for example, need to educate migrants about their rights before departure, guarantee fair contracts upon arrival and provide decent living and working conditions during their stay. The entry and return phases of migration require particular monitoring to reduce the risk of human rights violations, all the more so when irregular migrants are intercepted at a border or returned to their home countries. Sound rehabilitation and reintegration programmes upon return are also crucial in the case of trafficked persons and other victims of exploitation.

IV. CONCLUSION

16. Vulnerability and abuse, ranging from structural discrimination to exploitation to outright violence, continue to be a reality for too many migrant men, women and children around the world. It is time to move beyond the rhetoric of the universal application of human rights to all, including migrants, to take concrete measures to ensure that this is the case in practice. Protection of the human rights of migrants is also not a luxury we afford only in “good times”. Particularly during periods of economic crisis, migrants’ needs and rights need to be specifically considered in State responses and actions.

17. The responsibility lies with all those engaged in managing migration at every stage of the process, whether governments of countries of origin, transit or destination or private or non-governmental actors whose actions affect migrants, in a whole-of-government and indeed whole-of-society approach. Appropriate legal and administrative frameworks, including access to remedies, are the necessary starting point but are not sufficient on their own. Proper training of practitioners, institutional capacity development, awareness-raising, and targeted protection and assistance for those in need – most importantly for those who have been trafficked or otherwise exploited – are some of the most urgent measures needed to give effect to the human rights of migrants. Central to all is political commitment – from the highest levels of government and society to the administrative clerks and others coming into direct contact with migrants at every step of the migration experience – to work together for safe, dignified and secure migration that benefits individuals and societies.

