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CALL FOR INPUT | SPECIAL PROCEDURES

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The analysis and considerations provided to the questions for the CALL FOR INPUT | SPECIAL PROCEDURES towards the *Report on how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants*, are of my own research and development, obtained from a published article in the Refugee Law & Migration Studies Brief Volume 1, Issue 1 (2022), of the American University Washington College of Law (WCL) in collaboration with the International Refugee Assistance Project (IRAP). The Brief publishes cutting-edge legal analyses on pressing migration and refugee issues, incorporating both domestic and international law.

The complete article goes into more detail and information about several subject matter items regarding the questionnaire in the call for input. The article is provided as annex to this submission where sources and quotations can be verified. Available at:

<https://digitalcommons.wcl.american.edu/refugeemigrationstudiesbrief/vol1/iss1/2>

I encourage reading the entire article, since it covers and discusses in detail many of the questions presented for input that can contribute to inform the Special Rapporteur’s report to the Human Rights Council at its 53rd session in 2023).

The answers here are pursuant and consistent with the Human Rights Council Resolution 43/6, the Special Rapporteur on the human rights of migrants is mandated “to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation” (paragraph 1 (a), A/HRC/RES/43/6). In carrying out his mandate, the Special Rapporteur has decided to dedicate his forthcoming report to the 53rd session of the Human Rights Council to discuss how to expand and diversify regularization mechanisms and programs to enhance the protection the human rights of migrants in irregular situations. Throughout the report, the Special Rapporteur particularly wishes to:

Questionnaire and input/comments sought for the *Report on how to expand and diversify regularization mechanisms and programs to enhance the protection of the human rights of migrants*

Total word count in answers provided: 1983

**Please indicate how can regularization processes facilitate the enjoyment of human rights by migrants as well as their cultural, social and economic integration into the host communities, taking into account that migrants in an irregular situation live in constant fear of detention or deportation, becoming excluded from the social protection system as a result of a change affecting the regularity of their residence in the country;**

Historical lessons have shown that traditional regularization of migrants is a politically and even socially charged and onerous for governments, and in many instances even communities. For this same reason traditional means or examples of regularization require drastic change in government behavior, which in a most cases is contrary or adverse towards human rights of migrants, as it contends immigration challenges and questions.

While contemporary migration trends require speedy and practical measures that facilitate integration, regularization and others, regularization as we know it, is an “uphill battle”, largely political and social; especially with current global dynamics prompted by geopolitical and public health fragility, among others. For this reason, integration and acknowledging human rights of migrants require intermediate or transitional measures that contribute to alleviate tensions and gaps in the shifting migration sphere, facilitate integration, and gradually contribute to more permanent and “regularization”-type solutions for contemporary migrants.

When migrants enter a country and remain without authorization it tends to spark policy debate and confrontation at different levels of government and within a community; it becomes a contentious issue in public and political fora and conversations. The adversarial debate over immigration and immigration status tends to undermine existing bodies of law that recognize and validate the human rights of migrants and their protection. Some argue that the “*only morally legitimate policy goal is to find ways to reduce the vulnerability of the ‘undocumented,’ and to challenge their official exclusion from the . . . community*.” Although this discussion seems primarily about legal rights, it is not; it also carries moral, ethical, and practical concerns. Many legal rights, including international legal rights, stem from moral and humanitarian considerations.

The Americas hosts many examples of migrant friendly integration and regularization-type measures; some examples in the United States where cities went beyond national or federal immigration standards, and instituting “forward-looking” efforts like “sanctuary cities”. Along these lines, other cities and states have challenged national standards in the realm of the right to an identification, which embodies and realizes a specific fundamental right, that acknowledges and recognizes the rights of migrants.

This, in the eyes of many might be considered “subversive”, but it really is a very clear and lawful example of local governance and autonomy. Challenging federal or national standards on immigration and instituting locally owned and developed solutions for migrant integration and regularization is an expression of local self-governance and autonomy and examples are available (*Please see full article attached*); not only in the international human rights realms, but in other areas of international human rights law and practices, such as the right to an identity and so on.

In principle, government authorities at all levels have the power to devise a range of initiatives that remove or alleviate social, administrative, and legal barriers that obstruct and deter migrants from participating in economic and social life of a community. Especially when destination increasingly receive migrants and the host communities are unfamiliar with situations of this nature*. The premise is simple*: bolster and provide local governments and communities with a framework and tools to host, service, and relieve any pressure or tension attributed to irregular migration, based on a human rights framework. Also, locally led effort to serve incoming migrants contribute to locally developed advocacy for autonomous driven and sourced solutions and legal frameworks to facilitate integration ad regularization.

The exclusion of migrants from administrative and social rights is problematic from a moral and practical stance. Governments at different levels can acknowledge administrative and social rights of citizenship in a partial or complete manner, along with the ability to be part of a host community and many of these rights derive from basic human rights, although some are made tangible through administrative actions or permissions connected to government regulatory functions. Examples of this might include simple and already available measures, such as issuing residency certificates or permits at the local level; these are just a few of the many existing tools local authorities have access to recognize and make tangible specific rights.

In addition to these, human rights frameworks adopted autonomously by local authorities in absence of a national effort of this nature, can enable basic rights even if these do not encompass all the entitlements originally derived from them.

The right to an identity is one of many human rights recognized and protected by international human rights law, regularly adopted into a domestic policy, for various reasons, including humanitarian. As such, this right enables other rights to function, a normative prerequisite, manifested in different ways under international human rights law that acknowledges a person’s existence, identity, and right to be recognized as a person before the law to exercise other rights.

This is particularly important for migrants, given its relevance in the movement of people within and between jurisdictions. Governments provide different forms of identification, which in the migration realm is manifested through formal identification, used by individuals to move across borders, access services, and to have rights before an authority such as law enforcement. This unique legal relevance situates the right to an identity under complex government oversight and scrutiny, as it relates to the exercise of sovereignty and equality of individuals before the law. In principle, any individual must retain an identity across jurisdictions and international law imposes obligations on states to take measures to preserve and develop an individual’s identity.

A right to an identity in the context of migration is an example of tangible human rights and how they “translate” into practice. International human rights law recognizes the right of migrants to an identity and reinforces it to the point where a migrant’s right to identity is acknowledged from the moment they are born. Paradoxically, in situations of irregular migration, a right to an identity is largely not recognized where the granting of legal status is concerned, but is recognized for the purpose of deportation and other administrative sanctions in turn depriving individual of fundamental rights like due process.

A denied right to identity excludes migrants from a formal economy, forcing many to work in low- skilled and unregulated sectors and industries, in jobs that can be dangerous, difficult, inhumane, or unpleasant. Some of these jobs place migrants in harm’s way and can subject them to exploitation. Without a recognized identity, individuals are denied other critical rights and privileges, and risk exclusion from ordinary life and community.

**(***Input for the questions below are provided in one response***)**

**Please share examples of national and regional solutions to legalize the stay for migrants in irregular situations and indicate whether your country has adopted any bilateral, sub-regional, regional, international mechanisms, agreements, frameworks or programs, including in the context of labor migration;**

**Please share examples of promising practices, including ad-hoc programs and permanent regularization mechanisms that your country or region has adopted to promote a human rights-based approach to migration. Please indicate any specific challenges that your country has encountered in regularization processes, with particular attention on how such challenges affect migrant workers, women and girls, children, and other persons and groups;**

Local authorities can take intermediate steps that lay the groundwork to formal regularization, before attempting to institute sweeping and more challenging regularization-type efforts, that allow migrants to participate within a community with rights and privileges. Local government authorities have tools that don’t require developing new frameworks or necessarily adopting overarching human rights frameworks (even though these should be taken into account).

As noted above, local authorities can institute measures like issuing residency certificates or permits at the local level, that serve as preliminary steps to recognize and make tangible specific rights of migrants. A practical application of this can be in traditional transit or new destinations that are seeing an increase in newcomers, that settle or have to remain for any reason (Residency permits can be issued for any period of time and if they don’t exist, local governments can develop and institute permits or certificates based on international human rights standards.) In addition to these, human rights frameworks can further develop and complement any local rule or measure of an administrative nature that can be used to grant migrants with basic human rights, by enabling basic rights even if these do not encompass all the entitlements and services originally derived from them.

A right to an identity in the context of migration is an example of tangible human rights and how they “translate” into practice. International human rights law recognizes the right of migrants to an identity and reinforces it to the point where a migrant’s right to identity is acknowledged from the moment they are born. Paradoxically, in situations of irregular migration, a right to an identity is largely not recognized where the granting of legal status is concerned, but is recognized for the purpose of deportation and other administrative sanctions in turn depriving individual of fundamental rights like due process.

Some local governments have addressed situations around status, by recognizing the need for identification and protection; for example, and in addition to federal or national government initiatives, there are well developed and successful examples of local autonomous initiatives from U.S. cities that recognize and protect the right to an identity regardless of an individual’s immigrant status. These examples vary in complexity, level of sophistication, and adaptation in a specific context. In New York City, New York, the IDNYC identification program is a card for “all New Yorkers, from all backgrounds, and from all five boroughs. Immigration status does not matter. The free, municipal identification card for New York City residents, ages 10 and up, provides access to a wide variety of services and programs offered by the city.

Another example of targeted ID initiatives in the U.S. is the collaboration between civil society, law enforcement, and the city of Greensboro, North Carolina, to provide residents (including immigrants, regardless of status) an ID that enables access to certain services. The FaithAction and FaithAction ID network partners in North Carolina “have provided over 30,000 ID cards to individuals who may not currently have access to government issued forms of ID, including new immigrants and refugees, homeless and elderly individuals, those recently returning from jail, and others who believe in a diverse and inclusive community.” This network operates in several states, including North and South Carolina, Florida, Virginia, Iowa, Ohio, and Oregon.

Further to this effort, in the U.S., the project Gender Equity Through Human Rights: Local Efforts to Advance the Status of Women and Girls in the United States, works with local governments around the country to advance gender equity and women’s rights, based on human rights principles (largely based on the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), to incorporate human rights into local efforts that strengthen local policy-making in this area.

This example offers concrete suggestions for state and local agencies and officials in the United States, to use human rights standards and strategies, that improve outcomes and opportunities for women; something which can be easily developed and expanded to migrant human rights and throughout the Latin American region where smaller and medium cities are increasingly seeing migrants arrive for transit or final destination.

Temporary and permanent solutions by different levels of government, like the examples above, are helpful in providing relief to migration challenges at large. These examples can be replicated through tailored adaptation at different levels of geographies and government, where local communities and governments can look to innovate through tools that contribute to effectively and humanely hosting migrants regardless of their legal status.

**Engagement with civil society organizations, national human rights institutions, and other stakeholders: Please provide information of concrete initiatives, actions and programs relating to the regularization of migrants in an irregular situation that have been developed, including jointly, by civil society organizations, national human rights institutions, and other stakeholders in your country. Please explain to what extent the work of civil society organizations and other stakeholders is taken into account to inform national policies;**

When human rights initiatives are implemented at the local level by local actors and authorities, it can foster informed debate and advocacy on incorporating enforcing human rights standards; primarily between local and national authorities. In turn, these debates can could balance and buffer ideological differences between stakeholders (i.e., local, state, or national authorities), and develop more consistent and informed perceptions and discussions between authorities at different levels, regarding international human rights of migrants and in general immigration. This can in turn strengthen the role of local governments and actors to advise and influence decisions regarding immigration policies at different government and regulatory levels.

Traditional international human rights instruments can help strengthen local advocacy and protection of the human rights of migrants in their communities. Stronger local capacities and administrative autonomy through the adoption of these instruments, in turn, can boost decentralization and self- governance of community affairs. An advocacy and assistance plan to work with and develop local frameworks inspired in international human rights standards can contribute to the broader immigration debate and provide relief and solutions for migrants, communities, and authorities.

**Please include any other relevant information relating to the regularization of migrants in an irregular situation.**

*Please see full article (also attached in PDF):*

<https://digitalcommons.wcl.american.edu/refugeemigrationstudiesbrief/vol1/iss1/2>

Background materials attached as annexes to the submission see file: *RLMSB Vol 1 Iss 1 2022 Camilo M.pdf* included in email submission.