

## **CHECK AGAINST DELIVERY**

**The Special Rapporteur on the human rights of migrants, Mr. Francois Crepeau**

**Presentation to the Italian Chamber of Deputies**

**Rome, Italy**

**14 October 2014**

Ladies and Gentlemen,

I'm very grateful for this invitation to address your august assembly, as you are deliberating on a very important topic. I'm sorry not to be able to be with you in person and thank you for organising the video link. I hope that my presentation can contribute to shaping the important decisions that you have to take.

1. My central point is that, if Europe is to witness a significant reduction of human suffering at its borders, it must bank, not on strict closure and restriction, but on regulated openness and mobility. It is paradoxical that, in the name of securing borders, European States are actually losing control over their borders, as criminal rings will most often be ahead of the game: restrictive policies without regular migration channels for asylum seekers and much needed low-wage migrants only entrench smuggling operations and underground labour markets where criminal rings and unscrupulous employers exploit undocumented migrants, and increase the precariousness of the migrants' situation, resulting in more deaths at sea and more human rights violations.

Despite excellent initiatives like the increase in search and rescue operations which have saved numerous lives, such as the Mare Nostrum operation for which Italy must be commended, some European member states continue to officially advocate repression of irregular migration, and haven't yet opened new legal channels for migration, thus limiting the possibilities for asylum seekers to regularly reach safe destinations and for low-wage migrants to respond to the needs of the EU labour market. Consequently, the number of migrants risking their lives on unseaworthy vessels over perilous sea routes can only increase.

The UN estimates that more than 130,000 migrants have arrived in Europe by sea this year, compared with 80,000 last year. They migrate due to the push-factors in their countries of origin, which may include war, conflict, natural disasters, persecution or extreme poverty, as well as in response to pull factors such as the unrecognized needs in the labour markets of EU member States, as migrants are often willing to do the "dirty, difficult and dangerous"

## **CHECK AGAINST DELIVERY**

jobs that nationals will not, at the exploitative wages that unscrupulous employers will offer, including in the construction, agriculture, hospitality and care-giving sectors.

Migrants don't believe that they are doing anything wrong: they believe, and rightly so in my mind, that they're only doing it to find either protection against violence or a job to support their family. Who can say that such survival strategies are wrong? We would probably do the same if we were in their shoes. We don't have the moral high ground on this issue. Repressive policies fail to deter irregular migration because hope is always stronger, because, despite what happened to others, or even to themselves in a previous attempt, they believe that next time will be the right time, and that they'll "make it".

Any attempt at "sealing" borders, preventing irregular migrants from entering the EU, as the nationalist populist discourse stridently calls for, will continue to fail on a massive scale. Sealing international borders is impossible, as Italy has recognised, and migrants will continue arriving despite all efforts to stop them, at a terrible cost in lives and suffering. Currently, migrants themselves, most often with the help of smugglers, are crossing borders regardless of State policies. They see no other option but to migrate irregularly due to a lack of legal migration channels, particularly for asylum seekers and low-wage migrant workers.

With time, continued repression of irregular migration is counterproductive, as it drives migrants further underground, thereby empowering smuggling rings, and creating conditions of alienation and marginalization that foster human rights violations, such as discrimination and violence against migrants. Global North States can thus be seen as co-responsible for creating conditions that encourage smuggling and make it more dangerous. While it needs to continue attempting to bring unscrupulous smugglers to trial for the suffering they inflict on migrants, Europe will not succeed at fighting resourceful and adaptable criminal rings unless it destroys their business model, which was created when barriers were erected and which thrives at evading repressive European migration policies. No one died in the Mediterranean in the 50s and 60s when hundreds of thousands of migrants crossed to Europe: mobility was the rule.

Europe needs less repression of survival migration and more harm-reduction policies taking as a central concern the well-being of migrants: Europe must bank on mobility across the Mediterranean – in both directions – as a dynamic factor of economic and social development. Opening, over a period of time, safe legal channels for migration and mobility on a much bigger scale would allow for, inter alia, the registration of all migrants, for identifying protection needs, for providing information on labour markets and the risks of

## **CHECK AGAINST DELIVERY**

irregular migration: this would mean that most migrants would find legal ways to enter Europe and that European countries would therefore reclaim the control of border crossings from the smuggling rings.

2. In the meantime, the increase in search and rescue operational capacity has been a very positive initiative which has saved many lives. I urge the EU to continue strengthening this capacity, while respecting the principle of *non-refoulement*, guaranteeing immediate disembarkation of asylum seekers and migrants at the nearest port, providing information, care and support to migrants, processing equitably the asylum claims, and encouraging commercial vessels to carry out rescue operations without risk of retaliation or harassment due to them being considered as accessory to smuggling operations.

3. More concerted effort is also required from European member states to assist the frontline states such as Italy, Greece, Malta and Spain. The search and rescue programmes cannot be the sole responsibility of the frontline countries. With the current surge in migration, the EU should ensure that there are sufficient reception centres with adequate facilities to accommodate the new arrivals. Upon arrival at port or country of destination, and in collaboration with civil society organisations, asylum seekers and migrants should have access to medical care, psycho-social support and legal counsel, after which individual assessments should be implemented to determine their protection needs. The immigration procedures need to be clear, explained in language that the asylum seeker or migrant understands, fair and efficient.

4. Although EU law under the Return Directive provides that detention for the purpose of preparing deportation proceedings should be a measure of last resort, I have observed that, within the discourse of securitization of migration and border control, the systematic detention of irregular migrants, often for very long periods of time, has come to be viewed by many EU member states, as a legitimate tool of migration management, despite the lack of any evidence that detention serves as a deterrent. In my research and country visits, I have witnessed inadequate procedures for detention, including the failure to respect legal, procedural and substantive guarantees, the useless detention of persons without prospect of removal, and the useless detention of children and families. States have failed to implement non-custodial alternatives to the detention of migrants, when such methods have proven to be efficient and less costly. Similarly, return procedures, particularly when facilitated through readmissions agreements, failed to provide the necessary human rights safeguards.

## **CHECK AGAINST DELIVERY**

5. There is also an urgent need to allow migrants to circulate within the EU to where they can be reunited with their families, or find a job and start contributing to their new communities. Trying to confine them to the territory of the frontline countries obliges migrants to continue traveling underground, further empowering criminal rings and unscrupulous employers, and places undue responsibilities on such frontline countries.

6. I urge the EU to establish a human rights-based, coherent and comprehensive migration policy which takes these issues into account and makes mobility its central asset. This policy should address the push factors by working together with the international organisations to continue to provide humanitarian and development programmes in countries of origin. Pull factors for irregular migration, such as the unrecognized needs for migrant workers in European underground labour markets, should also be addressed. States should recognize their real labour needs, including for low-wage work. This means that they should, on the one hand, open up many more regular migration channels, and, on the other hand, repress unscrupulous employers who exploit the fear of asylum seekers and undocumented migrants to be detected, detained and deported: effectively implementing the employer sanction directive should be a priority. Combining such policies would lead to smaller underground labour markets, less irregular border crossings, less smuggling of migrants, less loss of life at borders, less labour exploitation, and less migrants' rights violations.

In this new human-rights-based common immigration policy, access to justice for all migrants is also key, if Europe really wants their rights to be respected, protected and promoted. In the recent past, the European Court of Human Rights, the European Court of Justice, national courts and tribunals, as well as national human rights institutions and ombudspersons, have shown their willingness to defend the rights of migrants. Facilitating access to justice by migrants, without fear of detection, detention or deportation, in order to help them fight for their rights, would go a long way towards, on the one hand, legitimising such migration policies through showing that territorial sovereignty and human rights are not incompatible, and, on the other hand, changing mentalities regarding migration through fighting nationalist fantasies and populist stereotypes.

7. A human-rights-based approach is also required in order to address the issue of asylum seekers. I urge EU member States to work with UNHCR in order to provide durable solutions for refugees on a much more important scale. This would indeed contribute to reducing the number of people who have recourse to smuggling operations, and would help EU member States regain control of their borders. Europe cannot leave thousands of refugees just

## **CHECK AGAINST DELIVERY**

outside its borders, in Turkey or Lebanon for example, and expect them to stay there quietly without trying to cross borders to create a future for their families.

8. Of course, States have the power to admit, to deny entry or to return migrants, but they equally have an obligation to respect the human rights of all migrants in the process. While it may constitute an administrative offence, irregular migration is not a crime, neither against persons, nor against property, nor against State security (in their vast majority, migrants are harmless and hardworking). Although they may have violated an administrative requirement, irregular migrants are not criminals per se, and should not be treated as such.

Terminology is important in this respect: migrants may be irregular or in an irregular situation, but they are not “illegal”, and all European Institutions must stop using this terminology. Incorrect terminology contributes to negative discourses on migration, reinforces negative stereotypes against migrants, and legitimates a nationalist populist discourse of fantasized threats and risks, which in turn contributes to further alienation, marginalisation, discrimination and violence against migrants. This is exacerbated by legislation in some countries which criminalizes the provision of assistance to irregular migrants, including in relation to the provision of health services and housing.

Criminalization is often linked to anti-migrant sentiments and inappropriate language. There is a need for a political counter-discourse that would emphasize the benefits that migration brings to both countries of origin and destination. However, this counter-discourse will have difficulty emerging as long as migrants do not have access to the political stage: they cannot voice their concerns and fight stereotypes (as women have accessed the political stage, voiced their concerns and fought sexist stereotyping in the past 50 years), and they cannot provide the politicians who would defend their rights with an electoral incentive.

Until migrants are given a voice in the political debates on migration policies, Europe must therefore fight much more vigorously racism, xenophobia and hate crime, as well as focus on saving lives, consolidating the common human rights culture that is now framing the evolution of all traditions, and celebrating the diversity of cultures and religions as an enrichment for everyone, citizens and foreigners alike.

I'm looking very much forward to coming to Italy for a second official visit next December and to discussing with Italian authorities how to regain control of borders while better protecting the human rights of migrants.

**CHECK AGAINST DELIVERY**

I thank you for your kind attention.

ENDS