

## CHECK AGAINST DELIVERY



### **Statement by Mr. François Crépeau, Special Rapporteur on the human rights of migrants**

#### **Overview of the main discussions**

#### **First GCM informal thematic session: Human Rights and Migration**

**8-9 May 2017**

### **INTERLINKAGES AND CONVERGENCES**

#### **Process**

- States do not have to start from scratch regarding the normative framework. There are already established international human rights instruments, guidelines, principles, etc. to draw from and to frame the issues. No new instrument is needed: what counts is implementation of what exists to all migrants.
- Whole-of-society and whole-of-government approaches were highlighted as an essential ingredient of successful initiatives.
- We heard throughout the two days, many good practices on the implementation of the human rights of migrants already exist all over the world.
- It has been mentioned several times that the voice of migrants needs to be heard. Migrant women, men and children need to bring their experience to the debates on migration policies. Policies which are not informed by the experience of the main people concerned cannot respond adequately to the issues. Migrant associations, CSOs, tribunals, unions, good media are instruments to allow the voice of migrants to be heard.
- Gender sensitive migration policies need be developed. The voice of migrant women and girls needs to be heard.

#### **Content**

- The idea that migrants, including undocumented migrants, have rights and should be able to exercise them seem to see convergence.

- Some States have insisted that migrants' rights be "balanced" with sovereignty and security, as if this was a zero-sum game. As is the case for citizens, sovereignty and human rights can both be respected and protected at the same time.
- There was some level of agreement that human rights are not abstract principles, but norms that can be concretely implemented through time-tested practical mechanisms, such as courts, tribunals, NHRIs, ombudspersons, labour boards... However, I still sense a hesitancy with regard to "how". I think those of us who have worked in this field need to help with the "how", as we can provide examples.
- The idea that the human rights normative framework is already sophisticated enough to protect all the rights of all migrants is also largely recognised.
- States agree on the need to address vulnerable groups, that is: children, women, older persons, persons with disabilities, trafficked persons. Indeed, it has been highlighted that each migration is an individual journey, which must be assessed individually.
- Many States also highlighted the importance of a comprehensive gender approach, which must include boys and girls, men and women, and provide an appropriate response for each individual.
- States also generally agree on the need to collect better data on migrants and the effects of their migration policies, so that policies and programmes developed respond to the specific needs of migrants and of the host communities, be it a country of origin, transit or destination, and that this data can inform public debates and discourses regarding migration as a way to combat xenophobia.

## **ISSUES OF COMPLEXITIES REMAIN**

### **Language and words matter**

- Undocumented migrants are called many names: "irregular", "illegal", "illegal aliens", "clandestinos", "wetbacks"... There seems to be an awareness that fighting xenophobia means straightening up the language of the public discourse: demonising undocumented migrants has repercussions on the public perceptions of all migrants. But there seems to be resistance to this still.
- Similarly there seems to remain quite a lot of confusion regarding the distinction between smuggling and trafficking. The idea that trafficking is an international crime that needs to be tackled mercilessly, while smuggling is essentially an opportunistic criminality, which is the direct consequence of prohibition policies and which would be considerably reduced if States offered more regulated mobility solutions, still remain problematic.

### **The treatment of undocumented migrants remains polarising**

- States have emphasised the paramountcy of the need to control their borders. Some delegations have highlighted that their national security, sovereignty and integrity is threatened by undocumented migration, which may be a misguided perception.
- One State articulated this preoccupation by asking: how does one protect one's borders while at the same time practically protecting the rights of migrants? That's what the States seem to be grappling with.

- There was a hint that one cannot do both at the same time: the more a State protects the rights of migrants, the less it can protect its borders.
- However, it's not a zero-sum game. For States to control their borders, they need to govern human mobility. Securitisation and militarisation do not work over the long term and cost a fortune.
- Thus, what has worked is establishing regular pathways at all skill levels and offering opportunities for regularisation. Making mobility fluid through providing more mobility options, thus inciting migrants to come to the border guard with the right papers.
- The idea that mass detention of undocumented migrants is not a deterrent of irregular migration and is counterproductive because it creates a climate of fear of the authorities, pushing such migrants further underground into the hands of smugglers, unethical recruiters or abusive employers, does not seem to create convergences.
  - States seem to agree that detention should be limited to a minimum, and should generally be avoided for children and families with children
  - However, States seem hesitant to commit to eliminating the detention of children and families with children, as always against the best interest of the child,
  - And States seem to want to remain free to decide the extent of their detention policies according to circumstances, including at times systematic detention of all new arrivals for an indeterminate time, even if the human rights normative framework clearly says that detention must be reasonable, necessary, proportionate, decided on a case-by-case basis and enforced for the shortest possible period of time, and can be justified only if the individual presents a danger to the public or risks absconding when their presence is necessary in further proceedings, such determinations to be made individually and on the basis of evidence.
  - Some States were asking for examples of alternatives to detention. There are a wide range of possible alternatives to detention, including registration requirements, deposit of documents, bond/bail, surety/guarantor, reporting requirements, case management, supervised release, designated residence, electronic monitoring, home curfew/house arrest, and assisted voluntary return. What is needed is implementation.
- States have highlighted the essential character of return policies and practices, and the centrality of such policies and practices to changing the attitudes on migration.
  - But how human rights norms and standards need to be implemented in return policies and practices remains vague. The idea of effectively empowering migrants to properly defend themselves against State decisions of expulsion, through access to a competent, well-trained lawyer, who would be adequately remunerated by a legal assistance program, with access to appeal mechanisms in front of competent, independent and impartial decision-makers, hasn't attracted much attention from countries of destination. Expeditious removal seems to remain the central objective.
  - As the proposals I have heard remained vague, let me give you some thoughts on the practical implementation of a human rights framework in the return procedures.

- No return should be implemented without due process of law, in a legal procedure where the migrant is effectively and properly represented, and with accessible recourses.
  - States should not return anyone under a readmission agreement without effective oversight by a post-return human rights monitoring mechanism which checks whether the human rights of returnees are actually respected.
  - The return of migrants who do not meet the required international or national legal standards to remain in their host country must be conducted in safety, dignity and respect for human rights, on the basis of: (a) the primacy of voluntary returns; (b) cooperation between States of origin and reception; and (c) enhanced reception and reintegration assistance to those who are returned.
  - Special procedures and safeguards must be established for the return of unaccompanied or separated children. States should only return or repatriate unaccompanied children as a measure of protection, i.e. to ensure family reunification in cases in which it has been determined to be in the child's best interests.
- The concept of firewall has been endorsed by many participants, including several States.
  - The idea that undocumented migrants should not be pushed further underground in the hands of exploiters, and that they should be allowed to access public services and have their voice heard, seems to edge towards convergence.
  - Even more so when one speaks about undocumented migrant children.
  - Conversely, the idea that the police, for example, can better fight crime or public health officials fight communicable disease if they have the collaboration of all the population, including undocumented migrants, because the latter trust their immigration papers won't be checked, seems to gain some ground.
- Access to justice for undocumented migrants has been mentioned several times as key to the effective enforcement of their human rights.
  - However again, States seem reluctant to provide legal aid, competent lawyers and interpreters, effective and well-resourced recourses, independent decision making bodies and appeal rights, all things necessary for an effective access to justice.
- Regularisation programmes do not make convergence yet.
  - They certainly reduce the political pressure of a large undocumented migrant population and facilitate integration.
  - There is the fixation that this cannot be done due to pressure from the electorate, but this only brings back the need to have a fact-based public narrative.

### **Little was said about how to end labour exploitation of migrants**

- Several economic sectors in destination countries are competitive only because of the low labour costs afforded by the exploitation of migrant labour, such as in agriculture, construction, hospitality, care giving, domestic work, fisheries or extraction.

- There has been comparatively little said regarding how to reduce underground labour markets which thrive on the exploitation of migrant workers, be they undocumented migrants or regular migrant workers who live under precarious labour statuses, such as single-employer sponsorship programmes.
- Migrants almost always go where there are jobs to be had, documented or undocumented: migrants respond to labour needs in labour markets of destination countries. There was however little discussion on how to repress exploitative employers and recruiters in destination countries, in order to reduce the pull factor for exploitable labour.
- The elimination of single-employer sponsorship programmes was barely evoked.
- Empowering migrants to fight precariousness thanks to access to justice and to public services, doesn't seem to constitute a priority.

### **Content: States agree on fighting xenophobia, but remain short on details**

- States agree on the need to address issues of xenophobia through proper diversity and integration policies and programs. States need to assist their population – migrants and citizens alike – to accept cultural, linguistic, sexual or religious diversity, and eschew discrimination.
- Many examples of specific good practices were given, in public and private media, in schools, in the work place, in public administrations, thanks to many actors such as NHRIs, anti-discrimination bodies, CSOs, etc. We need to collect and disseminate them.
- It is not certain that States agree on how to develop and deploy comprehensive programs, beyond general anti-discrimination campaigns.
  - The idea that restrictive migration policies necessarily fuel xenophobic public discourse, societal debates and individual opinions has been mentioned by some, but is not shared by many countries.
  - The issue of empowering migrants to fight discrimination in the workplace or hate speech in the street, through better access to justice, was not much mentioned.
  - The idea of protecting migrants from detention and deportation – through firewalls – when they denounce violations of their rights, was mentioned by many, but not really endorsed by the whole room.
  - Issues of national identity and cultural cohesion seem to be still very sensitive politically for many States:
    - diversity and multiculturalism are not necessarily embraced as positive values,
    - integration often seems to be equated with assimilation,
    - access to citizenship is sometimes impossible even after decades of regular residence, and is now made increasingly more difficult in several countries.

## **THE WAY FORWARD**

### **Link to SDGs**

- The link between protecting the human rights of migrants and the recognition of migration and mobility as a key to sustainable development in the SDGs is acknowledged by almost every one.
  - How to move forward from this acknowledgement is not clear however.
  - It is not sure that the scarce migration mentions in the SDGs are sufficient to frame how mobility policies should develop

### **Agenda 2035**

- Based on the discussion around SDG's, it is clear to me that the Global Compact will only be the first step – indeed a stepping stone – in supporting States developing appropriate migration and mobility policies. We shall need more time to come to grips with the various foreseeable migration and refugee “crises”.
  - What is most missing in the migration policy debate is the long term strategic planning where goals are set, benchmarks established, investments are panned and scaled, and monitoring mechanisms are put in place to measure progress
  - All stakeholders would have the time to adjust their policies and practices over the long period
  - I make proposals in my last HRC report, which is available online on my website.

In sum, I wish to say how much I'm impressed by how much the multilateral discussions on migration policies have evolved since I took up my mandate in August 2011. We have effectively broken the barrier of silence and the present meeting is a huge step forward. We now need to deliver concrete results for migrants and host populations.