



GLOBAL FORUM ON MIGRATION AND DEVELOPMENT (GFMD) QUITO, ECUADOR

CIVIL SOCIETY DAY, 22 JANUARY 2020

Background note

Theme 5

Criminalization of migrants and those assisting them

Introduction:

Criminalization of irregular entry or stay by migrants has a dire and long-lasting human cost: prolonged, if not indefinite, detention and its deep impact on mental health, forced return in violation of human rights standards, lack of regularization, family separation, and restriction to access to justice, services or social benefits. It also has much broader and, sometimes unforeseeable, consequences.

To justify criminalizing approaches, States frequently not only adopt repressive legislation but also build buy-in by parliamentarians and the public at large. Very often in many contexts this is done by either endorsing or implicitly accepting the anti-migration narrative of populist movements or political parties. Another way of preparing the ground for criminalization of migrants is not to combat hate speech or various form of harassment or abuse against migrants, refugees or foreigners in general. By presenting irregular migrants as invaders, law breakers and profiteers, rather than human beings with rights, aspiration, qualities and shortcomings, law makers or those supporting them, can “sell” restrictive and repressive legislations as preserving national security and interest.

Criminalization of migrants is also presented as part and parcel of the global effort to combat the international crimes of smuggling and trafficking, conveniently hiding the ineffectiveness of such measures and the very poor global record in arresting and prosecuting the international smuggling and trafficking networks.

Part of the same logic is the criminalization of those assisting migrants, also touching on one of the most fundamental values on which almost every society is built: solidarity and altruism. Again here criminalization can take various forms: prohibiting medical doctors and nurses to provide health



services to irregular migrants, penalizing teachers who have enrolled irregular migrant children in primary education, criminalizing those who offer shelter or humanitarian assistance to irregular migrants, as well as arresting and detaining individuals for rescuing migrants at sea, in short saving their lives. There is a question here, maybe abrupt and undiplomatic for some, that must be raised. How can a State reach such a low in terms of ethics by preventing human beings from saving other human beings? Because criminalization is indeed preventing solidarity, because criminalization is injecting a culture of fear, and because criminalization *de facto* means accepting that some lives will not be saved, that the lives of some human beings who happen to be migrants at a certain point are not worth saving.

Objectives of the morning session: mapping of trends and challenges

1. What are some of the practices that you are seeing in your region in relation to the criminalization of migrants and those assisting them? Are these new practices or have they been ongoing in recent years (or decades)?
2. What has been your experience of the impact of criminalization on “access to services by migrants regardless of status” (both on an individual level and also at the community level)?
3. Can you share some good practices providing alternatives to criminalization, in particular alternatives to detention and measures that “build a fire wall” between immigration authorities and those providing services to irregular migrants, in particular health and education?

Objectives of the afternoon session: solutions & partnerships focused

1. What solutions/initiatives/partnerships are you aware of that counter criminalization? Especially in the following areas:
 - a. Firewalls between service providers/justice and immigration enforcement
 - b. Alternatives to detention
 - c. Humanitarian assistance to irregular migrants (e.g. saving lives at sea, offering food or shelter)
2. What elements make those initiatives or partnerships replicable? What role did civil society play in supporting these initiatives?
3. How would you describe the relationship between the narrative on migrants and migration in your country/region and steps taken to criminalize (or NOT criminalize) migrants or those helping them? When a narrative promotes criminalization, what steps can be taken to change this narrative within your country/region? What can be learnt from contexts where there are initiatives trying to counteract criminalization? What can be done by civil society to influence the narrative on migration?