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**Fundamental Rights Conference “Fundamental Rights and Migration to the EU”
“Ensuring the rights of migrants in the EU: from vulnerability to empowerment”**

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Ladies and Gentlemen,

In 2014 the Mediterranean became the largest migrant graveyard on earth, with more than 3 000 recorded deaths of migrants while attempting to enter Europe between January and September. More than 70% of them came from war-stricken regions like the MENA, Sub-Saharan Africa and the Horn of Africa¹. This is a clear proof of lessons unlearned from a series of past tragedies at Europe’s borders.

In the aftermath of the tragedy near Lampedusa last year, Italy’s military-driven “Mare Nostrum” operation still stands out as the only remarkable response by an individual European state to prevent the loss of more migrant lives in the Mediterranean. However, these efforts do not make up for the continued failure by other European countries to accept responsibility for, and cooperate in carrying out search and rescue (SAR) operations.

As concerns the European Union, despite positive steps, its response to the lack of transparency, accountability and coordination in member states’ SAR policies and practices is still in its initial stages. Reflecting these concerns, the Council of Europe Parliamentary Assembly has underlined the need for a radical change in SAR policies and practices in Europe notably in its recent [Resolution 1999 \(2014\)](#) and [Recommendation 2046 \(2014\)](#) on “The ‘left-to-die boat’: actions and reactions”.

I am extremely concerned by the continued reports on collective expulsions of migrants in Europe, both at land and sea borders. In its landmark 2012 judgment in the case of [Hirsi Jamaa and others v. Italy](#), the Strasbourg Court condemned the practice of “automatic” returns of migrants to their countries of origin or transit as being contrary to Article 4 of the 1963 Protocol No. 4 to the European Convention on Human Rights that prohibits collective expulsions.²

However, further “push-backs” have been reported since then, including in the Aegean Sea, off the coasts of Greek islands, at the Greek-Turkish land border, the Bulgarian-Turkish border, and the Moroccan-Spanish border. Moreover, testimonies of survivors and other sources indicate that in many cases, these “push-backs” have been accompanied by violence and other forms of ill-treatment perpetrated by authorities against migrants. I have an on-going dialogue with the Greek

¹ <http://www.iom.int/files/live/sites/iom/files/pbn/docs/Fatal-Journeys-Tracking-Lives-Lost-during-Migration-2014.pdf>.

² This protocol is still not acceded to by Greece, Switzerland, Turkey and the United Kingdom.

authorities concerning such incidents, including the one last January near the islet of Farmakonisi. I also called on the Spanish authorities to open an investigation to establish accountability for the police violence and “push-backs” which occurred last month in Melilla.

However, migrants’ vulnerability to violations of their human rights does not stop at the external borders of the territories they try to enter.

In the context of the recent European joint police operation, “Mos Maiorum”, FRA has underlined the disproportionate impact that certain practices used to detect irregular migrants may have upon the respect of their human rights within the internal borders of the EU.

In addition, the asylum systems of many European states – including EU member states – often fail to provide basic facilities to those in need, including to unaccompanied minor asylum seekers. During my visit to France last September I was saddened to meet many Afghan asylum seekers sleeping rough on the streets or parks of Paris. Some countries, including in Eastern Europe and the Western Balkans in particular, have long seen themselves merely as transit countries for asylum seekers wishing to establish themselves in Western European states and have not sufficiently developed their asylum systems. Yet, the increasing number of refugees, including Syrians, who claim asylum in these countries – for example, in Hungary and Bulgaria -, contradicts this perception. The authorities’ efforts to improve the asylum systems of these and other countries are still not sufficient.

On the other hand, a number of EU member states suffer the consequences of the “Dublin Regulation”, which has led to an overstretching of their asylum systems. Following a thematic mission concerning the situation of Syrian refugees in Europe, which I carried out last year, I called on EU member states to refrain from using the “Dublin Regulation” to return Syrian asylum seekers to Bulgaria, Greece, Italy and Malta.

Of further, grave concern to me is the situation of irregular migrants who end up in detention. The paper on the [Criminalisation of migrants in an irregular situation and of persons engaging with them](#) published by the EU Fundamental Rights Agency (FRA) last March shows that in almost all EU member states, irregular entry and stay are offences, often punishable with custodial sentences. Moreover, despite the relevant case-law of the Court of Justice of the European Union and of the European Court of Human Rights, the detention of migrants, in particular of those subjected to forced expulsion, occasionally exceeds the duration permitted by EU legislation ([C-357/09 Kadzoev](#), 30 November 2009) and violates the prohibition of cruel, inhuman and degrading treatment ([Aden Ahmed v. Malta](#), 23 July 2013). The procedures concerning migrants in detention also fall short, in some cases, of the standards of equality and non-discrimination that are in force in the EU. A year ago I wrote to the French authorities calling on them to reconsider the conducting of off-site hearings for migrants held in the immediate proximity of the migrant detention facilities.

I wish to stress again that the criminalisation of migration exceeds a state’s legitimate interest in controlling its borders. It is a policy which, amongst other negative effects, exposes migrants to increased racist rhetoric and physical violence which regrettably thrive in today’s Europe. FRA’s [MIDIS](#) (Minorities and Discrimination) survey report published in 2012 showed that across five types of crime, including violence against persons, Sub-Saharan Africans experienced the highest level of victimisation, at 33%. I have witnessed this situation during my visit to Greece in early 2013, where I met with refugees who had suffered bodily harm inflicted by members of extremist, racist groups.

Only a couple of months later, in April 2013, 28 Bangladeshi migrant workers at a Greek strawberry farm were shot at in a dispute over outstanding wages.

A more recent, but equally worrying phenomenon is the strong anti-Muslim rhetoric, which is becoming very prominent in some European countries. During my visit to Denmark last year several of my interlocutors indicated that the focus of stigmatising media and political debate has shifted from colour and ethnicity to religion and culture, with Muslims and Islam being at the centre of this shift. Terminology frequently used to refer to Islam includes words such as “barbaric”, “tyrannical”, “fundamentalist” and Muslims are often portrayed as terrorists. Anti-Muslim debate has soared in particular in the context of anti-terrorism plans being put in place by some EU member states in response to violent conflicts waged by the “Islamic State”.

Migrant Roma are also particularly frequent victims of stigmatisation and intolerance in Europe. During my recent visit to France I stressed the need for political leaders, at local and national level, to give an end to the mythological rhetoric of a Roma migrant invasion when referring to a more or less stable number of migrant population that has not exceeded 20 000 for many years now. There are a number of success stories of well-integrated Roma migrants that need to be more widely known and promoted.

This brings me to another point concerning the vulnerability of migrants in Europe. While European countries clearly benefit from the work of irregular and regular migrants, they impose strict limitations on access to their labour markets by non-nationals. Thus, in the absence of adequate integration measures, many migrants lead a life of deprivation. In 2013 the EU indicators of migrant integration showed a worsening situation compared to EU citizens in earlier years: more than 44% of third country nationals were actually at risk of poverty and exclusion. It is widely accepted that ageing Europe is in dire need of migrant labour. For this, states need to provide migrants already on their territory with adequate legal safeguards and social protection particularly during this period marked by serious financial constraints.

However, today I would like to highlight in particular the case of Syrian refugees. Last December I visited Syrian refugee camps and centres in Turkey, Bulgaria and Germany. The situation I witnessed during that mission confirmed that the Syrian crisis was a neglected human rights crisis whose end is not around the corner.

While the EU and its member states have been the largest contributors to the Syria humanitarian crisis, their response to the refugee movement and effective protection needs was much less spectacular. At the end of my mission, as well as in some of my country visits during this year, I asked European states to respond generously to UNHCR’s appeals not only for funding but also for the resettlement of refugees from countries neighbouring Syria to their own territory. **In the EU**, the lead was taken by only a few countries: Germany, which to date has pledged 20 000 humanitarian admissions and 8 500 “individual sponsorships”, Sweden, and Austria.

One year down the road, there are some positive developments on this line: European states, including 15 EU member states, have made pledges to take in almost 35 000 Syrian refugees, through humanitarian admissions or resettlement; this doubles the number pledged a year ago. Also, the vast majority of Syrians who applied for asylum in the EU – some 97% - were given some form of protection status in the first half of 2014.

However, these statistics should not delude us. The number of Syrian refugees has by now exceeded 3 million. The majority of them continue to be hosted by Syria's neighbouring countries, including Turkey, which received an estimated 1 million, even though it still keeps the geographical limitation of the UN Refugee Convention. These countries have reached a saturation point, as the increasing number of Syrian refugees is taking its toll on the resources of host communities.

By comparison, only 4% of all Syrian refugees – some 120 000 persons – have sought asylum in Europe as a whole, of which some 105 000 in the EU.³ Resettlements and humanitarian admissions have also been low to date, despite the increased pledges. While in most European countries Syrians continue to live in a state of uncertainty, the need for integration measures for these refugees is now evident. Measures such as Denmark's recent move to limit the residency of refugees fleeing civil war and to restrict family reunification run contrary to this goal.

I would like to conclude with some observations and recommendations on how Europe can improve the protection of the human rights of migrants and what it can do to ensure their transition from the status of vulnerable outsiders to that of empowered members of the society. I fully trust that European states' commitment to human rights will make an essential contribution to this process.

1. Europe is in urgent need of a migration paradigm shift. States should debunk the myth that migrants are not necessary or represent a threat instead of an asset. To this end they need to disentangle migration from security and to abandon the inefficient non-entry policies. More restrictive and money-draining border practices have led to more tragic migrant deaths and to an increase of smuggling. European societies need both low- and highly-skilled migrants who should be given a variety of possibilities to enter Europe lawfully and in dignity, without being forced to risk their lives and integrity.
2. The illegal practice of collective expulsions should end. All European states that have not as yet acceded to Protocol No. 4 to the European Convention on Human Rights are urged to do so. States should show absolutely zero tolerance towards the use of violence against migrants at land or sea borders and on the high seas. They should ensure that effective investigations are carried out into all recorded incidents and that all necessary measures are taken to eradicate impunity and to prevent the recurrence of such practices.
3. European states and the EU should work towards establishing co-operation agreements for sharing responsibility for rescuing migrants at sea and for facilitating the resolution of disputes concerning responsibility for SAR operations. The EU could take the lead in rapidly finding solutions to increasing the efficiency of SAR operations in the Mediterranean.
4. The EU should overhaul the "Dublin" mechanism to ensure a solidarity-based, fair distribution of responsibility between member states for providing international protection to those in need. At the same time, existing solidarity mechanisms should be used to support the asylum systems of countries at the external borders of the EU. In this context, the situation of member states from Eastern Europe and the Western Balkans should be given due consideration.
5. Europe should put an end to the criminalisation, including the detention, of irregular migrants. Much more humane, efficient and effective, alternatives to the detention measures should be introduced into law and/or effectively applied on a case-by-case basis, aiming to ensure the

³ <http://www.refworld.org/docid/53b69f574.html>.

right to individual assessment and the full respect of the fundamental principle of *non-refoulement*.

6. European states should increase their awareness of the danger of religious or other forms of intolerance. Politicians should refrain from stigmatising by discriminatory rhetoric aimed at migrants; they should also clearly and firmly condemn all hate speech and physical violence, and promote equality. Authorities should ensure that all alleged racist and xenophobic acts, irrespective of the perpetrator's social or political status, are investigated, prosecuted and effectively sanctioned. In particular, extremist, racist political organisations should not be tolerated and need to be banned.
7. The EU should take measures so that all member states give full effect to its relevant legislation, including the anti-racism Council Framework Decision of 2008, and the Charter of Fundamental Rights. It should also consider measures for cooperation between member states and other European countries to prevent and fight radicalisation in Europe – including anti-Muslim radicalisation.
8. European countries should keep their borders open to allow more Syrian refugees to access their territories to seek and enjoy asylum, including through participation in resettlement or relocation programmes, and by granting humanitarian visas. The “Dublin Regulation” should not be used for returning Syrian refugees to member states whose asylum systems are not capable of ensuring respect for asylum seekers' human dignity and personal security.
9. European countries should do their utmost to improve the integration of all migrants, including refugees. There is an urgent need to improve the social and political integration measures so that they can act as autonomous members of the society and can fully contribute to the economic, social and political development of their host countries.
10. In this context, I would like to stress, and conclude, that migrants' integration and empowerment *de facto* starts at local level. Local authorities in Europe need to realise and take all necessary measures in order to fulfil their crucial role in this domain. Non-nationals who are regular residents should be allowed to participate fully in public life at local level. To this end, I call on all European states that have not as yet done so to accede to the 1992 Convention of the Council of Europe on the participation of foreigners in public life at local level.

Last but not least, it is important to reinforce the synergy between the Council of Europe and the EU in protecting the human rights of migrants. I am convinced that the EU's accession to the European Convention on Human Rights will constitute a key step in this sense.

I stand ready to continue my dialogue with all governments and with the EU in the very challenging area of migration, in order to contribute to a more inclusive and human-rights sensitive Europe.