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ON REFUGEES AND EXILES

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**Justice and Home Affairs Council 12-13 October
Melilla tragedy underlines need for respect for fundamental rights within
comprehensive approach to asylum**

Last week's tragedy in Melilla exposed the fatal consequences of the European Union's current approach to asylum and migration, which attempts to exclude refugees from Europe, irrespective of Member States' legal and moral obligations and the EU's declared intention to act as a beacon for human rights in the world. This week the Justice and Home Affairs (JHA) Council will discuss the European Commission's proposals for improving refugee protection in regions of origins and countries of transit. ECRE understands it also intends to adopt conclusions on voluntary returns and may discuss the European Parliament's recent resolution on the asylum procedures directive. It is vital that these and future decisions are based on a recognition that human rights and refugee protection cannot be sacrificed in the fight against illegal immigration. The only effective and principled way to tackle the migration pressures on Europe is through a comprehensive policy that balances migration control with respect for international obligations.

Ceuta and Melilla

For many years the European Union has put pressure on its neighbouring countries to control irregular migration. The emphasis of the EU's policies in this respect has been on promoting stronger border controls in those countries, thereby passing to them the responsibility to help close Europe's borders. The events around Ceuta and Melilla and the tragic shooting of six migrants by Moroccan border guards must be seen against this background. Indeed, whilst "deeply regretting" the events in Ceuta and Melilla, the European Commission's response has been to send a team of border control experts, offer Morocco 40 million Euros to protect its borders and call on Morocco to sign a readmission agreement with the EU by the end of the year. Since then, Spain has used a bilateral readmission agreement to return to Morocco some of those who managed to cross into Melilla, without, according to local NGOs, properly considering whether any might have grounds for international protection. Moreover, Morocco is reported to have abandoned 500 migrants on its desert border with Algeria and to be negotiating the return of 1,000 migrants to sub-saharan Africa – a region where conflict, persecution and human rights violations are endemic. Yet, the situation in Melilla and Ceuta is not unique. ECRE and its members have long been concerned that Italy may be returning to Libya migrants arriving on the island of Lampedusa, without hearing individual asylum claims, fears that were echoed by the European Parliament's citizen's rights committee, following a visit by a delegation from the Committee in September.

At the same time as the EU is encouraging its neighbours to do more to protect refugees, in its negotiations with Libya, as well as in its proposed new Regional Protection Programmes (below), it is sending a dangerous signal that it values border controls more than respect for human rights and refugee protection.

ECRE urges the Council to demonstrate its commitment to international law and the fundamental rights on which the Union is founded by reminding Member States of their duty to ensure that no person is expelled from the Union without full consideration of any claim for international protection.

Access to Europe

The scenes at Ceuta and Melilla represent a stark and harsh reminder that the migration controls operated by the EU offer refugees little or no regular means of accessing protection in Europe. A comprehensive European approach to refugee protection, as well as to irregular migration, must include means by which asylum seekers can reach the territory other than by jumping razor-wire fences or risking their lives in small boats in the Mediterranean.

ECRE reiterates its call for the Council to consider lifting visa requirements on nationals from the main refugee-producing countries, and to issue humanitarian visas to asylum seekers from other countries where serious human rights violations are taking place.

Regional Protection Programmes

ECRE broadly supports actions to improve the protection capacity of countries in refugees' regions of origin and transit, to better protect the refugee population to create the conditions for the durable solutions of resettlement, local integration and voluntary repatriation to take place. Expectations must be limited, however, given the modest funding allocated to the pilot programmes and the short timescales envisaged. ECRE would stress that the programmes should be aimed exclusively at improving protection and the availability of durable solutions and must be conducted in a spirit of international solidarity and equity. They must not include, or go hand-in-hand with migration control measures that Member States might attempt to use to shirk their international obligations for refugee protection.

The Commission has provided a useful list of core activities in its communication on regional protection programmes. Their impact, if successful, will be predominantly to improve the protection and local integration of refugees in the countries concerned. This work is much needed in the countries envisaged by the Commission, such as Ukraine, Moldova, Belarus and Tanzania and should be informed by the expertise of UNHCR and NGOs working on the ground. Actions to create conditions in countries of origin conducive to the durable solution of voluntary repatriation, the third durable solution, may be desirable, but may not have a demonstrable impact in the short time scale and with the limited funds envisaged. The resettlement component is vital in order for the programmes not to be seen as exercises in burden-shifting, rather than responsibility-sharing.

Resettlement is not only an exercise in international solidarity, however, but creates the opportunity to provide protection, especially to those most in need; it can provide access to Europe for refugees who would otherwise languish in camps for many years; it provides the opportunity to develop coordinated, high-quality reception and integration programmes; and it

is an important means of facilitating public understanding of all refugees, their plight and the situations they flee.¹

ECRE calls on the Council to confirm that resettlement will be an essential element of both pilot regional protection programmes. It should also undertake to expand the resettlement elements of the pilot regional protection programmes into a resettlement programme co-ordinated across the EU. This would send a powerful signal that Europe is committed to sharing the responsibility for refugee protection, particularly with the poorest countries that host the majority of the world's refugees.

Asylum Procedures

The credibility of actions taken by the EU to improve protection beyond its borders depends on being seen to uphold standards of protection within the EU. On 27 September the European Parliament adopted a resolution expressing “severe reservations” about the draft asylum procedures directive and calling on the Council to implement numerous changes. ECRE is deeply concerned that the current text contains provisions which do not properly reflect or ensure respect for Member States’ obligations under international refugee and human rights law and fail to safeguard access to a fair and efficient asylum determination procedure. ECRE particularly objects to the scope for Member States to send asylum seekers to countries deemed to be ‘super-safe’, without hearing their asylum claim, to enforce returns to countries where people claim torture or persecution before their appeal is heard, rendering meaningless any right to appeal, and to the absence of minimum guarantees that contribute to a fair and efficient decision-making, such as legal advice and information in a language the applicant understands.

ECRE calls on the Council to demonstrate that the Union’s common approach to asylum is founded on respect for human rights, as well as its commitment to cooperating with the European Parliament when legislating in this area, by addressing the deep flaws in the asylum procedures directive highlighted in Parliament’s resolution.

Responsibility-sharing

Spain has justified its new policy of returning migrants to Morocco on the grounds that it is faced with an “avalanche of humanity”. Italy and Malta, have also protested at the particular pressures they face with dealing with illegal immigration across the Mediterranean. Whatever the merits of these claims, few would maintain that the numbers of asylum seekers they face are beyond the capacity of the Union as a whole. Indeed the overall number of asylum applications to the EU is on the decrease, down by 17% in the first half of this year, compared to the same period in 2004. The solution is not to deny refugees the right to seek asylum, but to share the responsibility for hearing their claims fairly across the EU. ECRE has recently put forward a model for a single European asylum procedure which includes an alternative to the Dublin II regulation², as that regulation, in combination with Eurodac, inevitably places a greater burden on countries at Europe’s periphery. The solution is to replace the regulation with a system that shares responsibility equitably. In the short term ECRE has proposed a variety of practical cooperation measures which would enable Member States to better share resources and achieve greater equality of protection across the EU.

¹ For more a more detailed view on resettlement in Europe, see *ECRE, The Way Forward. Europe’s role in a global protection system. Towards a European Resettlement Programme*, ECRE, 2005

² See *ECRE, The Way Forward. Europe’s role in a global protection system. Fair and Efficient Asylum Systems in Europe*, ECRE 2005

ECRE urges the Council to review the Dublin II Regulation and consider an alternative system for sharing equitably the responsibility for refugee protection. The Council should step up efforts to explore practical cooperation to achieve improved and more equal refugee protection across the EU.

Voluntary Returns

ECRE does not dispute that return is an important element in a comprehensive migration and refugee policy. It is important to distinguish, however, between voluntary repatriation of persons who freely choose to exercise their right to return to their country of origin or habitual residence and those who do not have a legal basis for remaining and consent to return. The most effective way of supporting voluntary repatriation is for the EU to take action to create the conditions in refugees' and asylum seekers' countries of origin that are conducive to sustainable return in safety and dignity. In other words, to address the persecution, conflict and poor governance that cause people to flee their countries. Indeed, the longer-term need to address the root causes of forced migration has all but disappeared from the external dimension of the JHA agenda, which is geared to the short term objective of containing refugees in their regions of origin or countries of transit.

ECRE calls on the Council to recognise the importance of addressing the root causes of forced migration in the particular context of promoting voluntary returns, but also in the broader development of the external dimension of asylum and refugee policy.

Finally, ECRE's experience is that a key reason for unsuccessful asylum seekers not consenting to return is their continued fear of doing so. Given the wide disparities in recognition rates of people in need of protection across Europe, it cannot be assumed that a person is not in need of international protection if their asylum claim has been rejected by a Member State.³

ECRE calls on the Council to recognise that the essential prerequisite for a common approach to returns is fair and efficient asylum systems that ensure that no person is forced or induced to return to a place where they face persecution, torture, inhuman or degrading treatment.

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³ See ECRE, *The Way Forward. Europe's role in a global protection system. The return of asylum seekers whose claims have been rejected in Europe*, ECRE 2005

