



Jesuit Refugee Service-Europe aisbl

www.jrseurope.org

europa@jrs.net

Rue du Progrès, 333/2 • 1030 Bruxelles, Belgium
T. : +32/2 250.32.20 • Fax : +32/2 250.32.29

Stefan Keßler, Senior Policy and Advocacy Officer • europa.senioradvocacy@jrs.net • Direct t.: +32/2 250.32.21

Comments by JRS Europe on the FRONTEX General Report 2009 and the proposed amendments to the FRONTEX regulation

Introduction

- 1 The Jesuit Refugee Service (JRS) is an international Catholic agency mandated by the Society of Jesus to accompany and serve forced migrants and to advocate their cause. In Europe, JRS has increasingly become confronted with the problem of getting access to protection.

In Casablanca (Morocco) JRS Europe runs a project where we offer “stranded” migrant women a place to meet, and a kindergarten for their children. In this context as well as during a research trip to Algeria, we have conducted interviews with those “stranded” migrants who gave us an insight into their deplorable situation.

It is against this background that JRS Europe would like to comment on the General Report 2009 of the *European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union* (FRONTEX). For the sake of brevity and readability we will focus on chapters 2.1 and 2.2 of this report, i.e. FRONTEX’ description of the situation at the external borders of the EU and of developments at the policy level.

We would also like to give some brief comments on the Commission’s proposal for amendments to the FRONTEX regulation.

I. The FRONTEX General Report 2009

Decrease of numbers of irregular border crossings and stays

- 2 In accordance to the report, the number of reported irregular border crossings has decreased in 2009 by 33% relative to 2008. It should be added that this decrease is only due to tighter border controls and to the travel to Europe becoming increasingly dangerous for life and limb. It is not a result of a better situation in the countries of origin. The reasons for fleeing are still existing and pressing but the people cannot seek protection in Europe. Instead they find themselves trapped in a “limbo” situation in the former countries of transit that is very precarious and in a number of cases even dangerous.

Potential victims: Persons in need of protection

- 3 Tighter border controls and the denial of entry to Europe affect (not only but also) persons in need of protection. This is illustrated by the list of countries of origin mentioned on page 6 of the report: Decreasing are the numbers of detected Iraqi, Eritrean, Moroccan and Indian nationals, while the numbers of Afghan and Vietnamese nationals are rising. Any look into reports from organisations such as Amnesty International and Human Rights Watch provides with sufficient information about the atrocious human rights situation especially in Iraq, Eritrea, Morocco, and Afghanistan.

- 4 Useful for illustration is also the fact that the vast majority of asylum seekers who managed to enter Europe and had their cases reviewed in Malta, are recognised as refugees in the meaning of the 1951 Refugee Convention or otherwise in need of international protection: Between January 2004 and December 2008, asylum procedures in Malta showed a recognition rate of around 55%, the highest in the European Union. Somalia and Eritrea were the countries of origin for the largest number of persons recognised as refugees. With regard to subsidiary protection, the large majority originated from Somalia, while considerable numbers also originated from Eritrea. A tightening of border controls without complementary measures for identifying persons in need of protection therefore results in the very concrete danger of refusing protection to victims of human rights violations.
- 5 Such complementary effective protection mechanisms have, despite all promises, not been put in place yet. Even if recently the European Asylum Support Office (EASO) has formally been established, the role, competences and tasks of this new authority still remain to be defined. The same goes for the relationship between FRONTEX and EASO: At the moment it is even not clear whether EASO will play a significant role at the European borders. On the other hand, FRONTEX does not have a protection mandate. Hence, the danger of breaching the non-refoulement rule during FRONTEX and other border operations is far from being eliminated.

Bilateral cooperation

- 6 In parallel with FRONTEX' activities, several Member States have developed bilateral contacts and concluded agreements with certain countries of transit. The most notorious cases are the close relations of Spain with Morocco, Mauritania and Senegal, and of Italy with Libya.
- 7 On 28 June 2010, for instance, the Secretary-General of the Moroccan Ministry for Foreign Affairs, Youssef Amrani, in a statement issued at the end of a meeting with the Spanish Secretary of State for Immigration, Anna Terron i Cusi, praised the cooperation between Morocco and Spain in the area of the fight against illegal immigration that had "efficient results", as the number of illegal immigrants has substantially dropped over the past two years. He noted that the two countries "are committed to pursuing consultations and coordination in this field and willing to work together to combat this phenomenon."¹ Neither his nor any statement from his Spanish counterpart did with any word mention the precarious situation of migrants in Morocco.
- 8 The "push-backs" of intercepted migrants by the Italian authorities to Libya have resulted, as FRONTEX noted, in the first quarter of 2010 "in only 150 detections of illegal border-crossing, compared to 5,200 detections a year ago, and 1,500 detections the previous quarter. This reduction is due to the agreement between the Italian and Libyan authorities implemented in May 2009."²
- 9 The victims of these "push backs" have reportedly complained of several human rights violations. The Italian lawyer Anton Giulio Lana has filed a complaint against Italy with the European Court of Human Rights on behalf of 24 clients who were among the 527 migrants having been forcibly returned to Libya in May 2009. At the same time, several NGOs, including JRS, have requested the European Commission to take action and intervene with the Member States in order to halt all returns to Libya as long as there is no safety for migrants. In June 2010 JRS again wrote to the Commission on the occasion of the closure of the UNHCR office in Tripolis and asked for an intervention. But Justice and Home Affairs Commissioner Cecilia Malmström has refused to do so. Instead she has only expressed her "hope that the Libyan authorities will ensure that migrants in need of international protection in Libya are not

¹ Agence Maghreb Arabe Presse, Morocco-Spain Cooperation in Fight against Illegal Immigration 'Efficient' –Official. 28 June 2010.

² FRONTEX, FRAN Quarterly Update. Issue 1, January-March, 2010

subject to refoulement”.³ Her Director for Migration, Stefano Manservigi, reportedly went a step further telling the Justice and Home Affairs (LIBE) Committee of the European Parliament on 13 July 2010 that the push back policy were “perfectly in conformity with EU law”.⁴

Atrocious situation of “stranded migrants” in countries of transit

- 10 JRS has recently begun to collect testimonies and additional information on the situation for migrants in several neighbouring countries at the Southern shores of the Mediterranean Sea. This information clearly shows that in Algeria, Libya and Morocco no national asylum procedure is in place, and although the United Nations High Commissioner for Refugees (UNHCR) conducts a form of screening procedure there, recognition as a Convention refugee does not lead to the enjoyment of the rights as enshrined in international law instruments. Instead, refugees are treated as irregular migrants and face the danger of deportation into the hands of their persecutors.
- 11 Refugees, asylum seekers and irregular migrants share the same dreadful situation: They are denied access to basic social rights and services and live in constant fear of being detained and deported. Even if they are already staying for several years in these countries they completely lack future prospects and chances to build up their lives.

General political recommendations to the European Parliament

- 12 The European Parliament should urge Commission, Council and Member States to set up mechanisms that effectively identify persons in need of protection and ensure the necessary protection to be granted.
- 13 Readmission and other cooperation agreements with third countries, be they concluded by the Union or a Member State, must contain a human rights clause protecting the fundamental rights of all migrants including their economic, social and cultural rights.
- 14 Forced return to a third country must be immediately stopped if the human rights of the affected migrants are not effectively protected.
- 15 With regard to the budget of FRONTEX, the European Parliament should ensure that money spent there is not taken away from the funds (such as European Refugee Fund) that support NGOs activities for the protection of refugees and other migrants.

II. The proposed amendments to the FRONTEX regulation

- 16 The Commission has made a proposal for amendments to the FRONTEX regulation.⁵ Deriving from the general observations listed above JRS would like to make the following recommendations:
- 17 Reporting mechanism: Recital 17 of the Amending Regulation and the amended Art. 8e (1) (h) of the FRONTEX regulation envisage the establishment of an incident reporting scheme. Such a system would be a step forward to more transparency and accountability for human rights violations but the provisions must be more specific. The new Art. 8e (1) (h) should expressly provide for reports on human rights violations, and these reports should also be reviewed by the European Parliament.

³ Letter of Commissioner Cecilia Malmström to Jesuit Refugee Service Europe, 15 July 2010.

⁴ See Migration News Sheet, August 2010, pp. 9-10: European Commission considers agreement between Italy and Libya instituting the “push-back” policy to be “perfectly in conformity with EU law”.

⁵ Proposal for a Regulation of the European Parliament and the Council amending Council Regulation No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), Doc. 2010/0039 (COD).

- 18 Cooperation with third countries: Recital 23 of the Amending Regulation as well as the amended Art. 14 (1) of the FRONTEX regulation provide for more cooperation with third countries. It should be added that this cooperation must ensure the respect and protection of human rights of migrants (including their economic, social and cultural rights) and that cooperation must immediately be suspended if and when these human rights are not effectively guaranteed.
- 19 In this context, the following two provisions should be inserted in the FRONTEX regulation:
- a) A new point 8 should be added to Art. 1a (1): “persons in need of international protection are third country nationals who meet the criteria set out in Art. 2 (c) and (e) of Directive 2004/83/EC;”
 - b) A new point j should be added to Art. 2 (1): “to closely monitor, in cooperation with the United Nations High Commissioner for Refugees, the United Nations High Commissioner for Human Rights, other international actors and relevant human rights organisations, the human rights situation of migrants in countries of transit, especially with regard to the situation of persons in need of international protection, and regularly report findings to Parliament, Commission and Member States.
- 20 Monitoring of treatment of returnees: JRS welcomes the proposal to include in Art. 9 (3) of the FRONTEX regulation a provision that envisages the establishment of an effective independent monitoring system on the situation and treatment of returnees after joint return operations. It should be clarified what in the second sentence of this paragraph “independently” means. In our view, those who carry out the monitoring must be independent from the Agency as well as from any relevant authority of the Member States.
- 21 Liaison officers: The role of the liaison officers as provided for in Art. 14 paragraphs 2 and 3 should be clarified with regard to human rights of migrants: Their activities must not result in a refoulement of a person with protection needs, and must be subject to judicial review.

Stefan Kessler