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European Council
on Refugees and Exiles

EU EXTERNAL COOPERATION AND GLOBAL RESPONSIBILITY SHARING: TOWARDS AN EU AGENDA FOR REFUGEE PROTECTION

**ECRE'S VISION OF EUROPE'S ROLE IN THE GLOBAL
REFUGEE PROTECTION REGIME: POLICY PAPER 3**

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The development of this paper on cooperation with countries in regions of origin and transit in enhancing protection capacity outside of the EU as part of the global protection regime is part of ECRE's series of proposals designed to provide recommendations on a number of topical refugee policy issues. It aims to constructively contribute to debates on Europe's role in protecting refugees within and outside the continent. Addressing the three distinctive stages in refugees' journeys to Europe, the other papers discuss: safe and legal channels for refugees to access protection in Europe and the future of the Common European Asylum System.

- Policy Paper 1: Protection in Europe: Safe and Legal Access Channels
- Policy Paper 2: Principles for Fair and Sustainable Protection in Europe
- Policy Paper 3: EU External Cooperation and Global Responsibility Sharing: Towards an EU Agenda for Refugee Protection

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EXECUTIVE SUMMARY

The large scale arrivals to Europe over the last couple of years, even though significant, could hardly be described as a crisis in global numerical terms. Yet, Europe's inability to effectively address the problem, beyond short term solutions, has led to a political crisis that has reinforced deep-seated divides in the Union and brought to the fore a long standing challenge; namely, the lack of solidarity and responsibility sharing mechanisms, both within the EU and with countries of origin and transit.

ECRE is particularly concerned about Europe's growing emphasis on externalisation of migration control, which, over the last few years, has moved centre stage. The Partnership Framework approach and Migration Compacts with partner countries, adopted in June 2016, is the culmination of this trend and a direct result of the sense of urgency to stop the migratory flows.

ECRE believes that it is critical to counter this dangerous trend by adopting a rights-based approach to migration and asylum, and placing human rights at the centre of policies and programmes in external action, including Migration Compacts and partnerships.

Moreover, instead of trying to stop migration, the EU should address the root causes, promote long term solutions, strengthen the institution of asylum worldwide and ambitiously shoulder its share of responsibility in global responsibility sharing efforts.

The credibility of European partnerships depends on Europe being consistent with its values and commitments under the Treaty. Europe's credibility for actions to promote refugee protection and durable solutions in third countries depends on whether Europe is consistent and upholds its responsibilities for protection in its territory.

This paper is part of ECRE's collective reflection presenting a vision for the role of Europe in the global protection regime over the next years. This vision is elaborated in three papers. This paper covers the external aspects, namely the role of the EU in global responsibility sharing and EU cooperation with countries of origin and transit, while the other two papers cover the aspects of access channels to Europe and protection standards in Europe.

ECRE argues for a comprehensive and ambitious **European Agenda for Refugee Protection** globally, that will be the premise for policies both *within* Europe and *outside*. The EU Agenda for Refugee Protection shall ensure access to and effective protection in Europe through the Common European Asylum System, support for protection in regions of origin and transit and solutions for refugees and displaced persons wherever they are, based on the values of solidarity and responsibility sharing.

The Agenda should have clear objectives and commitments in the area of refugee protection that should be responded to, at all times, by effectual policies and programmes. This will allow for the pooling of different policies and programmes so as to meet the objectives, and also ensure monitoring, accountability, and coherence in all external actions.

ECRE believes that the following principles should underpin European actions relating to refugees and displaced persons globally:

- Policies and programmes affecting migrants, refugees and displaced persons should respect human rights and values, as defined in article 21 of the Lisbon Treaty
- Helping to make refugee protection more effective beyond Europe does not substitute European countries' obligation to protect refugees who spontaneously arrive on their territories
- The responsibility for hosting and protecting the world's refugee population must be shared more equally between states
- Strengthening protection in countries of origin and transit should not be regarded as a means of returning or transferring asylum seekers and refugees from Europe to other countries
- European policies need to be consistent: they should not proclaim to promote solutions and rights-based policies on the one hand, while at the same time emphasising containment and deterrence and outsourcing responsibilities to partner countries.

ECRE also believes that EU policies and programmes affecting migrants and refugees in external action currently suffer from insufficient transparency and accountability. Policies and programmes should be regularly monitored internally and externally, by civil society organisations, and measured against a set of benchmarks to ensure that the rights of migrants and refugees are safeguarded at all times.

INTRODUCTION

The majority of the world's refugees live in the developing world, close to the country they are fleeing. Developing countries face significant challenges in the efforts to assist them, in a context where their own nationals often do not enjoy basic rights. Supporting solutions locally is predominantly to the benefit of refugees, as they generally do not want, nor are able, to move even further from their homes. Strengthening protection capacities increases the possibility to access long term solutions. Better access to protection in third countries also enlarges the asylum space and contributes to the successful implementation of Member States' and EU development cooperation programmes. For these reasons, it is fundamental that states' policies promote and support protection capacities in regions of origin and transit.

Europe must play an active role in improving refugee protection in regions of origin, without undermining the right to seek asylum on its territories. Europe is a global actor, the world's leading development donor and largest humanitarian funder; it has the normative power to shape policies and the leverage to influence partners, and should use its influence to promote stability, resilience and respect for human rights worldwide.

What we currently witness, however, is a continuous and unbalanced European effort to keep migrants and refugees away, strengthen policies that prevent migratory flows, discharge its protection responsibilities and put more pressure on partner countries to manage displacement and protection challenges. What is more, European policies fail to see the challenges from the migrants and refugee's perspective, nor appreciate their rights or need for safety and prosperity.

ECRE argues that Europe needs to make U-turn and adopt an entirely different approach to global refugee and migration challenges in order to support solutions that will save human lives, promote inclusion, cooperation and prosperity.

This paper is based on the premise that a global agenda for responsibility sharing and international solidarity must be set out and implemented and that Europe should play a leading role in this endeavour.

Any cooperation to develop protection capacities amongst Europe's partner countries should be established on responsibility sharing principles, and should not result in shifting responsibilities to these countries. The possibility to seek asylum in regions of origin and transit does not replace Member States' obligations to process applications, grant refugee protection and treat them with humanity and dignity.

Intensified border controls, without the concomitant safeguards, only increases the risks and fails to address the causes of such movements. At the same time, any measures to improve the protection environment in regions of origin and transit must not undermine states' obligations to ensure that no asylum seeker or refugee is returned or transferred from a European country to a place where they may not be able to access their rights.

Onward or secondary movements will not be reduced unless their causes are identified and measures are taken to remove or mitigate them. The absence of protection measures which meets the needs of refugees, and grants them their rights, is one of the causes of such movements and this should be addressed through the strengthening of protection.

Chapter Two of this paper outlines the context of current global displacement, highlights recent debates and explores global initiatives to promote solutions, examining the interaction between the global and EU level and the role that Europe can play in the global refugee regime.

Chapter Three presents ECRE's vision for a responsible EU Agenda for Refugee Protection as a global actor, in reply to these displacement challenges. Concretely, ECRE presents the Agenda's main objectives and commitments, that could act as an overarching framework and guide for policies and programmes. In addition, a set of protection elements are proposed as a checklist for the design and implementation of EU policies and

programmes, in order to ensure that they are rights-based and protection-driven (in Annex).

Chapter Four turns to the actual policies and programmes that the EU disposes for cooperation in the area of migration and asylum, discussing their main challenges and proposing recommendations on how these could better meet the objectives of an EU Agenda for Refugee Protection. Different policy areas come together, namely the external dimension of immigration and asylum (Home Affairs), development cooperation and humanitarian aid and human rights in external action. Currently, the approach taken by the external dimension of immigration and asylum policy is based on a logic of deterrence and runs contrary to the developmental approach of promoting solutions to displacement. The Partnership Framework approach, adopted by the Council in June 2016, intends to pool together different policies and incentives in external action in order to promote local solutions, but also to encourage partner countries to prevent further migration flows to Europe. ECRE is concerned with the way development cooperation is becoming instrumentalized in migration control. The toolbox available in the framework of human rights in external action could be better utilised to promote and monitor refugee protection and closer links could be made between this and the other policies in order to ensure coherence.

CHAPTER 1 - THE EU IN THE GLOBAL CONTEXT: FORCED DISPLACEMENT AND DEBATES AT GLOBAL LEVEL

Today, forced displacement affects over 65 million people worldwide, among them nearly 21.3 million refugees and 40 million IDPs. In addition, there are 10 million stateless people. This is the largest number since World War II, making forced migration one of the major challenges of our times. The vast majority of refugees under the UNHCR mandate (86%) live in the developing world, close to situations of conflict. Turkey is currently by far the largest hosting country, with 2.5 million refugees, while Lebanon hosts more refugees compared to its population than any other country (one in five). In 2015, the largest refugee producing situations are Syria, Afghanistan, Somalia, South Sudan and DRC.¹ In addition, by the end of 2015, one in two refugees was a child.²

The nature of displacement today is changing and the factors driving it are multiplying. There are large scale refugee flows caused by conflicts (the traditional drivers of displacement) which now tend to last longer, as, for example, in Somalia and Afghanistan where they have lasted for over three decades. New conflicts or situations of violence and insecurity erupt frequently. In the past five years, aside for Syria, wars have broken out in South Sudan, CAR (Central African Republic), Burundi, Yemen and Ukraine.

In the context of growing global displacement, the number of people trying to reach Europe in the last couple of years has also increased. An increasing number of people have risked their lives to cross the Mediterranean Sea in search of safety and protection; more than one million arrived in Europe by boat in 2015, the majority by crossing from Turkey to Greece. 84% of them originated from the top 10 refugee producing countries, including Syria, Afghanistan and Iraq. The number of people that arrived in a continent of 500 million people is relatively small, compared to other refugee situations in the world, and could be hardly described as a crisis. Nevertheless, these sudden arrivals have tested the asylum and reception systems of certain countries. They also exposed the absence of a comprehensive response at the European level, ideally based on solidarity and responsibility sharing. In response, some European countries increased border controls and other restrictions, and erected fences in an attempt to stop onward movements to their territories. Furthermore, at a time when safe and legal channels to Europe were most needed, some countries also introduced changes to their asylum systems, including modifying family reunification rules so as to limit the arrivals.

The factors leading to displacement today are far more complex than those under the 1951 Refugee Convention. Displacement by conflict is exacerbated by a number of global trends, namely population growth, urbanisation, food and water scarcity and the impact of climate change. Compared to a few decades ago, natural disasters now increase in frequency. Most displacement caused by such factors, or slow-onset environmental degradation, is internal but the absence of solutions often encourages many of those internally displaced to cross external borders. Furthermore, socio-economic deprivation exacerbates the causes that

1. UNHCR, Global Trends, Forced Displacement in 2015, available at: <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>
2. UNICEF, The Uprooted, Growing Crisis for Refugee and Migrant Children (September 2015), available at: http://www.unicef.org/publications/files/Uprooted_growing_crisis_for_refugee_and_migrant_children.pdf

motivate those escaping persecution to cross borders and continue their journeys further afield. Although the lack of food, water, education, health care and livelihoods are not necessarily qualifying factors under the 1951 Geneva Convention, these deficiencies nevertheless characterise a situation for many people who have substantive protection needs.

In addition, global displacement is nowadays overwhelmingly urban. More than half of all refugees live in towns and cities. The traditional camp approach is no longer appropriate to the needs of the majority of those displaced.

More and more refugees and IDPs are currently left without a solution, compared to several decades ago. According to UNHCR, nearly 6.7 million refugees were considered to be in a protracted displacement situation at the end of 2015 - some 300,000 more than the previous year.³ In terms of voluntary repatriation, 201,400 refugees returned home voluntarily in 2015, the majority to Afghanistan, Sudan, and Somalia; this is the lowest in three decades. Over one million refugees are estimated by UNHCR to be in need of resettlement, and just over 100,000 are resettled every year.⁴ Secondary and multiple displacements reflect the failure to address the needs and vulnerabilities of the forcibly displaced, or to provide durable solutions.

Despite decades of humanitarian policies and programmes, the international response to displacement remains inadequate. Assistance is not always delivered on time to those that need it; at the same time, short term relief, as provided by traditional humanitarian aid systems, is unable to meet the needs of the displaced in the medium to long term. Safe and regular access channels are not available, forcing refugees to undertake dangerous journeys and risk their lives in order to reach safety. Refugees face additional risks to those situations they fled from, such as the inability to access protection, the risk of accelerated returns and refoulement and detention. Today, mixed flows are still not properly addressed.

In order to address these multiple challenges, there is a need to better understand the characteristics and drivers behind displacement, especially protracted displacement, and its economic dimensions, including refugee welfare and poverty. Political solutions are slow to come by, and without development prospects and opportunities, refugees and IDPs are more likely to move further and outside their regions of origin. New thinking and new solutions are needed that go beyond the traditional three durable solutions. New partnerships are sought with the private sector and research and innovation think tanks, exploring how to support sectors like housing, energy, education and livelihoods, promote practical solutions for refugee and host communities and make use of new technologies and social media. Supporting self-reliance and assisting host countries and communities should become the norm. States should take an ambitious step forward and offer meaningful, safe and regular channels for refugees.

At the global level, the scale and complexity of refugee movements has triggered the need to launch a serious discussion about how the international community can better respond and share the responsibility for hosting and assisting refugees. A number of global initiatives and forums have developed in the last few years have tried to promote thinking and outline an approach for global action, such as the Global Forum on Migration and Development, the Solutions Alliance, the World Humanitarian Summit in May 2016, the UN General Assembly High Level Plenary on addressing large movements of refugees and migrants on 19 September and the US-led Leaders' summit, on 20 September 2016. Linked to all these, and perhaps the most concrete of all targets, is the 2030 Agenda and the Sustainable Development Goals (SDGs), during which 193 states agreed in 2015 to meet over the next 15 years in the endeavour to end poverty and promote development.⁵

'Leaving no one behind' is the SDG's main motto, calling to address the needs of the most vulnerable. The question is how far the SDGs will manage to provide solutions to the 65 million refugees and displaced around the world. The agenda's scope is wide and aims to address many of the root causes that drive people to flee their homes, including poverty, climate change-induced disasters and conflict. Goal 10 in particular calls to reduce inequality within and among countries specifically with '*orderly, safe, regular and responsible migration*

3. UNHCR Global trends, page 5. UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for five or more years in a given asylum country.

4. UNHCR puts projected resettlement needs for 2017 at 1.19 million, available at: <http://www.unhcr.org/protection/resettlement/575836267/unhcr-projected-global-resettlement-needs-2017.html>

5. The Sustainable Development Goals (SDGs), through the report 'Transforming our world: the 2030 Agenda for Sustainable Development' is a set of seventeen aspirational 'Global Goals' with 169 targets. The goals are also contained in paragraph 54 United Nations Resolution A/RES/70/1 of 25 September 2015. Available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>

and mobility of people', through target 7 'the implementation of planned and well-managed migration policies.'⁶ Countries accepting refugees and migrants are asked to fulfil commitments in education, healthcare, job opportunities universally and for all, including also displaced persons in their territories. Compared to the MDG framework, the SDGs are better articulated to tackle the drivers of displacement.

The Global Forum on Migration and Development (GFMD), an informal, non-binding and state-led framework that emerged from the first UN General Assembly High Level Dialogue on International Migration and Development in 2006, is a process where policy makers and civil society come together to discuss migration and development. Since 2015 the GFMD aligns itself more on the link between migration and the Sustainable Development Goals (SDGs), particularly from the perspective of the contribution that migration can make to development.⁷ Forced migration is increasingly mainstreamed in the GFMD discussions, linking forced displacement with mobility needs; there is also more attention now to protecting the rights of migrants in all situations, including situations of crises and the precariousness in transit countries. The 2016 GFMD in Bangladesh broaches the challenge of safe and regular migration channels.⁸

The World Humanitarian Summit (WHS), held in Istanbul, Turkey, in May 2016 was an initiative of the UN Secretary General aiming to reform the humanitarian aid system to react more effectively to today's crises. One positive outcome of the WHS is the recognition of the protracted nature of the present humanitarian crises, that requires a long term response, multi-annual financing mechanisms and more resources for integration. In the WHS report, 'Agenda for Humanity', states are asked to commit to five core responsibilities: global leadership to prevent and end conflict; uphold the norms that safeguard humanity; leave no one behind; shift from delivering aid to ending need; and invest in humanity, through political, institutional and financial investment and support for local capacities and fragile states.⁹ To a large extent, the WHS commitments are a follow-up to the post-2015 agenda and the SDGs.

The Solutions Alliance, an inter-agency initiative, aims to influence the global policy agenda, including the post-2015 development agenda, to recognize displacement as a development challenge, a humanitarian and protection issue and to work with governments in affected countries to include displacement issues as a cross-cutting theme in national and local development plans.¹⁰ The Solutions Alliance is currently developing guidance on how to support attainment of rights for refugees and IDPs through existing law enforcement instruments; discussing tools for performance management on solutions and global IDP solutions indicators and guiding questions on how to engage with the private sector.

What all these initiatives have in common is promoting discussions and thinking about developmental solutions to address displacement, whilst acknowledging the contribution of migration, including forced migration, as a factor supporting development. They all set a number of objectives, but none has a binding force on states.

In addition, in the context of the global refugee crisis, a very important factor that can undermine the implementation of these commitments and the inclusive spirit of the agenda is the xenophobia and nationalism dominating the political discourse around the world, particularly in Europe. The importance of countering xenophobia and promoting non-discrimination should not be underestimated; it is a precondition for implementing successful policies and programmes at national levels.

At the UN High-level Summit on Refugees and Migrants in New York in September 2016 Member States adopted the 'New York Declaration' with two Annexes, the Comprehensive Refugee Response Framework

6. UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, UN General Assembly Resolution adopted on 25 September 2015, page 21. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

7. The 2016 GFMD takes place in Dhaka, Bangladesh from 8-12 December 2016, <http://www.gfmd.org/>

8. Migration that Works for Sustainable Development of All: a transformative migration agenda, GFMD Chair Draft Concept Paper, Ninth Global Forum on Migration and Development - Bangladesh 2016, available at: <http://www.madenetwork.org/sites/default/files/GFMD%202016%20Draft%20Concept%20Note.pdf>

9. UN General Assembly, One humanity: shared responsibility Report of the Secretary-General for the World Humanitarian Summit, 2 February 2016 available at: <https://consultations.worldhumanitariansummit.org/bitcache/e49881ca33e3740b5f37162857cedc92c7c1e354?vid=569103&disposition=inline&op=view> and Chair's Summary for the UN Secretary General, Standing up for Humanity; committing to action, Istanbul 23-26 May 2016, available at: <https://consultations.worldhumanitariansummit.org/bitcache/5171492e71696bcf9d4c571c93dfc6dcd7f361ee?vid=581078&disposition=inline&op=view>

10. The Solutions Alliance is led by Danida and supported globally by UNHCR, UNDP and WB. It started in April 2014 and is a 'coalition of the willing' in support of the Solutions Agenda. The SA's vision is to create a partnership based platform. The SA includes 'national groups' (Somalia, Zambia, Uganda and Tanzania), and thematic groups together with academia and the private sector (the Rule of Law Group, the Research, Data and Performance Management Group, and the Engaging the Private Sector Group), for more information see <http://www.solutionsalliance.org/>

and Annex II 'Towards a Global Compact for Safe, Orderly and Regular Migration.'¹¹ Contrary to initial plans to adopt two Compacts, a Global Compact on Refugees and a Global Compact on Migrants at the Summit, states decided to postpone it into a two-year process leading to their adoption by the UNGA in 2018.

The New York Declaration is seen by some as an important step in reaffirming the international legal framework, notably the 1951 Geneva Convention, and in getting many states to agree on a number of common objectives to address the global refugee crisis.¹² An important outcome of this summit has been that states agreed to address xenophobia and discrimination at global level through a joint campaign. At the same time, the Outcome document is relatively weak, with no concrete commitment and binding force, and more importantly no concrete targets in resettlement and global responsibility sharing.¹³

The US-led Leaders' Summit on the Global Refugee Crisis on the margins of the UNGA on 20 September 2016, targeted, more specifically, humanitarian funding and resettlement. A number of positive elements emerged; humanitarian funding was substantially increased and resettlement pledges were doubled to 360,000, while states sought to develop more concrete initiatives for partnerships with the private sector.¹⁴

The EU and its Member States have participated in these forums and debates with varying degrees of commitment. The interaction between the EU level and the global forums and summits seems to have served for the EU as the space to promote some of its own concepts and concerns, such as the emphasis on returns and readmission, and the partnership framework approach to managing migration. The export value of European policies and the ripple effect that these can have is clear; it reaffirms how important it is for Europe to develop a rights-based approach to migration and refugee protection, as this will impact also at global level. There is less evidential impact, thus far, in the opposite direction, in terms of a positive influence of global debates and trends on EU developments. However, in the next few years, should multilateral governance in migration and displacement take the form of more concrete commitments, this could potentially influence European policies too. This, particularly concerns global responsibility sharing mechanisms and targets, where European political will seems to be most lacking.

11. In particular, the Political Declaration sets forth a set of key principles and commitments, including many on the protection of the human rights of all migrants, regardless of their status, under existing human rights and humanitarian treaties, and the further rights (e.g. under the 1951 Refugee Convention and other international treaties) of particular migrants, such as refugees and asylum seekers, children, victims of trafficking, torture and trauma. Annex I (Comprehensive Refugee Response Framework) is a guide for responding to situations that involve large scale movements and refugee arrivals. In the final section of the Framework, states commit to work towards the adoption of a Global Compact on Refugees at the UN General Assembly in 2018. Annex II (Towards a Global Compact for Safe, Orderly and Regular Migration) the announcement of the launch of a two-year process to devise a Global Compact for Safe, Orderly and Regular Migration, also for adoption by the UN General Assembly in 2018. In this Annex, States list some of the elements that could be included in the Compact. Available at: http://www.un.org/zh/documents/view_doc.asp?symbol=A/71/L.1%20&referer=http://refugeesmigrants.un.org/summit-documents&Lang=E
12. UNHCR welcomes unprecedented force and resonance of New York Declaration, Press Release, 19 September 2016 available at: <http://www.unhcr.org/news/press/2016/9/57dff34f4/unhcr-welcomes-unprecedented-force-resonance-new-york-declaration.html> see also Aleinikoff A., The UN Summit: what can be achieved? MPI, September 2016, available at: <http://www.migrationpolicy.org/news/un-refugee-summit-what-can-be-achieved>
13. McAdam J., Filling up or emptying the glass? Musings on the 19 September Summit, UNSW Kaldor Centre, September 2016, available at: <http://www.kaldorcentre.unsw.edu.au/publication/filling-or-emptying-glass-musings-19-september-refugee-summit> and Crisp J., Minor miracle or historic failure? Assessing the UN's refugee summit, UNSW Kaldor Centre, August 2016, available at: <http://www.kaldorcentre.unsw.edu.au/publication/minor-miracle-or-historic-failure-assessing-un%E2%80%99s-refugee-summit>
14. There is a lack of clarity in terms of new places pledged and existing quotas by some states, see Papademetriou D. and Fratzke S., Global refugee summits offer reasons for both disappointment and hope, MPI Commentary, September 2016, available at: <http://www.migrationpolicy.org/news/global-refugee-summits-offer-reasons-both-disappointment-and-hope>

CHAPTER 2 - INTERNATIONAL SOLIDARITY AND RESPONSIBILITY SHARING: A VISION FOR AN EU GLOBAL FRAMEWORK FOR REFUGEE PROTECTION

The starting point is that the EU should respect and promote international law, including international humanitarian law, refugee law, international human rights law and European asylum law.

Moreover, Europe should look back to its history and the examples of states that have protected and assisted thousands of refugees and displaced persons. This is a call to the norms and values of non-discrimination, solidarity and responsibility sharing.

Safe and legal channels are the commitment that are missing the most at the global level. The EU should fulfil its role as a global leader and take a decisive step forward, making a substantial and concrete commitment for resettlement and other forms of admission, as part of a strategic response to the global refugee crisis. The EU Member States should set an example for others by offering more resettlement places and opening up safe and legal access channels, and alternative forms of admission; also by fulfilling obligations to family reunification, ensuring that people's rights to family life are fulfilled.

With regards to resettlement, efforts have been made over the last year to increase resettlement to Europe through multilateral and national schemes, but these still remain insufficient in relation to global resettlement needs. Following a Commission Recommendation on a European resettlement scheme (C (2015)3560 final), the Council agreed in July 2015 to resettle 20,000 persons through multilateral and national schemes. At the Valletta summit in November 2015, states also mentioned that "access to regular mechanisms for protection, such as resettlement, should be reinforced". Further to that, on 15 December 2015, the European Commission presented a Recommendation for a Voluntary Humanitarian Admission Scheme (VHAS) with Turkey for persons displaced by the conflict in Syria who are in need of international protection and have been registered by the Turkish authorities prior to 29 November 2015. Finally, resettlement is also taking place in the framework of the EU-Turkey deal, whereby resettlement is offered in exchange for Turkey's efforts to prevent further crossings into Europe and take returns from Greece (one Syrian resettled for one Syrian returned from Greece). So far 10,695 people have been resettled in the framework of the July 2015 scheme and 1,614 persons resettled from Turkey under the 1:1 scheme¹⁵

In its proposal for a Regulation establishing a Union Resettlement Framework, presented on 13 July 2016, the Commission proposed to establish a permanent Resettlement Framework with a unified procedure for resettlement across the EU. The framework will be operationalized through the adoption of an annual EU resettlement plan, which will have a maximum numerical target for MS on the basis of identified geographic priorities. The annual plan will then propose one or more targeted EU resettlement schemes to implement the EU resettlement plan. Following the logic of the EU-Turkey deal, the Framework also proposes a differentiated approach with specific partner countries, where resettlement will be offered in exchange for migration control. The role of resettlement as a durable solution for protracted refugee situations is not explicitly mentioned. The new Framework intends to penalise refugees, by denying the possibility for resettlement to those that have attempted to cross irregularly to Europe in the last five years. Exclusions also applies to resettlement candidates rejected by a Member State during the last five years. These provisions risk undermining opportunities for the resettlement of vulnerable refugees and emergency cases, as well as those that have no other sustainable solution. The proposal may also possibly undermine national programmes that resettle refugees other than the EU priorities.

A European resettlement plan needs to offer a meaningful number of places in relation to the global resettlement needs. In ECRE's view, this could take the form of a fixed percentage of the global resettlement efforts. In his report, Safety and Dignity (May 2016), the UN SG has suggested that States should receive at least 10% of the total refugee population through resettlement and other forms of admission, in order to sufficiently meet the annual resettlement needs identified by UNHCR.¹⁶ As the refugee population under UNHCR mandate in 2016 is just over 16 million, this percentage would correspond to over 1.6 million refugees a year. While this target

15. Communication from the Commission to the European Parliament, the European Council and the Council, Sixth report on relocation and resettlement, Brussels 28.09.2016, COM(2016) 636 final, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth_report_on_relocation_and_resettlement_en.pdf

16. UN General Assembly, In safety and dignity, addressing large scale movements of refugees and migrants, Report of the UN Secretary General, 21 April 2016, available at: <http://refugeesmigrants.un.org/secretary-general-report-safety-and-dignity-addressing-large-movements-refugees-and-migrants-english>

has met resistance, and was not consolidated in the New York Declaration of September 2016, it remains a meaningful and ambitious target globally. The EU should make a meaningful contribution to this global effort. ECRE argues that the EU should offer 25% of global resettlement places per year. Resettlement and other forms of admission are analysed in the ECRE vision paper on safe and legal channels.

While migration and refugee protection programmes have been implemented over the last decade under different policy areas, there is still a lack of coherence in terms of objectives and outcomes. There is a clear lack of policy orientations specifically addressing refugee protection in external cooperation with political commitment at the higher level.

Given the fact that the majority of displacement situations have moved from an emergency phase to a long-lasting one, there is a need for the EU to effectively implement its commitments to address protracted displacement. This also means working towards addressing the root causes of forced displacement in order to prevent it from becoming protracted. Moving beyond the emergency approach would certainly improve cost-effectiveness and sustainability. As a major donor, the EU is in a unique position to contribute to global efforts and foster dialogue with other international organisations, governments and communities and EU Member States.

The European Union Global Strategy on Foreign and Security Policy, presented by VP/HR Mogherini to the European Council in June 2016, is a strategic document that aims to guide the Union's global actions in the future.¹⁷ Migration is included as a priority area for which common and tailor-made approaches will be formulated, including development, diplomacy, mobility, legal migration, border management, readmission and return. However, the intention is to better align EU development funding with foreign policy and the overall objective to prevent migratory flows. The Global Strategy aims to address the root causes of migration through development and preventive diplomacy, support transit countries through capacity building, education and livelihoods and strengthen the links between humanitarian and development aid through joint risk analysis and multi-annual programming. In the area of asylum, the Global Strategy favours a more effective common European asylum system, safe and legal access channels and cooperation in global responsibility sharing. Nevertheless, there are no actual commitments and the Strategy lacks any vision for Europe in the global refugee protection regime and responsibility sharing efforts.

While respect for human rights is mainstreamed across all policy areas, the EU Global Strategy still falls short of making human rights a foreign policy objective and the Strategy's foundation. Instead, commitment to universal, indivisible human rights should be placed explicitly at the centre of the Global Strategy, in accordance with the EU Treaty and international human rights law. The Global Strategy should defend the universality of human rights and respect international human rights law and norms and human dignity for all, including citizens and populations hosted by the countries.

In addition to the Global Strategy, the EU also needs to have a dedicated Agenda for Refugee Protection, with specific policy objectives and political commitments for solutions to displacement and mixed migratory flows, support to refugee hosting countries, structured and regular safe and legal channels to Europe. This should be the premise for policies supporting protection both within Europe as well as outside. A dedicated agenda would also ensure coherence between different policy areas and provide a basis for monitoring and accountability.

The EU Agenda for Refugee Protection

Firstly, the following principles should underpin European actions affecting refugees and displaced persons globally:

- Policies and programmes affecting migrants, refugees and displaced persons should respect human rights and values, as per article 21 of the Lisbon Treaty
- Helping to make refugee protection more effective beyond Europe does not substitute European countries' obligation to protect refugees who spontaneously arrive on their territory
- The responsibility for hosting and protecting the world's refugee population must be shared more equally between states
- Strengthening protection in regions of origin should not be regarded as a means of returning or transferring asylum seekers and refugees from Europe to other countries

17. A Global Vision for the European Union; shared vision, common action: a stronger Europe, available at: <http://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union>

- European policies need to be consistent: they should not proclaim to promote solutions and rights-based policies on the one hand, while at the same time emphasising containment and deterrence, and outsourcing responsibilities to partner countries.

More concretely, an EU Agenda to protect and assist refugees will ensure that all Union's policies and programmes affecting refugees and displaced persons, directly or indirectly, contribute to their protection, assistance and support for solutions. The Agenda should have six main objectives, accompanied by specific commitments. EU policies and programmes, individually or combined, should meet these objectives and be in line with the commitments made. This will allow the pooling of different policies and programmes together, in order to meet the objectives and support greater coherence.

The Agenda's Objectives

Objective 1: Address the causes and drivers of displacement

Address the drivers that lead to displacement and the conditions that will enable solutions for the displaced wherever they are. These solutions need to be anchored in development policies that place equal emphasis on supporting local capacities, the host communities and local civil society

Objective 2: Protect the fundamental rights of people on the move and in transit

Strengthen search and rescue mechanisms, protection sensitive border procedures, address smuggling and trafficking by offering safe and legal channels and by protecting the rights of smuggled and trafficked persons; counter criminalisation of irregular entry; refrain from using detention, particularly of children, at all times.

Objective 3: Protect persons with particular vulnerabilities such as gender, age and disability. Ensure early identification of vulnerabilities and special needs; protect the fundamental rights for displaced children and youth, and children on the move, in line with the 2030 Agenda, support national and cross-border protection for children; provide services to survivors of violence and sexual violence, including mental health care.

Objective 4: Ensure that refugees have access to asylum and a secure status

Uphold the norms including the 1951 Geneva Convention and relevant international instruments and protocols, the European Convention on Human Rights, European Charter for Fundamental Rights and European relevant asylum instruments; support individual registration and identification and access to legal status, to prevent statelessness

Objective 5: Open up safe admission pathways for refugees

This includes resettlement and humanitarian admission programmes, private sponsorships, student and labour schemes and other channels that provide a lifesaving tool and a durable solution to refugees worldwide. This could take the form of a fixed percentage of the global resettlement efforts; the EU could offer 25% of global resettlement places per year.

Objective 6: Support integration and self-reliance

Ensure that basic needs are met in partnership with national service providers; support national policies for inclusion that include access to legal status, education, health care and employment; develop a counter-narrative, that is positive and inclusive and prepares the ground for successful policies.

CHAPTER 3 - EU COOPERATION WITH COUNTRIES OF ORIGIN AND TRANSIT IN MIGRATION AND ASYLUM

This chapter will discuss the different strands of policies and programmes relating to migration and asylum, namely the external dimension of immigration and asylum (Home Affairs), development cooperation and humanitarian aid, and human rights policy in external action. Without necessarily going into the details of individual instruments and programmes, it will outline gaps and opportunities and propose recommendations on how these can better be aligned with an EU Agenda for Refugee Protection.

Cooperation between EU Member States and countries of origin and transit in the area of migration and displacement has been high on the agenda of the EU throughout the last decade, but has gained substantial significance over the last few years as a result of the increased number of arrivals in the Mediterranean and the refugee situation in Europe. Primarily driven by Home Affairs priorities, EU policies have displayed a rather short term logic aiming to address immediate reception and assistance needs and to control further arrivals to Europe. At the same time, Europe has been moving away from human rights and policies to protect the rights of people on the move.

In parallel, cooperation with third countries in the area of migration and refugee protection has also been part of the EU humanitarian and development agenda. Over the last couple of years increasing efforts are taking place to bring closer together EU humanitarian and development policy in addressing issues affecting displaced populations.

3.1. THE EXTERNAL DIMENSION OF EU MIGRATION AND ASYLUM POLICY

The refugee situation unfolding in Europe since 2015 has marked a turning point in the political debates and the development of policies and measures to address arrivals to Europe. Reacting in a state of panic, Member States have concentrated all efforts on closing the EU borders and putting pressure on Member States in the periphery of the Union, like Greece, and partner countries to provide immediate assistance to stop the flows. As a result, cooperation with countries of origin and transit is now seen primarily as a strategy of deterrence, aiming to prevent migratory flows to Europe.

The **Global Approach to Migration and Mobility** (GAMM) is the Union's overarching framework for cooperation in the external dimension of migration and asylum.¹⁸ The GAMM has been a broad and flexible policy framework with tools that allow the development of actions and financing in external action with relatively little political commitment. The GAMM introduced the 'more for more' principle in the external dimension of migration and asylum, meaning a differentiated approach to countries in migration dialogues. Among the four priorities, the one that has been most substantially developed are actions to address irregular migration. Furthermore, the GAMM has been weak in linking support in regions of origin and transit with safe and legal channels to access protection in Europe.

Mobility Partnerships concluded with specific countries are perhaps the most concrete model of cooperation under the GAMM, with a level of political commitment in the form of an agreement with jointly agreed policy targets, a consortium of Member States and technical assistance projects to implement the agreement. Visa facilitation and readmission are key components, the first used as an incentive for the second. Mobility Partnerships normally also include an asylum component, but so far this area has not received the same level of attention as other elements in the partnership. A concrete component in the area of refugee protection should be included in the Mobility Partnerships to ensure jointly agreed political commitments.

Refugee protection is supported in the GAMM also through the **Regional Protection Programmes** (RPP)/ **Regional Development and Protection Programmes** (RDPP), capacity building projects in the area of asylum and migration, and other migrant and refugee assistance projects, funded through geographic and thematic instruments. RPP/RDPPs have taken the form of projects implemented primarily by UNHCR, together with local

18. The GAMM's four priorities include better organised legal migration and mobility, addressing irregular migration, maximising the development impact of migration, and strengthening international protection. The GAMM includes several political instruments (action plans, political dialogues) and legal instruments (visa facilitation, readmission). Mobility Partnerships and migration and security dialogues are the key frameworks through which these tools are used, and cooperation between the EU and third countries is negotiated. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The Global Approach to Migration and Mobility, COM/2011/0743 final, available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011DC0743>

NGOs. Judging from their implementation so far, ECRE believes that these could be significantly strengthened by entering the political dialogues between the EU and partner countries and securing local ownership and Member State involvement.¹⁹ They should also include substantial resettlement offers from the European countries supporting them, a component already foreseen which, however, has remained underdeveloped. They should be driven by a rationale of solidarity with the countries hosting the majority of the world's refugees, rather than a migration control logic. The RPP have been severely underfunded in relation to the scope and objectives they were designed to meet. Substantial funding should be made available in order to truly support capacities and conditions promoting durable solutions. Finally, RPP would need to support regional protection in close coordination and coherence with development programmes and national development initiatives, benefiting both the displaced and the host communities around them.

In response to the Syrian crisis, the EU launched a Regional Development and Protection Programme for refugees and host communities in Lebanon, Jordan and Iraq.²⁰ The RDPP is an attempt for a development-led approach aimed at minimising the negative impact of refugees in host countries and enhancing their positive economic contribution and self reliance, in both camp and urban settings. The results of the RDPP implementation in the Middle East remain to be seen. Using the same model, RDPP have now also been developed by the EU in the Horn of Africa and in North Africa.

Political dialogue with partner countries is taking place in **migration dialogues** with selected countries, Common Agendas on Migration and Mobility (CAMM) and through the **regional processes** (Budapest Process, Prague Process, Rabat Process, Khartoum Process, Eastern Partnership, EU-Africa Partnership MME, EU-ACP dialogue). Regional processes tend to prioritise certain issues over others, and there is relative overlap between some of them; they are also often criticised for having little impact. Streamlining and rationalisation would be needed to bring their added value forward.

Human rights in the GAMM are seen as a cross-cutting dimension. The GAMM foresees that respect for the EU Charter for Fundamental Rights should be a key component of EU policies on migration and that the impact on fundamental rights of initiatives taken in the context of the GAMM should be assessed.²¹ It is also stated that *'the dialogue and cooperation with partners should strive to protect the human rights of all migrants throughout their migration process. Measures should be taken to ensure decent living conditions for migrants in reception centres and to avoid arbitrary or indefinite detention.'* [...] *This approach includes protecting the human rights of all migrants in transit by focusing on: protecting vulnerable migrants (unaccompanied minors, asylum-seekers, victims of trafficking, stranded migrants, etc.) and on the specific needs of women; supporting capacity-building for law enforcement forces and referral systems; supporting prevention, protection and prosecution of criminal acts and human rights violations committed against migrants, including those travelling irregularly; and guaranteeing decent living conditions for migrants in reception centres in non-EU countries'*²²

Nevertheless, GAMM implementation has not always ensured sufficient support for these objectives. Neither has the impact on fundamental rights of GAMM initiatives been sufficiently assessed with concrete indicators. The non-binding nature of different GAMM instruments has meant that human rights obligations or monitoring and accountability mechanisms are not necessarily foreseen. No independent evaluation and monitoring is undertaken on the effects of the implementation of readmission agreements and joint return operations.²³ European Parliament scrutiny and monitoring of the implementation of Mobility Partnerships and RPP/RDPP has also been generally low. In its report on the implementation of the GAMM, the Commission identified that more work needs to be done to ensure balanced implementation of the Mobility Partnerships with more actions relating to legal migration, human rights and refugee protection.²⁴

In the aftermath of the 2013 Lampedusa tragedy, the Taskforce Mediterranean brought the internal and the external dimension closer together in order to prevent further migrant deaths at sea and address migratory flows

19. For an analysis of RPP and recommendations see Regional Protection Programmes: an effective policy tool? Discussion Paper, DOMAID/ ECRE, January 2015 available at: <http://www.ecre.org>

20. This EUR 26.6 million project is funded by the EC and by Member States and implemented by a consortium of governments, UN agencies and civil society. It aims to promote self-reliance and strengthen capacities to assist both refugee and host communities in these countries. Available at: https://eeas.europa.eu/node/7895_en

21. See above COM/2011/0743 final, page 6

22. Ibid, page 24

23. Migrants in the Mediterranean: protecting human rights, European Parliament Study, 29 October 2015, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/535005/EXPO_STU\(2015\)535005_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/535005/EXPO_STU(2015)535005_EN.pdf)

24. Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Report on the implementation of the Global Approach to Migration and Mobility 2012-2013, 21 February 2014, COM(2014) 96 final, p. 9. Available at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/gamm_implementation_report_2012_2013_en.pdf

towards Europe.²⁵ For the first time, the Commission stated its intention to explore possibilities for protected entry to the EU. Measures under the Taskforce were implemented and monitored throughout the next two years, and mirrored in the EU Strategic Guidelines in the area of freedom, security and justice for 2010-2014.

In response to the unprecedented refugee situation unfolding in Europe in 2015, the EU published the **European Agenda for Migration** (May 2015), consolidating the objective of cooperation with countries of origin and transit in order to address irregular migratory flows to Europe. The Agenda presented a set of immediate measures and long term objectives. The immediate measures included more funding to FRONTEX search and rescue operations; activation of an emergency relocation mechanism within Europe; the introduction of the 'hotspot' concept whereby EU agencies would work together in EU Member States affected by large scale arrivals to register, identify and fingerprint those arriving; a strengthened role for Europol as an intelligence hub for dismantling smuggling networks and the launching of CSDP operations in the Mediterranean to capture vessels. In the external dimension, immediate measures in the Agenda included more funding for Regional Development and Protection Programmes, funding for a joint resettlement scheme, and the setting up of a multi-purpose centre in Niger, in cooperation with UNHCR and IOM. EASO and FRONTEX's work in the external dimension should also be strengthened. For the medium term, the European Agenda proposed four main pillars: strengthening efforts to address smuggling and trafficking in the EU and in cooperation with third countries, as well as return to third countries; saving lives and securing the external borders; strengthening asylum policy in the EU; and proposing a new policy on legal migration.²⁶

The European Commission also adopted an **Action Plan on Return** of asylum seekers who have not been granted international protection in Europe.²⁷ This proposal is complemented by the Return Handbook,²⁸ which establishes guidelines and recommendations for the implementation of EU rules on return. According to the Action Plan, the Commission will further develop cooperation on return and readmission with third countries of origin and transit, in order to increase the number of migrants to be returned, while discouraging irregular migration.²⁹ Besides, the EU will also fund programmes on voluntary return from transit countries to countries of origin, under the RDPPs for North Africa and for the Horn of Africa, as well as under Mobility Partnerships and CAMM. Similar programmes will be proposed for third country nationals in transit through the Western Balkan countries.³⁰

According to a recent European Parliament study, the EU Action Plan on return does not refer to the need to enhance the implementation of EU readmission agreements in terms of compliance with human rights obligations, or to strengthen post-return monitoring³¹.

Along the same lines, the EU-Africa summit in **Valletta** (November 2015) and Action Plan, aim primarily to strengthen efforts to prevent irregular migration and increase mobility, using readmission as a main tool in country cooperation.³² This would be pursued through bilateral migration dialogues with selected countries and support projects.

25. The Taskforce identified the following five key areas: strengthened EU border surveillance and maritime and rescue capacity in the Frontex coordinated operations taking place in Greece and Italy, and better exchange of information through EUROSUR; increasing financial support for Member States and the possibility of supported processing of asylum applications via EASO; addressing smuggling and trafficking by strengthening Europol, reviewing the EU legal framework and building capacities in third countries; securing EU funding for resettlement; more strengthened RPP and the continuation of cooperation with countries of origin and transit via GAMM tools such as MP, migration dialogues etc. Communication from the Commission to the Council and the European Parliament on the work of the Taskforce Mediterranean, 04.12.2013, COM(2013)/ 869 final, available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131204_communication_on_the_work_of_the_task_force_mediterranean_en.pdf

26. Commission Communication of 13 May 2015 entitled 'A European Agenda on Migration'(COM(2015)0240)6, Commission Communication of 14 October 2015 entitled 'Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration'(COM(2015)0510), Conclusions of the European Council meeting on migration of 25 and 26 June 2015 and of 15 October 2015

27. European Commission, COM(2015) 453 final, EU Action Plan on Return, Brussels, 9 September 2015

28. European Commission, C(2015) 6250 DRAFT, Recommendation establishing a common Return Handbook to be used by Member States' competent authorities when carrying out return-related tasks, Brussels; and Annex, Return Handbook, Draft. Adoption to follow.

29. The EU has already concluded 17 readmission agreements, with: Russia, Ukraine, Moldova, Georgia, Armenia, Azerbaijan, Turkey, the Western Balkan countries, Hong-Kong, Macao, Sri Lanka, Pakistan and Cape-Verde. Readmission is also included in Article 13 of the Cotonou Agreement between the EU and ACP countries. Within this framework, priority countries to boost cooperation on return include: Nigeria, Senegal, Mali, Ethiopia, the Democratic Republic of the Congo, Guinea, Ivory Coast, Ethiopia and the Gambia.

30. Specific funding on voluntary return is included in the AMIF Funds 2014-2020, such as the Readmission Capacity Building Facility (RCBF) of EUR 5 million. Other programmes are covered by EU funds related to development cooperation and neighbourhood policy programmes, such as the Trust Fund for Africa (European Commission, COM(2015) 453 final; EU Action Plan on return, Brussels, 9 September 2015

31. EU cooperation with third countries in the field of asylum, Study for the LIBE Committee, 2015, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536469/IPOL_STU\(2015\)536469_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536469/IPOL_STU(2015)536469_EN.pdf)

32. Political Declaration and Action Plan adopted at the Valletta summit on 11-12 November 2015, available at: <http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>

The Action Plan contains various positive commitments, including: facilitating access to justice, legal assistance, witness protection, health and socio-psychological support for refugees, migrants and asylum seekers; supporting countries in their efforts to accede to and comply with the 1951 Refugee Convention and its 1967 Protocol; enhancing the protection capacities of host countries; and addressing human rights violations that contribute to instability.³³

Nevertheless, ten months after the adoption of the Valletta Action Plan, there is an overall lack of transparency in terms of implementation, especially with regard to the High-Level Dialogues on Migration being held at the bilateral level. In addition, the multiplication of dialogues involving a varying number of countries and bilateral negotiations with African countries further risk undermining important African regional approaches that already exist on migration and mobility, such as the ECOWAS Common Approach on Migration. With the Valletta Action Plan, the EU also launched the EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa (hereafter called the “EU Emergency Trust Fund for Africa”).

Most of its funds are being channelled through governments. There is an increased concern about the conditionality of aid and the fact that actions supported by the EU Emergency Trust Fund for Africa may encourage partner countries to intensify measures to stop migration to Europe. Although civil society is mentioned as an implementing partner of some of the priorities of the Valletta Action Plan, there is an overall concern about the lack of transparency about how civil society can actually be involved and about the difficulty that civil society actors currently encounter in accessing the funds provided by the EU Emergency Trust Fund without working with their respective government.

In the European Agenda on Migration and the Valletta Action Plan, refugee protection in third countries is supported as part of a broader effort to prevent irregular migration.

With an unprecedented number of refugees making the crossing from Turkey to Greece and walking through the Balkans towards Western Europe over the summer of 2015, a High Level Conference on the Eastern Mediterranean-Western Balkan route was convened in October 2015 between EU Member States, Balkan and Middle Eastern states, with the aim to ensure, once again, ‘an orderly management’ of the flows. A set of practical measures were announced to strengthen information exchange and put more controls and border surveillance in place, along with humanitarian assistance to the affected countries along the route. Nevertheless, while it was clear that the main issue at stake was to provide safe and legal channels for refugees to reach Europe, the EU and its Member States did not propose any such measures. Instead, the next weeks saw a series of **border closures** between Member States and Balkan countries and the introduction of a discriminatory policy of allowing only specific nationalities to pass through. The situation culminated in the closure of the Greek-FYROM border in February 2016, effectively putting an end to the Balkan route, with over 50,000 refugees becoming trapped in Greece for the months to come.

The Eastern Mediterranean migratory flow towards Europe in 2015 brought Turkey centre stage as the key country holding the solution to the management of the flows. The EU took one step further, in putting into practice a model of cooperation that explicitly and openly uses incentives to encourage returns and prevent irregular departures. The **EU-Turkey Joint Action Plan**, agreed on 5 October 2015, sets out a series of actions to strengthen cooperation to prevent irregular migration flows and support refugees and their host communities in Turkey through a dedicated Turkey Refugee Facility. In addition to this, during the European Council meeting of 18 March 2016, EU leaders reached an agreement, the so-called **EU-Turkey statement**, according to which irregular migrants crossing from Turkey to Greece after 20 March 2016 would be returned on the basis that Turkey is a ‘safe third country’, and for each Syrian returned, one Syrian refugee would be resettled from Turkey to the EU. As a reward, Turkey would receive visa liberalisation and a reinvigoration of the Accession negotiations.

Shortly after the agreement came into force, the ‘hotspots’ for registration and identification of arrivals and refugees eligible for relocation in the Greek islands were transformed into closed detention facilities.³⁴ A vast number of irregularities in the implementation of the EU-Turkey deal have been reported by media and human rights organisations. Despite these concerns, returns to Turkey have taken place, but evidence provided by numerous organisations shows that refugees returned are being detained and mistreated, and some have also

33. Annual Report on Human Rights and Democracy in the World in 2015 – Thematic part, 20 June 2016, available at: <http://data.consilium.europa.eu/doc/document/ST-10255-2016-INIT/en/pdf>

34. On the functioning of the hotspots, see, The hotspots in Italy and Greece: taking stock and next steps, ECRE, Dutch Council for Refugees, CIR, GCR, October 2016, available at: <http://www.ecre.org/study-of-eu-hotspot-approach-reveals-serious-challenges-in-greece-and-italy/>

been brought to the Turkish Syrian border and returned.³⁵ ECRE remains of the opinion that Turkey does not fulfil the legal criteria laid down in EU law to be considered as a 'safe third country' and that refugees should not be returned there.

The *quid pro quo* principle, initially proposed in the GAMM through the visa facilitation/readmission binary, now becomes concrete and takes a leap forward. What is more, resettlement is now used as an incentive and a leverage for migration control, which runs contrary to the fundamental objectives of resettlement as a protection tool and a durable solution. While large scale resettlement from Turkey (as for other countries neighbouring Syria) should be a central part of the international response to the conflict, this should not be conditional on an exchange which involves people risking their lives to seek protection. Resettlement should be treated as distinct from readmission and other deterrence measures.

In addition, the non-binding nature of the agreement makes it difficult to ensure human rights obligations and monitoring and accountability mechanisms. EU Member States have a legal obligation to provide access to fair asylum procedures at their borders. The "one-for-one" proposal runs counter to the right to asylum as guaranteed under Article 18 of the EU Charter on Fundamental Rights. The EU is outsourcing its responsibilities to protect refugees to Turkey, circumventing its obligations under international and European asylum and human rights law.

The political ramifications of the EU Turkey deal have quickly become apparent. The model of strengthened cooperation with selected countries with the use of additional incentives has quickly been taken up as the new *modus operandi*.³⁶ The Migration **Partnership Framework**, adopted by the Council in June 2016, is an all-encompassing framework to leverage all existing EU and Member States' instruments and tools available in external cooperation in order to stem migration flows to Europe and increase returns; development funds, trade and investment and other related external action tools in energy, mobility and security will be used to prepare tailored packages of cooperation with selected partner countries.³⁷

The Partnership Framework approach sends an entirely wrong signal, countering international solidarity and responsibility sharing measures. The EU is externalising its own commitments with financial incentives to reward those partner countries that shall fulfil this role. ECRE is concerned with the way development cooperation is becoming instrumentalized in migration control.

The Partnership Framework will be operationalized through **Migration Compacts** with selected countries.³⁸ Little information is available about the content of these Compacts at the time of writing; the content of each will be tailor made to specific countries. According to the Partnership Framework Communication, the short term objectives of the Compacts will be to save lives at sea, increase the rate of returns and 'enable migrants and refugees to stay close to home and to avoid taking dangerous journeys.'³⁹ They will also include actions in the institutional and legislative framework for migration and asylum, return and readmission, and the development of labour migration channels and resettlement. While these sound rather comprehensive, the main concern lies in the fact that offers will be made conditional on collaboration in return and readmission.

The EU is taking a major step forward in making **return and readmission** a top priority, even using temporary arrangements for return without full-fledged readmission agreements. The risk of using temporary agreements is the potential lack of any human rights safeguards and the possibility of monitoring and oversight. Moreover,

35. Amnesty International, No safe refuge: asylum seekers and refugees denied effective protection in Turkey, 3 June 2016, available at: <https://www.amnesty.org/en/documents/eur44/3825/2016/en/> and Amnesty International, Illegal mass returns of Syrian refugees expose fatal flaws in EU Turkey deal, 1 April 2016, available at: <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>

36. See letter sent to Presidents Donald Tusk and Jean-Claude Juncker on 15 April 2016 by Italian Prime Minister Matteo Renzi with a Non Paper titled 'Migration Compact' that presented a strategy for strengthened cooperation with countries of origin and transit, by making use of additional incentives and measures for EU leverage and introducing new sources of funding, such as EU-Africa bonds and Common EU Migration Bonds. The proposal, which was welcomed by both the President of the European Council and the President of the European Commission, uses the EU-Turkey deal as a model to create similar deals with African countries of origin and transit for refugees. See also Council Conclusions on the external dimension of migration of 23 May 2016 that confirmed the intention to continue with tailor-made country packages and the possibility to use stronger incentives and leverage.

37. Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank, on establishing a new Partnership Framework with third countries under the European Agenda on Migration, 07.06.2016, COM(2016) 385 final, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf European Council Conclusions 28 June 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/06/28-euco-conclusions/> and joint statement signed by over 100 NGOs asking EU leaders to reject the proposal and refrain from using aid conditionality for migration controls, available at: http://www.ecre.org/wp-content/uploads/2016/06/Final_Joint_statement_110_signatories.pdf

38. Migration Compacts currently prepared and negotiated with the following countries: Lebanon, Jordan, Ethiopia, Mali, Nigeria and Senegal http://europa.eu/rapid/press-release_MEMO-16-2118_en.htm

39. Communication COM(2016) 385 final, p.6

no consideration is given to ensure that human rights standards are in place and that people will not be returned to countries where their rights are not safeguarded. The protection situation and living conditions for migrants and refugees raises human rights concerns in some of the EU's partner countries. Europe's increasing emphasis on migration control will place great pressure on partner countries to resort to all sorts of measures to prevent migration flows, including detention, ill-treatment and possible *refoulement* to countries of origin, or countries where the rights of migrants and refugees would be at risk. The result of growing externalisation and the simultaneous lack of safe and legal access to Europe is that the protection of migrants and refugees is left to the partner countries to provide.

A prime example of the EU's prioritisation of return and readmission, at any cost, is the EU agreement signed with **Afghanistan** in October 2016. Based on this Agreement, Member States can send an unlimited number of rejected asylum seekers, including women and children, back to Afghanistan, both voluntarily and involuntarily.⁴⁰ While officially proclaimed as not connected to development, the Agreement was signed in the margins of the Brussels Donor Conference on Afghanistan and according to an earlier Non-paper, meant to make development aid conditional on returns.⁴¹ Inspired by the EU Turkey deal, this Agreement intends to send refugees back to conflict situations, given substantial evidence that the security situation is deteriorating.⁴²

The impact of this trend should not be underestimated. By acting unilaterally, and driven by the sole objective of deterrence of migration flows, **Europe is losing its credibility** as a partner, as the world's largest donor and as a major international actor with normative power. It is hard to see how Europe can ask partner countries to keep their doors open, to host large scale refugee populations and prevent further movements, while at the same time it is not assuming its own international protection responsibilities. In addition, Europe's policies have an **export value** that is significant, and there is a risk that this model of cooperation will be replicated further.

40. Joint Way Forward on Migration Issues between Afghanistan and the EU, available at: <http://www.statewatch.org/news/2016/oct/eu-afghanistan-refugee-deal-prel.pdf>

41. Brussels Donor Conference available at: <http://www.consilium.europa.eu/en/meetings/international-summit/2016/10/05/>, Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Afghanistan, Brussels 3 March 2016, <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf> see also <https://www.theguardian.com/global-development/2016/oct/03/eu-european-union-signs-deal-deport-unlimited-numbers-afghan-asylum-seekers-afghanistan>

42. European Union: European Asylum Support Office (EASO), EASO Country of Origin Information Report. Afghanistan: Recruitment by armed groups, September 2016, available at: <http://www.refworld.org/docid/57e145c44.html>

Recommendations:

Policies and programmes in the external dimension of migration and asylum should be in line with the six objectives of the EU Agenda for Refugee Protection outlined above, supporting protection and the rights of refugees in partner countries and those accessing Europe. In particular:

The EU should have a balanced and rights-based approach to cooperation with partner countries to address the causes and drivers of displacement and promote solutions.

The EU should develop channels for migrants and refugees to come to Europe safely and legally. For refugees, Europe should strengthen resettlement and humanitarian admission programmes and make more use of humanitarian visas and family reunification possibilities.

More worker mobility schemes should be set up for migrant workers, and student visas could be used for both refugees and migrants.

The EU should refrain from using development funds for migration control, and in making these conditional on readmission and return as a basis for cooperation.

Concrete commitment to refugee protection and responsibility sharing should be included in High Level Dialogues and Mobility Partnerships.

The RPP/RDPP should be significantly strengthened, embedded in and coherent with cooperation programmes with partner countries; they should ensure political commitment and local ownership.

The effects on the human rights of migrants and asylum seekers of the implementation of the GAMM instruments, and the policies foreseen under the European Agenda on Migration should be assessed and monitored.

Migration Compacts should ensure that the fundamental rights of migrants and refugees on the move and in transit are protected, that refugees have access to asylum and a secure status and that programmes support self reliance and integration. Migration Compacts should be premised on the principles of solidarity and responsibility sharing.

Migration Compacts should include human rights safeguards; they should be regularly monitored and assessed in a transparent manner, with participation of civil society.

The European Parliament should be more involved in monitoring implementation of Mobility Partnerships, RDPP and Migration Compacts.

The implementation of readmission agreements, and return outside readmission agreements should be monitored through dedicated structures (Joint Readmission Committees or committees monitoring the Mobility Partnership implementation, Partnership Framework and Migration Compacts etc).

Third-country nationals should not be sent to countries where their rights and safety may not be guaranteed, where they could face persecution, inhuman or degrading treatment, in violation of the principle of non-refoulement and Article 3 ECHR.

The EU and Member States should consider the human rights situation and the availability of a well-functioning asylum system in the third country before entering into negotiations and implementing readmission agreements. Benchmarks should be in place based on international human rights and refugee law, and they should be regularly monitored. The Checklist provided in the Annex could serve as a basis for that.

3.2. EU DEVELOPMENT COOPERATION AND HUMANITARIAN AID

As the world's largest humanitarian and development donor, the EU already dedicates a significant amount of funds to countries and regions hosting displaced people, in both emergency situations and protracted settings. The EU has traditionally recognised protracted displacement as a humanitarian challenge to be addressed through its humanitarian policy. The largest part of European Commission funds dedicated to refugees and IDPs have been managed by ECHO, while development cooperation instruments (geographic and thematic) also include actions that support and assist refugees and IDPs. Addressing displacement was, until very recently, not a key issue in development cooperation.

Recently, efforts were made to develop new approaches to address the humanitarian-development divide when dealing with refugees and IDPs, linking different external policy tools.⁴³ This is reflected in the Comprehensive Approach to External Conflict and Crises, which suggests developing a shared analysis and a common strategic vision among different EU actors to enhance coherence across external instruments.⁴⁴ Similarly, the EU Action Plan for Resilience in Crisis Prone Countries (2013-2020) reiterates the need to bring together humanitarian actions, development cooperation and political engagements. It further suggests including protracted displacement in national resilience programmes that would address the impact of protracted displacement on host populations and acknowledge the long-term development needs of refugees and IDPs, while improving their daily lives during displacement.⁴⁵

The Communication, 'Maximising the Development Impact of Migration' (2013) highlights the need to address displacement in the framework of development.⁴⁶ Steps were taken to enhance coordination, with DEVCO and ECHO developing a joint Issues Paper on Protracted Refugee Situations, with the goal of seeking engagement of development actors, including donors and governments.⁴⁷ The Council adopted Conclusions on Migration in EU Development Cooperation in December 2014 and Member States asked the EU to propose a coherent development approach to refugees and IDPs.⁴⁸ This was also highlighted in the European Agenda on Migration.

The Communication on Displacement and Development, of April 2016, aims to address the humanitarian-development nexus when dealing with refugees and IDPs, and to link more coherently the different tools of its external policies.⁴⁹ This approach recognises the potential of refugees and IDPs to actively contribute to, and participate in, the economy and society of host countries and communities. It also aims to support refugee hosting countries to develop national legal systems and policies in line with international human rights standards. The Council Conclusions of May 2016 adopted the concept, opening the way for a new policy framework to respond to global forced displacement.

These are important steps, with the potential to change the way that Europe responds to global displacement. The key elements of the Communication can form the basis of a new EU framework for refugee protection, as described earlier. However, a more concrete strategy needs to be developed and operationalized, also in relation to funding instruments. Moreover, the increasing emphasis on containment in parallel policies, mentioned earlier, and the outsourcing of responsibility to partner countries runs against the stated objectives in this approach.

In parallel, and after a year long review of the EU Neighbourhood Policy, launched after the outbreak of war in Syria, the conflict in Ukraine and the Arab Spring, the new proposal was presented in November 2015 and

43. Finding solutions to protracted displacement; the EU's role and ways forward, ECRE/ DOMAID project Discussion Paper, October 2014, available at: http://ec.europa.eu/echo/sites/echo-site/files/domaid_discussion_paper-protracted_displacement_7.pdf and EU policies supporting development and lasting solutions for displaced populations, Expert Roundtable – Report, Brussels, 13 October 2014, ECRE/DOMAID project, available at: http://ec.europa.eu/echo/sites/echo-site/files/ecre_roundtable_oct2014.pdf

44. Joint Communication to the European Parliament and the Council, The EU's comprehensive approach to external conflict and crises, Brussels, 11.12.2013 JOIN(2013) 30 final, available at: http://www.eeas.europa.eu/statements/docs/2013/131211_03_en.pdf

45. Commission Staff Working Document, Action Plan for Resilience in Crisis Prone Countries 2013-2020, Brussels, 19.6.2013 SWD(2013) 227 final, available at: http://ec.europa.eu/echo/files/policies/resilience/com_2013_227_ap_crisis_prone_countries_en.pdf

46. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Maximising the Development Impact of Migration The EU contribution for the UN High-level Dialogue and next steps towards broadening the development-migration nexus, Brussels, 21.5.2013 COM(2013) 292 final, available at: https://ec.europa.eu/europeaid/sites/devco/files/communication-maximising-the-development-impact-of-migration_en_11.pdf

47. Issues Paper, Development, refugees and IDPs, available at: http://ec.europa.eu/echo/files/policies/refugees-idp/dev_refugees_idps_issues_paper_en.pdf

48. Council conclusions on migration in EU development cooperation, Foreign Affairs (Development) Council meeting Brussels, 12 December 2014, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/146182.pdf

49. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Lives in Dignity: from Aid-dependence to Self-reliance, Forced Displacement and Development {SWD(2016) 142 final}, Brussels, 26.4.2016 COM(2016) 234 final, available at: http://ec.europa.eu/echo/files/policies/refugees-idp/Communication_Forced_Displacement_Development_2016.pdf

adopted by the Council in December 2015.⁵⁰ The new ENP's main objective is the stabilisation of the EU neighbouring region, rather than its transformation. It is acknowledged that EU leverage is limited. Stabilisation and security issues (namely, controlling radicalisation) emerge as key priorities, along with the need to control the refugee flows.

The new ENP follows the priorities of the European Agenda on Migration, European Council Conclusions of 25-26 June and 15-16 October 2015, the High-Level Conference on the Eastern Mediterranean/Western Balkans Route of 8 October 2015 and the Valletta Summit on Migration of 11-12 November 2015. Considering this was published in the midst of the refugee crisis, the emphasis is on how to address short term humanitarian needs and long term development and security challenges. Similar to the GAMM, the new ENP favours differentiation, proposing tailor made approaches that may not always put human rights and the protection of migrants and refugees among the top priorities, depending on the partner country. Migration Compacts with ENP countries are also linked to the revised ENP policy.

Refugees and IDPs should become a recognised priority within EU strategic frameworks in external action: ECHO should systematically incorporate concrete actions for solutions based on refugees and IDPs' self-reliance and resilience into its Humanitarian Implementation Plans (HIP). DEVCO and NEAR should encourage more mainstreaming of refugee and migration issues in national and regional development strategies, such as Poverty Reduction Strategy Papers (PRSPs), in ways that benefit both displaced and host communities. Displacement needs to be mainstreamed in all development sectors while, at the same time, socio-economic factors should also be introduced to humanitarian assistance. Good organisation is of the essence in order to prevent the longer term development aims slowing down the response to the immediate, humanitarian need on the ground. The field of disaster resilience is a useful potential platform for cooperation between the two sectors of development and humanitarian assistance.

Different funding streams and cycles in humanitarian assistance and development cooperation are often not easily combined. At the same time, there is much convergence between instruments, and it is often a case of terminology or procedures, rather than objectives, which prevents them from bridging the gap. Overcoming the barrier of terms and definitions might be helpful; simplification of the funding instruments would be also useful.

In a way, the Syria displacement and refugee crisis in the Mediterranean has brought to the fore all the challenges of the existing compartmentalised approach. The need for a comprehensive approach has quickly emerged. One of the most pressing challenges has been the need to pull resources and capacities together to address challenges in the same region. New methods of financing have emerged with the use of Trust Funds (EU Africa Trust Fund, Madad Trust Fund for the Syria displacement) that complement traditional models of financing. Such funds could become useful mechanisms to address displacement, providing that Member States contribute their part and that the funding matches the scale of needs they are meant to address. At the same time, merging development funding with non-development objectives, as is migration deterrence, is incoherent and runs the risk of undermining Europe's credibility as a partner in external action.

50. Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Review of the European Neighbourhood Policy (SWD(2015) 500 final) Brussels, 18.11.2015 JOIN(2015) 50 final, available at: https://eeas.europa.eu/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf

Recommendations:

Policies and programmes in development and humanitarian aid should be in line with the five objectives of the EU Agenda for Refugee Protection, outlined above, supporting protection and the rights of refugees in partner countries and those accessing Europe. In particular:

Displacement has to be addressed from the very moment an emergency appears, with a view to establishing long term development approaches. Long term strategic planning has to be incorporated into all responses and activities building around post conflict and displacement.

The EU should systematically include protracted displacement into political and development strategies, and, as a priority category, in resettlement.

The EU should support programmes that promote action and conditions/conducive factors which serve as drivers for solutions. Among those, livelihood opportunities, income generating activities, cash-based schemes, educational and vocational training opportunities and other activities enhancing self-reliance are particularly important and should equally engage host communities and governments.

EU programming and funding should take into account the specific needs of refugees and IDPs in urban contexts and areas outside camps, work with national service providers and support host communities.

Furthermore, tools and mechanisms allowing joint work, such as EU Trust Funds, should be considered from the onset of an emergency to tackle issues of displacement from an early stage.

Assistance programmes in regions of origin must have a regional perspective as displacement often has regional implications.

The EEAS and the Council of the EU should place protracted displacement systematically on the agenda of their political, economic and social dialogues with third countries and regional organizations. EU delegations have an important role to play in influencing national authorities to consider providing more developmental support to refugee impacted areas.

While promoting developmental solutions to displacement, it is important to ensure that fundamental rights are safeguarded throughout the process.

Gender perspectives need to be mainstreamed from the outset and special regard should be paid to groups having multiple vulnerabilities, including children.

Engaging with host governments on the issues of registration, legal status/residency and work permits is crucial. Capacity building in the area of good governance, justice and democratisation needs to support institutions and frameworks to safeguard human rights and support the country to meet its international obligations, ensuring the protection of the rights of refugees and IDPs.

3.3. MIGRATION AND REFUGEE PROTECTION IN THE EU FRAMEWORK FOR HUMAN RIGHTS IN EXTERNAL ACTION

The relationship between these policies described earlier and the EU human rights framework in external action seems to be loose, both in programming and in implementation. In theory, policies and programmes relating to migrants and refugees should start by safeguarding their rights, wherever they are. Yet, it is striking how little reference is usually made to the EU's framework for human rights and how these policy areas remain disconnected.

Before discussing the human rights framework and its tools, it is worth recalling the relevance of the framework for external policies, and the legal obligations the EU has to protect human rights in external action.

According to the Lisbon Treaty, Article 21, the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and

fundamental freedoms, respect for human dignity, the principles of equality and solidarity and respect for the principles of the United Nations Charter and international law. This should remain a central principle in any EU policy area in external action including actions in development cooperation, humanitarian aid, neighbourhood policy etc relating to migrants and refugees.

According to Article 2 of the Treaty on European Union, the EU's founding values are 'human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.' When it comes to relations with the wider world, according to Article 3, the EU contributes to the 'eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter'.

The Lisbon commitments are all the more relevant considering the current trend towards using development aid as an instrument of deterrence, including with those countries with poor human rights record.

The **EU Action Plan on Democracy and Human Rights 2015-2019**, paragraph 24, puts forward the following commitments in the area of migration: Enhance human rights safeguards in all migration and mobility dialogues and cooperation frameworks with third countries, including Mobility Partnerships and CAMMs and any migration related agreements and programmes, including through the analysis of human rights impacts; ensure the introduction of human rights training elements in capacity building projects with immigration and border agencies. These are to be implemented by the EEAS, Commission and Member States.⁵¹ In practice this is reflected in relevant language about respect for human rights inserted in agreements and dialogues, such as the Valetta Action Plan. It is not, however, consistently applied or sufficiently translated into safeguards and the human rights impact of instruments is not assessed.

The Action Plan proposes to fully integrate human rights and protection for victims of trafficking in political, migration and other dialogues; follow up through delegations, promote ratification of international conventions; address the human rights dimension of human smuggling in these dialogues; support and protect refugees and IDPs through capacity and ratification of international conventions; support access to justice and health for migrants in countries of origin and transit; promote alternatives to detention and better detention conditions, especially unaccompanied minors; work with diasporas to raise awareness in their countries of human rights abuses in transit countries and address human rights issues in their countries of origin; target political and other dialogues to address human rights violations in countries where these act as a push factor; address statelessness.

While some of these may have been already streamlined with programmes more than others, it is uncertain whether they have been institutionally promoted to become standard elements in political and other dialogues with partner countries.

Moreover, the Action Plan concerns both the EU and the Member States, and the latter should also take on greater ownership and use it as basis for promoting human rights in their bilateral relations and programmes.

The following are also of relevance to the protection of the rights of migrants and refugees. Paragraph 27 suggests promoting a **rights-based approach to development** cooperation 'with a view to achieving a full integration within the assessment of the implementation of rights based approach to development cooperation in 2016'. A Staff Working Document on a rights-based approach (RBA) was published in 2014, encompassing all human rights for EU development cooperation.⁵² The Commission should monitor the implementation of the RBA and its dedicated toolbox of concrete guidance.⁵³ The RBA toolbox is meant to include not only the basic human rights but a broader set of rights. **The protection of the rights of refugees and non-refoulement could also be added to this list**, along with the right to specialised medical and psychological care for vulnerable migrants and refugees. Apparently, the RBA toolbox has been used for some development

51. Council of the European Union, EU Action Plan on Human Rights and Democracy 2015-2019, available at: https://eeas.europa.eu/human_rights/docs/eu_action_plan_on_human_rights_and_democracy_en.pdf

52. Commission Staff Working Document Toolbox – A rights-based approach, encompassing all human rights for EU Development Cooperation, Brussels, 5 May 2014, available at:

<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209489%202014%20INIT>

53. Annual Report on Human Rights and Democracy in the World 2014 and the EU policy on the matter, 17 December 2015, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0470>

programmes,⁵⁴ but clear plans for its implementation would still need to be developed.⁵⁵ The RBA model can be a potentially useful tool in programming, monitoring and evaluation.

Human rights dialogues (paragraph 29) are a tool where migration and refugee protection could be further strengthened. The Action Plan suggests that human rights are factored in, including in sector dialogues, and that priorities, objectives, modalities, and progress indicators are established in human rights dialogues, and that these are assessed. Such priorities and indicators could be specifically developed for the protection of the rights of migrants and refugees, to be included in human rights dialogues, sub-committees on migration, social affairs or justice and home affairs. Dialogues should be results-driven and their impact should be monitored. As they are periodical, a track should be kept of the issues raised during the previous dialogue to measure the progress against the reporting from the third country on the measures taken to tackle the relevant problems.

At the same time, a balanced approach is necessary to ensure that migration does not dominate the external agendas on human rights. Raising human rights concerns about migration should happen not only in the human rights dialogues but also in other engagements (political dialogues, visits, summits) with the partner country, including at the highest level.

Human rights country strategies (HRCS) (paragraph 30) are multi-annual documents drafted by the EU delegations, setting priorities for the next four years. HRCS are also supposed to be reflected in the programming of the EIDHR funding instrument, which supports a substantial number of projects assisting migrants and refugees. HRCS priorities should be integrated in political and other dialogues. HRCS should include specific priorities for the protection of the rights of migrants and refugees in the countries with a special focus on vulnerable migrant groups, victims of violence and torture, health related issues including mental health. As the HRCS joint annual implementation reports are reviewed by the Council (COHOM Working Group), this could create a more concrete monitoring mechanism to measure the implementation of priorities. HRCS should be developed in consultation with civil society, refugee assisting and human rights organisations. In addition, Member States' bilateral cooperation programmes should also facilitate the implementation of HRCS. In its resolution of 17 December 2015, the European Parliament has pointed out the need to continuously assess the HRCSs and adjust them if necessary, and further improve cooperation, communication and exchange of information between EU Delegations, Member States' embassies and EU institutions in drawing up and implementing the HRCS. HRCS should be taken into account at all levels of policy making vis-à-vis individual third countries, including during the preparation of high-level political dialogues, human rights dialogues, country strategy papers and annual action programmes.⁵⁶

Human rights guidelines (paragraph 31) are another tool that could be used to strengthen the implementation of the action plan commitments. The EU adopted 11 guidelines in 2015, setting priority areas of action, including one on human rights dialogues with third countries.⁵⁷ Thus far, the topic of migrants and refugees has not been a priority. Specific guidelines on refugee protection and the protection of the rights of migrants could be developed with quantifiable benchmarks that could better support monitoring.

Guidelines are useful in placing the EU policy on paper for the EU Delegations and embassies, and for reporting on implementation. They also raise awareness of EU actions with the EU and partner countries; they can promote synergies and inter-institutional cooperation and can support the preparation of national strategies. Promoting the ratification and implementation of relevant instruments could be included in such guidelines. In accordance with its mandate, COHOM can keep under review the implementation and follow-up to the Guidelines in close co-ordination and co-operation with other relevant Council Working Parties.

The **mid-term review of the Action Plan** in 2017 will coincide with the mid-term review of the financial instruments, and this could present an opportunity to insist on the insertion of stronger refugee protection and migrants' rights indicators in programming. The annual report of implementation of the Action Plan in 2015 was published in June 2016. With regards to the implementation of the GAMM, the report mentions projects

54. Council Conclusions on a Rights Based Approach to Development Cooperation, encompassing all human rights, 19 May 2014, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/142682.pdf

55. From Vision to Action: Operationalizing the EU Rights-Based Approach Toolbox Encompassing all human rights in EU Development Cooperation CONCORD position paper, June 2014, http://concordeurope.org/wp-content/uploads/2016/07/CONCORD_position_paper_From_vision_to_action_Operationalizing_the_EU_Rights_Based_Approach_toolbox_encompassing_all_human_rights_in_EU_development.pdf?c48b8d

56. European Parliament resolution of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter (2015/2229(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0470>

57. For a full list of the existing 11 EU Human Rights Guidelines see http://eeas.europa.eu/human_rights/docs/index_en.htm See also Guidelines on Human Rights Dialogues with third countries: http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf

and programmes funded under the EU Trust Fund for Africa, the Madad Trust Fund and the Turkey Refugee Facility, stating that the 'rights of refugees and migrants are a key element'.⁵⁸

In addition to these tailor made human rights tools, all partnership frameworks, mobility partnerships, international agreements and cooperation strategies with third countries should include human rights safeguards and relevant clauses. Such clauses should make explicit reference to refugee protection but also the rights of migrants in general, including non-refoulement, the prohibition of arbitrary detention and ill treatment and support to vulnerable groups. The Annual Report 2014 calls on the EU to ensure that all migration cooperation and readmission agreements with non-EU states comply with international law, and recalls that global cooperation on migration is closely linked with development and humanitarian policies, including setting up safe and legal channels⁵⁹

In this regard, the Parliament has suggested that the EU and Member States should also be more selective in their support for third-countries' law enforcement agencies, taking into account the record of those agencies in breaching the human rights of migrants.⁶⁰

Finally, according to the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD), more pressure could be exerted in partner country negotiations in a positive or negative manner, in order to encourage compliance with human rights principles and standards.⁶¹ Even if migrants and refugees are not explicitly mentioned, this could also safeguard the protection of the fundamental rights of migrants and refugees in the countries concerned.

58. EU Annual Report on Human Rights and Democracy in the World in 2015 – Thematic Part, 20 June 2016, 10255/16, p.18, available at: <http://data.consilium.europa.eu/doc/document/ST-10255-2016-INIT/en/pdf>

59. Annual Report on Human Rights and Democracy in the World 2014 and the EU policy on the matter, 17 December 2015, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0470>

60. Report on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)), 23 March 2016, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0066+0+DOC+XML+V0//EN>

61. World Bank/OECD Compendium Integrating Human Rights into Development. Donor approaches, experiences, and challenges, Second Edition, May 2013, available at: <http://www19.iadb.org/intal/intalcdi/PE/2013/11639.pdf>

Recommendations:

The tools of the human rights framework in external action should be put into practical use in policies and programmes in the area of migration and asylum; these tools can help develop a rights-based approach and meet the six objectives of the EU Agenda for refugee protection.

EU external action should be driven by the commitments made in the Lisbon Treaty.

Migration-related cooperation should be in line with the EU Action Plan on Human Rights and Democracy, which reaffirms the European Union's commitment to promote and protect human rights and support democracy worldwide.

The EU should make human rights a stated objective in the EU Global Strategy and seize the opportunity to drive an ambitious human rights foreign policy. An ambitious foreign policy should defend the universality of human rights and acknowledge international human rights law and norms and human dignity.

The protection of the rights of refugees and migrants can be added to the Rights Based Approach to the development policy toolbox.

Priorities and indicators could be specifically developed for the protection of the rights of migrants and refugees, and included in human rights dialogues, sub-committees on migration, social affairs or justice and home affairs.

Human Rights Country Strategies should include specific priorities for the protection of the rights of migrants and refugees in the countries.

Specific guidelines on refugee protection could be developed with quantifiable benchmarks that could better support monitoring.

In addition to these tailor made human rights tools, all partnership frameworks, mobility partnerships, international agreements and cooperation strategies with third countries should include human rights safeguards and relevant clauses. Such clauses should make explicit reference to refugee protection but also to the rights of migrants in general, including non-refoulement, the prohibition of arbitrary detention and ill-treatment.

Institutions should ensure that human rights concerns on migration management are raised at all levels, not only in human rights dialogues or migration dialogues.

CONCLUSION

Over the last years, policies and programmes under the external dimension of Migration and Home Affairs have taken a direction that risks contradicting the objectives of development cooperation and humanitarian aid relating to migrants and refugees. The lack of clear human rights objectives, or accurate assessment of the implementation of migration policies, has resulted in little consistency in relation to maintaining the coherence of these various policies.

The Partnership Framework mentioned earlier, purports to be Europe's comprehensive response to the lack of coordination and coherence in migration policies. There are concerns however, that this will be done by instrumentalizing development aid as a leverage for migration control, which runs against development aid's main objective, according to the Lisbon Treaty, to eradicate poverty. ECRE remains mindful that the Lisbon Treaty identifies coherence, consistency, complementarity and coordination as key elements to achieve the objectives of development cooperation. Article 208 states that "*the Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries*".

There are numerous examples where different programmes relating to migrants and refugees are directed to the same countries or regions, from Mobility Partnerships and visa liberalisation dialogues to RDPP, and projects funded under geographic instruments or Trust Funds without sharing similar objectives. Rationalisation, better use of available resources and coordinated programming is essential. A court of Auditors Report (2014), on EU external migration spending, found that coordination between EU actors and funding instruments, and coherence in terms of objectives and indicators would need to be substantially enhanced.⁶²

Moreover, partner countries need to be more involved in the design and negotiation of policies and programmes affecting refugees, to reflect local needs, increase ownership and consistency with political commitments.

Coherence needs to be ensured with commitments in the area of human rights in external action and the instruments and tools available. Human rights tools can ensure greater integration of refugee protection and the rights of migrants as cross-cutting issues in political dialogues and aid programming, and to facilitate monitoring through targeted indicators.

ECRE argues that policy coherence will be better supported through a dedicated EU Agenda for refugee protection, that will bring all these areas together under common objectives. The Agenda can also provide guidance for programming to geographic units and EU Delegations and ensure appropriate follow-up of policy initiatives through concrete mechanisms and collaboration tools.

The High Representative/Vice President has an important role to play in ensuring coherence in refugee protection and assistance. Within the Council, coordination needs to be ensured between JHA and Foreign Affairs working groups and the different working parties relating to external action, development and human rights, to ensure political commitment from the Member States and to maximize synergies.⁶³ Furthermore, objectives in the area of refugee protection need to be reflected in the implementation of the Global Strategy.

Europe can play an important role in the global protection regime by receiving an ambitious share of the world's refugees in its territory.

Moreover, Europe can play an important role at the global level by being a leader and setting the standards through humane and fair policies, in line with international human rights law. Europe can be a driver in global migration governance and multilateral efforts to address global displacement by putting forward development-oriented approaches that support solutions for refugees, wherever they are, but at the same time, striving to ensure that their rights are protected

Large scale movements will continue and possibly increase around the world, and Europe is likely to witness many more thousands of people trying to reach its territory in search for safety. Refugee challenges are transnational, and hence, the responsibility sharing principle is fundamental.

62. European Court of Auditors, EU external migration spending in Southern Mediterranean and Eastern Neighbourhood countries until 2014. Available at: http://www.eca.europa.eu/Lists/ECADocuments/SR16_09/SR_MIGRATION_EN.pdf

63. Working parties such CODEV, COHAFA, parties/groups responsible for geographical areas (e.g. on Africa - COAFR, on Asia-Oceania - COASI, on Mashreq/Maghreb - MAMA, on Middle East/Gulf - COMEM/MOG); also the Council Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (within the EU) and the Working Party on Human Rights (in external action).

Respecting its history and its values, the European Union needs to present a dignified approach to human mobility and displacement that supports the rights and the needs of people in the world, and that is implemented in true partnership with countries of origin and transit.

ANNEX I: REFUGEE PROTECTION CHECKLIST

ECRE believes that protection and human rights standards should be integrated into all EU policies and programmes for improving refugee protection in countries of origin and transit.

The following elements can be used to serve as a benchmark for the availability of international protection in line with international refugee and human rights law. They could be used as a checklist for programming and the design of EU policies relating to refugee protection in partner countries and for identifying any failures to respect refugee rights. These principles also seek to encourage European states and/or institutions to build the capacities of countries with less developed or more burdened refugee protection systems.

- States must, without reservations, accede to and comply with the standards set out in the 1951 Refugee Convention and the 1967 Protocol, and other relevant international and regional human rights instruments. While accession to such instruments alone does not prove that a country is providing protection for refugees on its territory, it can be an important indicator of a state's political will to do this and can help UN bodies exercise their supervisory functions.
- The guarantee of non-refoulement is the first essential step towards ensuring protection is available.
- In accessing protection, refugees must enjoy the rights flowing from the relevant international and regional refugee and human rights instruments.
- An individual must be granted, without delay, the human rights to which he/she is entitled under international refugee and human rights law.
- A State must have adequate legislation in place in the area of protection of refugees, at least in conformity with the Refugee Convention, and this legislation should be adequately implemented.
- Refugees must enjoy all their civil and political rights and not only rights such as freedom from torture, cruel, inhuman or degrading treatment or punishment, or the right to life.
- Economic, social and cultural rights are essential to the enjoyment of protection and other human rights.
- The right to protection (including access to a legal status and necessary documentation) should last for as long as international protection is required and until a durable solution ensues, to which new protection rights would be attached.
- Particular attention should be given to the needs and rights of vulnerable groups, including women, children, the disabled and older persons, in accordance with international human rights instruments and best practice.
- Migration-related detention, both in law and in practice, should only be used as a last resort and in accordance with international law. Sufficient legal remedies should be available and accessible and a fair procedure guaranteed to challenge detention and prevent collective expulsions.
- Humanitarian and other civil society organizations should have access to reception/detention facilities. Conditions and treatment in these facilities should be in line with human rights law, and monitored independently.
- Refugees should have access to a durable solution. States should play a leading role in the development of comprehensive strategies for durable solutions and European states should increase the availability of resettlement in Europe.
- If an individual undergoes an asylum procedure and/or status determination procedure, this should be taken in the form of an individual assessment, including all necessary safeguards, such as free legal advice, access to UNHCR/NGOs, a qualified and impartial interpreter, a personal interview and a

suspensive right of appeal.

- Prima facie and group recognition are useful to speed up access to protection. However, states should ensure that the full range of human rights to which refugees are entitled and timely access to durable solutions flow from these processes. Any additional procedures for accessing durable solutions should not be lengthy. Temporary protection programmes should be fully respectful of refugees' rights and be able to lead to durable protection. Any temporary protection regimes must provide access to refugee status determination at any time.
- Adequate measures should be taken by States to fight discrimination and xenophobic violence.



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