

Call for inputs to the report to the Human Rights Council (50th): Report on human rights violations at international borders: trends, prevention and accountability.

Inputs presented by New Humanity¹. -

New Humanity would like to express its support for the work of the Special Rapporteur on the human rights of migrants and states that we consider it necessary to implement burden-sharing mechanisms for the reception of migrants and refugees, in application of the principle of international solidarity. This must be a guiding principle in the global governance of international migration.

In addition, we would like to present these inputs in relation to the following issues:

1) Please provide information on any recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021. Grateful if you could kindly submit the original text of the relevant provisions of the legislation or policy(ies), accompanied by an English translation if it is in a language other than English, French or Spanish.

The developments of some aspects of the European Union New Pact on Migration and Asylum might imply more subtle measures that actually conceal the impossibility of requesting international protection.

The proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Strasbourg, 14.12.2021, COM (2021) 891 final, 2021/0428(COD)), points out responses planned in relation to the instrumentation in relation to the instrumentality of migrants at the external borders. In this situation, Member States may limit the number border crossing points or their opening hours where the circumstances so require. It also states that this shall be implemented in a manner that is proportionate and that takes full account of the rights of third-country nationals seeking international protection. Some mechanisms to safeguard this proportionality are considered highly desirable.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending

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Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 rules Screening at the external border (Article 3) and Security Check (Article 11)
As Frontex has important functions in EU external borders management and control more effective mechanisms of control or accuracy should be implemented.

2) Please provide information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country.

In the judgement of the European Court of Human Rights of 13 February 2020, in the case of *N.D. and N.T. v. Spain*, the Court deals, for the first time, with the applicability of Article 4 of Protocol No 4 to the 'immediate and forcible return' of aliens who attempt to enter illegally and massively across a land frontier. According to the Court's own settled case-law, there is no violation of Article 4 of Protocol No 4 if the absence of an individual expulsion decision can be attributed to the conduct of the person concerned. In situations such as the case, the Grand Chamber considered it necessary to take into account (i) whether the Spanish State provided "genuine and effective access" to legal entry procedures; (ii) if so, whether there were compelling reasons for not using them; (iii) and whether those reasons were based on objective facts for which the Respondent State was responsible about (paras. 200-201).

The European Convention requires States Parties controlling the external borders of the Schengen Area to have "genuine and effective access to legal entry procedures" guaranteeing the right to lodge an application for international protection. This obligation does not prevent States from requiring applications to be lodged at existing border crossing points by refusing entry to their territory to those who do not use them, without giving "compelling reasons" (paras 209-210). The applicants' arguments on the physical impossibility of applying for asylum at the Beni Enzar border crossing point failed to convince the Grand Chamber, which ultimately found that Spain complied with this requirement. Nor did it consider conclusive the reports submitted by the UNHCR and the European Commissioner for Human Rights on the physical impossibility for sub-Saharan Africans to reach the Beni Enzar border post. Considering, furthermore, that the Spanish State was not responsible about the difficulties that may exist in Moroccan territory (paras. 211-218)

Many civil society organisations have expressed concern about this case law precedent. We believe that States should be urged to ensure "genuine and effective access to legal entry procedures", by taking the necessary measures, mainly strengthening the cooperation of transit States.

4) Please provide information on any progress made in developing independent border monitoring mechanism(s) at the national level.

Since 2012, in the midst of the Syrian refugee crisis, some European states have begun to introduce and implement Private Sponsorship of Refugees. The projects vary from state to state. Their common denominator, with many variants, is the fact that a private sponsor from the European host country (groups, individuals, charities, associations etc.) provides integration and financial support to vulnerable migrants, normally refugees entitled to resettlement.

The importance of these projects, from a humanitarian point of view, is grounded in the fact that they allow people in vulnerable situations to avoid perilous trips to reach Europe. Indeed, if selected, they will reach Europe through legal channels and receive, if they do not have it already, the status of refugee. From the state border monitoring point of view, these channels have become an alternative pathway to resettlement that has the potential to further develop in an official way to channel migration of vulnerable people legally.

These European states introduced and currently still run Private Sponsorship of Refugees programs:

- Italy, France, Belgium, Vatican State: Humanitarian Corridors from different third countries (such as Afghanistan, Ethiopia, Lebanon, Lesbos etc.)
- Germany: NesT program
- UK: Community Sponsorship
- Ireland: Community Sponsorship Ireland
- Basque Country: "Auzolana II" programme

Some other states, such as Switzerland and Portugal, run some temporary sponsorship programs for a limited time.

Monitoring and research on these schemes is currently taking place. The hope is that they will be adopted by more states and develop in official legal channels of migration.