

## Failing EU migration and asylum policies: Red card for Europe!

Position paper – 20 June 2016

According to the United Nations High Commissioner for Refugees (UNHCR), 211,385 migrants and refugees arrived in Europe via the Mediterranean since the beginning of the year<sup>1</sup>. Most of them came from war-torn countries such as Syria (37%), Afghanistan (19%) and Iraq (12%) or fled repressive regimes like Eritrea (3%) or Iran (2%). More than half of arrivals since the beginning of the year were made up by women and children. While Europe is celebrating its football championship, FIDH recalls that the tragedy of refugees continues to unfold across the continent and at its doorstep with the complicity of European leaders. Red card for Europe! On the occasion of the World Refugee Day, FIDH publishes a note to denounce anti-migrant measures taken by the European Union (EU) and its member States.

To reach Europe, migrants, asylum seekers and refugees can take various routes, all dangerous: via Turkey to Greece, through land or the Aegean Sea; via Morocco to reach the Spanish enclaves of Ceuta and Melilla; or through Libya to Italy, which involves the extremely dangerous crossing of the Mediterranean. Since the beginning of the year, 2,856 people drowned or went missing in the Mediterranean according to UNHCR<sup>2</sup>. The routes change following repressive measures adopted by European member States and institutions. When one route is shut down, another opens. Building barbed-wire fences, strengthening border surveillance or militarizing the Aegean see without offering safe legal alternatives for migration will only push migrants, asylum seekers and refugees to more dangerous routes and lead to further human rights violations humans and deaths. As long as they are fighting for their survival and security, migrants, asylum seekers and refugees will continue to come to Europe. Smugglers will adapt.

European migration and asylum policies are failing. Both the EU and its member states have shown their inability to rise to the occasion and lead by example even though the challenges they face are less significant than those faced by Lebanon, Jordan or Turkey, the countries hosting most refugees from Syria. Against the backdrop of economic difficulties, the EU and its Member States persist in sealing off their external borders at all costs. Across the continent, we increasingly witness populist rhetoric and "anti-migrant" discourses and measures, which violate the dignity and the rights of migrants, asylum seekers and refugees. The EU continues to militarize its external borders and to shamelessly outsource its responsibilities for managing migration to gatekeepers with poor human rights records trading away the rights of migrants, asylum seekers and refugees for what they believe is greater security. Numerous EU Member States have adopted drastic measures to repel or deter migrants, asylum-seekers and refugees : they have built visible and invisible walls, set up quotas; they do not hesitate to carry-out push backs in violation of international law; they use systematic administrative detention, including for minors, often in degrading conditions; or they have confiscated their valuables.

In his 2013 annual report on the management of the external borders of the European Union and its impact on the human rights of migrants, the United Nations Special Rapporteur on the human rights of migrants, had warned that a purely repressive approach to migration would only serve to fuel fear, stigmatization, discrimination, xenophobia, and contribute "towards the rise of verbal and

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<sup>1</sup> UN High Commissioner for Refugees, Refugees/Migrants emergency response- Mediterranean, June 15, 2016 [<http://www.unhcr.org/fr/urgence-europe.html>]

2 Ibid.

physical violence against migrants”<sup>3</sup>. On June 13, the United Nations High Commissioner for Human Rights made the same analysis at the United Nations Human rights Council<sup>4</sup>. FIDH calls urgently on European leaders to break away from these discourses and policies based on fear and respect their obligations to protect human rights by fighting xenophobia, racism and violence experienced by migrants, asylum seekers and refugees.

## Fortress Europe: Securing external borders at all costs

The EU and its Member States persists in sealing off their borders at all costs instead of prioritizing saving lives at sea, increasing their resettlement capacity, opening safe and legal migration channels and addressing the root causes of the violence that force people to flee their country of origin. Europe is trying to keep migrants, asylum seekers and refugees away with the support of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States (Frontex), and NATO since February 11<sup>5</sup>. Since 2004, the qualifications, independence and budget of Frontex have been continually strengthened despite a significant lack of transparency, independent oversight and accountability. The 2011 amendments to Frontex mandate aimed at strengthening the respect of human rights, failed to address these concerns.

On May 30, the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) approved a text to set up a European Border and Coast Guard agency<sup>6</sup>. The objective is clearly border control rather than search and rescue operations at sea and the respect for the rights and dignity of migrants, asylum seekers and refugees. FIDH is concerned that the mandate of this new European agency does not solve the above-mentioned problem of the lack of independent oversight mechanism and lack of accountability of Frontex. This new mandate does not strengthen the protection of the rights of migrants, asylum-seekers and refugees in the context of operations coordinated by Frontex. Besides, MEPs decided to extend the mandate of the European Border and Coast Guard agency in returns even if they stated that it "should not organize return operations to any third country where risks of fundamental rights violations exist, in accordance with the non-refoulement principle"<sup>7</sup>. To ensure that this cornerstone principle of the right of asylum is respected, it is key that the situation of each asylum-seeker is examined on an individual basis and complies with the procedural guarantees provided by international and European law. No country can be deemed "safe" in general.

However, the European Union has drawn up a common list of "safe countries of origin" which includes Albania<sup>8</sup>, Bosnia and Herzegovina<sup>9</sup>, the Former Yugoslav Republic of Macedonia<sup>10</sup>,

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3<sup>\*</sup> UN Special Rapporteur on the human rights of migrants, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants , April 24, 2013, [[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en.pdf)]

4 UN News Centre, « Migrants et réfugiés : le chef des droits de l'homme de l'ONU appelle l'Europe à mieux structurer sa réponse », June 13 2016 [<http://www.un.org/apps/newsFr/storyF.asp?NewsID=37440#.V2J6OPkiT44>]

5<sup>\*</sup> FIDH, EU/Migration : the answer is neither militarization nor outsourcing, February 22, 2016 [<https://www.fidh.org/en/issues/migrants-rights/eu-migration-the-answer-is-neither-militarization-nor-outsourcing>]

6<sup>\*</sup> European Parliament, Civil Liberties Committee backs new European Border and Coast Guard, May 30, 2016 [<http://www.europarl.europa.eu/news/en/news-room/20160530IPR29683/Civil-Liberties-Committee-backs-new-European-Border-and-Coast-Guard>]

7<sup>\*</sup> Ibid.

8 FIDH, Albania : A safe country?, May 26, 2016 [<https://www.fidh.org/en/issues/migrants-rights/albania-a-safe-country>]

9<sup>\*</sup> FIDH, Bosnia and Herzegovina: A safe country?, May 26, 2016 [<https://www.fidh.org/en/issues/migrants-rights/bosnia-herzegovina-a-safe-country>]

10 FIDH, FYROM : A safe country?, May 26, 2016 [[Former Yugoslav Republic of Macedonia \(F.Y.R.O.M.\) : A safe country ?](https://www.fidh.org/en/issues/migrants-rights/fyrom-a-safe-country)]

Kosovo<sup>11</sup>, Montenegro<sup>12</sup>, Serbia<sup>13</sup> and Turkey<sup>14</sup>. If the finalization of the list is pending the opinion of the European Asylum Support Office (EASO), the principle of absolute "safety" of some countries is not questioned. FIDH opposes the mere notion of "safe country" as it is contrary to the right of asylum and the principle of non-discrimination on grounds of nationality enshrined in international law. FIDH has documented with Euro Med Rights and AEDH that, in any case, none of the prospective countries could be considered "safe" under any circumstances<sup>15</sup>.

## Outsourcing migration management to keep migrants away

Whilst the EU and its Member States claim to be leaders in the promotion of promotion and protection of human rights in the world, they seek to increasingly shift their responsibility for migration management to countries of origin and transit including North African and sub-Saharan countries and most recently Turkey, where grave violations of the rights of migrants and asylum seekers continue unabated. The objective is to prevent migrants, asylum seekers and refugees to reach Fortress Europe or to send away those who are already on European soil.

On June 7, the European Commission proposed a new framework on partnership with third countries of origin and transit in the management of migration<sup>16</sup>. The Commission expressed its willingness to conclude "compacts" with Jordan and Lebanon and « launch and agree on » compacts with Ethiopia, Niger, Nigeria, Mali and Senegal while reinforcing cooperation with Tunisia and Libya. If the goal of saving lives at sea is laudable, others clearly reveal a policy aimed at keeping migrants, asylum seekers and refugees away : increase in the number of returns and "enable migrants and refugees to stay close to home".

FIDH is also concerned about revelations regarding draft agreements envisaged in the most complete opacity between the EU and particularly repressive states in the field of human rights. On 13 May, the German weekly *Spiegel* disclosed confidential documents stating that "the leading diplomats [...] discussed a plan that the EU member states had agreed to: They would work together with dictatorships around the Horn of Africa in order to stop the refugee flows to Europe."<sup>17</sup> According to *Spiegel*, Sudan would be one of the countries expected to act as a gatekeeper for the European Union in return for incentives and with the help of cameras, scanners and servers as well as police training provided by the EU. This information is of grate concern. Indeed, the Sudanese president is wanted by the International Criminal Court for genocide, crimes against humanity and war crimes. FIDH and its Sudanese league, the African Centre for Justice and Peace Studies, documented repeatedly the grave human rights violations perpetrated with impunity by the police and the National Intelligence and Security Service (NISS), which has broad powers of arrest and detention<sup>18</sup>.

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11\* FIDH, Kosovo: A safe country?, May 26, 2016 [<https://www.fidh.org/en/issues/migrants-rights/kosovo-a-safe-country>]

12 FIDH, Montenegro : A safe country?, May 26, 2016 [<https://www.fidh.org/en/issues/migrants-rights/montenegro-a-safe-country>]

13 FIDH, Serbia : A safe country?, May 26, 2016 [<https://www.fidh.org/en/issues/migrants-rights/serbia-a-safe-country>]

14 FIDH, Turkey : A safe country?, May 26, 2016, [<https://www.fidh.org/en/issues/migrants-rights/turkey-a-safe-country>]

15 FIDH, The European Union's lists of "safe countries": a denial of the right of asylum, 26 mai 2016 [<https://www.fidh.org/en/issues/migrants-rights/the-european-union-s-lists-of-safe-countries-a-denial-of-the-right-of>]

16\* European Commission, Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bankon establishing a new Partnership Framework with third countries under the European Agenda on Migration, June 7 2016 [[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](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)]

17\* Spiegel, Questionable Deal: EU to Work with African Despot to Keep Refugees Out, May 13 2016, [<http://www.spiegel.de/international/world/eu-to-work-with-despot-in-sudan-to-keep-refugees-out-a-1092328.html>]

18\* See for example, FIDH, UN Member States should make strong recommendations to Sudan at upcoming human rights

"After the EU-Turkey Deal, the European Union wants to repeat the experience by outsourcing its responsibilities for managing migration to countries, which do not respect human rights in exchange for trade incentives or development aid. This is highly cynical. The European Union and its Member States should not consider cooperation agreements without ensuring that such agreements will be implemented without human rights violations. Otherwise, Europe will be complicit," said Karim Lahidji. The inclusion of clauses, which require respect for human rights is far from being sufficient. The European Union and its Member States must ensure that they are strictly enforced during the implementation of the agreements.

## 1. Europe's Gatekeepers

### Turkey : Europe's Gatekeepers

Turkey currently hosts the largest number of refugees in the world with 2,7 million Syrian refugees. Most of them live in dire conditions outside of government-run camps with barely any support. Access to asylum is particularly challenging. Syrians, Iraqis or Afghans cannot be fully recognized as refugees because Turkey continues to maintain geographical reservations to the 1951 Geneva Convention relating to the Status of Refugees, which exclude non-Europeans from asylum claims. The procedure in Turkey for foreign nationals to obtain a work permit is extremely strict. Very few international protection seekers manage to obtain a work permit. Subsequently, many are being exploited and a lot of women and children have no other option than begging. Children are deprived from their right to education. The Turkish authorities have forcibly returned Syrians to their country of origin in clear violation of the principle of non-refoulement, which prevents States from returning people to countries where they would be at risk of persecution and other human rights violations<sup>19</sup>.

Despite the dramatic human rights situation in the country<sup>20</sup> both for Turkish citizens and for migrants, asylum seekers and refugees, the EU reached an agreement with Turkey in March 2016, providing for fast-track procedures aimed at returning 'all new irregular migrants' reaching the Greek islands after March 20 whose asylum claim is deemed unfounded or inadmissible back to Turkey. These returns follow accelerated procedures, which do not offer sufficient guarantees under international law. The deal also sets an inhumane barter of human beings: for each Syrian sent back to Turkey, the EU will resettle a Syrian refugee from Turkey<sup>21</sup>. As of June 15, 2016, 462 migrants were deported to Turkey under the agreement (325 between April 0 and 20; and 137 between April 20 and June 15<sup>22</sup>).

### Spain- Puch backs and excessive use of force by the civil guards

In May 2015, the United Nations Committee against torture expressed serious concern about « the practice of summary forced return — known as “hot expulsion” » from Ceuta and Melilla,

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review, Avril 19 2016 [<https://www.fidh.org/en/international-advocacy/united-nations/human-rights-council/un-member-states-should-make-strong-recommendations-to-sudan-at>]

19\* FIDH, What Turkey really is, April 18 2016 [<https://www.fidh.org/en/issues/migrants-rights/what-turkey-really-is>].

20\* FIDH, Turkey: Human Rights Under Threat, 24 February 2016, <https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-human-rights-under-threat>

21\* FIDH, EU/Turkey: Migrants are not goods one can barter, 17 March 2016 [<https://www.fidh.org/en/issues/migrants-rights/eu-turkey-migrants-are-not-goods-one-can-barter>].

22\* European Commission, First Report on the progress made in the implementation of the EU-Turkey Statement, 20 April 2016 [[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160420/report\\_implementation\\_eu-turkey\\_agreement\\_nr\\_01\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160420/report_implementation_eu-turkey_agreement_nr_01_en.pdf)]; European Commission, Second Report on the progress made in the implementation of the EU-Turkey Statement, 15 June 2016 [[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd\\_commission\\_report\\_on\\_progress\\_made\\_in\\_the\\_implementation\\_of\\_the\\_eu-turkey\\_agreement\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf)]

without prior risk assessment<sup>23</sup>. The Spanish civil guards continue to summarily expel individuals, who try to reach Spain (including through its new legal concept of « rejection at the border » introduced in the March 2015 Public Security Act) and prevent them from accessing asylum procedures, in violation of international and European law on the protection of refugees, including the principle of non-refoulement. For instance, on May 26, out of the 120 people who tried to cross the fences around Melilla, 30 reached Spain and were immediately returned back to Morocco. Only one person was able to reach the city of Melilla<sup>24</sup>. Several investigations into allegations of abuse of the Spanish civil guards have been shelved.

### **Italy - An example of outsourcing migration management**

According to the United Nations High Commissioner for Refugees, 52,637 migrants, asylum seekers and refugees have arrived in Italy by sea since the beginning of the year<sup>25</sup>. Following the closure of the Balkan route in March 2016 and the EU-Turkey deal, these figures are likely to increase. This year has already witnessed several shipwrecks off the Italian and Libyan coasts. Italy is one of the countries most affected by the crisis of European migration and asylum policies, as a point of entry into the EU, but also as a country to which asylum-seekers are also returned to under the EU regulation Dublin III.

Despite its complex situation and the inability to effectively control its maritime border, Italy has oriented its migration policy towards the goal of "securing" its borders and outsourcing the management of migration to third countries. In April 2016, the Italian Minister of Interior expressed his hope that Libya would effectively control its northern border where vessels depart to reach Europe and its southern border through which transit many migrants, asylum seekers and refugees from the Horn Africa on their way to Europe. In May 2016, an Italian delegation visited the Gambia to discuss the Italian-Gambian cooperation with the objective of strengthening the capacity of the Gambian government's to control migration<sup>26</sup>. FIDH documented on numerous occasions how the Gambian President has systematically silenced all opposition and dissent since he came to power after a coup in 1994. On 14 and 16 April 2016, the Gambian security forces suppressed in blood peaceful demonstrations in favor of electoral reform. The crackdown resulted in the arrest of dozens of opponents and the death in custody of three of them<sup>27</sup>. Ahead of the Presidential elections in December, FIDH fears that the government will increase its repression against political opponents, independent journalists and human rights defenders, which could lead to pre-electoral violence.

### **Albania – A country under pressure from the European Union**

Following the closure of the Balkan route in March 2016, an increasing number of people on the move are trying to go through Albania to reach EU Member States. The Italian authorities are particularly concerned by this change of route. To prevent "irregular crossings" of its territory, Albania, which is a candidate for accession to the EU, strengthened its controls at the Greek border and set up infrared cameras. These measures led to send back to Greece hundreds of migrants including Syrians. The Albanian Minister of European Integration stated however that the

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23 \* United Nations Committee Against Torture, Concluding observations on the sixth periodic report of Spain, 29 May 2015, [<http://www.refworld.org/publisher.CAT,ESP,564595214,0.html>]

24\* El Diario, La Guardia Civil devuelve en caliente a los 30 migrantes encaramados en la valla de Melilla, 26 May 2016 [[http://www.eldiario.es/desalambre/Treinta-migrantes-encaramados-Melilla-devueltos\\_0\\_520048187.html](http://www.eldiario.es/desalambre/Treinta-migrantes-encaramados-Melilla-devueltos_0_520048187.html)]

25\* UNHCR, June 172016, [[http://data.unhcr.org/mediterranean/regional.php#\\_ga=1.20301243.2008055705.1466061083](http://data.unhcr.org/mediterranean/regional.php#_ga=1.20301243.2008055705.1466061083)]

26 Migration Compact? Così l'Italia già stringe accordi con i regimi africani, June 6 2016, [<http://stranieriinitalia.it/attualita/attualita/attualita-sp-754/migration-compact-cosi-l-italia-gia-stringe-accordi-con-i-regimi-africani.html>]

27\* FIDH, 8 months ahead of the presidential election, the repression against the opposition is underway, April 21 2016, [<https://www.fidh.org/en/region/Africa/gambia/8-months-ahead-of-the-presidential-election-the-repression-against/>]

government would take all necessary measures not to erect walls to prevent refugees from entering the territory.

## 2. Visible and invisible fences

### Hungary – Draconian « Anti-migrant » measures

Hungary has adopted draconian measures to restrict drastically the arrival of migrants, asylum-seekers and refugees. In July 2015, the country built a 3 to 4 meters high and 175 km long barbed-wired fence at its Serbian border and a 40 km long one on the border with Croatia.

Since August 2015, migrants and asylum-seekers arriving on Hungarian territory are swiftly deported to Serbia, which is considered a "safe country"<sup>28</sup>, without complying with the procedural safeguards enshrined in international and European law on asylum<sup>29</sup>. The UNHCR and civil society organizations, which FIDH met in Budapest in October 2015 spoke about a process of one or two hours. The rights to legal assistance, interpretation and translation are not guaranteed under accelerated procedures. The right to an effective remedy is also compromised due to excessively short deadlines both for applicants to prepare their defense and appeal if their application is rejected, and for the competent authorities to examine asylum claims. Appeals do not have a suspensive effect so applicants may be expelled pending a decision.

In September 2015, the Criminal Code was amended to criminalize "illegal" entry into the territory, an offense now punishable by three years in prison, in clear violation of Article 31 of the 1951 Convention relating to the Status of Refugees<sup>30</sup>. Criminal proceedings initiated under the new provisions raise problems of compatibility with the right to a fair trial. The rights to information, interpretation and translation as well as the rights of the defense are particularly at risk. The new laws provide for the possibility of using rubber bullets and tear gas against recalcitrant migrants. In September 16, 2015, the day after the adoption of the new legislation, serious incidents took place at the access points to the border near Horgos in the framework of control operations conducted by the Counter-Terrorism Centre (TEK). These operations led to serious human rights violations. The Hungarian Commissioner for Fundamental Rights (the ombudsperson), refused to investigate these violations despite calls from civil society to do so.

Following a visit to Hungary in November 2015, the Council of Europe Commissioner for Human Rights expressed serious concerns about the compatibility of these new standards with European law<sup>31</sup>. The Commissioner for Human Rights and the UNHCR<sup>32</sup> believe that access to international protection is compromised in the country. The European Commission launched an infringement procedure against Hungary in December 2015 for alleged incompatibility between the above-

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28 According to numbers provided by the Hungarian Helsinki Committee in October 2015, the fact that Serbia was deemed a « safe country » should have led to the deportation of the applicant in 99 % of cases

29\* For more details, see Hungarian Helsinki Committee, No country for refugees: new asylum rules deny protection to refugees and lead to unprecedented human rights violations in Hungary, Information note, 18 September 2015, [[http://helsinki.hu/wp-content/uploads/HHC\\_Hungary\\_Info\\_Note\\_Sept\\_2015\\_No\\_country\\_for\\_refugees.pdf](http://helsinki.hu/wp-content/uploads/HHC_Hungary_Info_Note_Sept_2015_No_country_for_refugees.pdf)]

30 For more details on the reform of the penal Code, see for example: Hungarian Helsinki Committee, The Hungarian Helsinki Committee's opinion on the Government's amendments to criminal law related to the sealed borders, September 2015 [<http://helsinki.hu/wp-content/uploads/modification-of-criminal-laws-16092015.pdf>]

31 Council of Europe, Commissioner for Human Rights, Hungary's response to refugee challenge falls short on human rights, 27 November 2015 [[http://www.coe.int/en/web/commissioner/-/hungary-s-response-to-refugee-challenge-falls-short-on-human-rights?redirect=http://www.coe.int/en/web/commissioner/home?p\\_p\\_id=101\\_INSTANCE\\_iFWYWFoeqhvQ&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=4](http://www.coe.int/en/web/commissioner/-/hungary-s-response-to-refugee-challenge-falls-short-on-human-rights?redirect=http://www.coe.int/en/web/commissioner/home?p_p_id=101_INSTANCE_iFWYWFoeqhvQ&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=4)]

32 Interview with FIDH and the UNHCR regional representative for Central Europe , Feixas Vihé, October 2015.

mentioned new laws and the European asylum *acquis*<sup>33</sup>.

Beyond these anti-migrant measures, the government launched a stigmatization campaign in 2015 to create confusion between migrants, asylum seekers and refugees on the one hand and terrorists on the other. The campaign culminated in a public consultation, which helped fuel xenophobic stereotypes and was, as such, severely condemned by the European Parliament<sup>34</sup>.

### **Austria – A fence and "anti-migrant" quotas**

In April 2015, Austria began building an 'anti-migrant' fence at its Italian border, at the Brenner Pass. This measure is only an example in the context of a more comprehensive policy to limit the number of entries migrants, asylum seekers and refugees on Austrian soil. In February 2016, Austria introduced quotas limiting the number of entries to 80 per day, and the number of new asylum applications recorded in 2016 to 37,500 in total.

Before the election of the new president, the lower house of Parliament approved a draft law allowing the government to take a series of measures "for the maintenance of public order and the safeguarding of internal security" in the case of a significant arrival of migrants and asylum seekers at the borders of the country. This text challenges the right of asylum by allowing only those with a member of their immediate family in Austria or whose life was threatened in a border country of Austria to apply for asylum. The others were to be allowed to appeal against the decision of inadmissibility of their application for asylum only after deportation.

### **Bulgaria – barbed wire at the Greek and Turkish borders**

In May 2016, the Bulgarian government announced that it planned to build new fences at its borders with Greece and Turkey to complete the three meters high razor-fence built at its border with Turkey in the summer of 2014. There are still allegations of deportations of migrants and refugees and reception conditions for asylum seekers remain dire.<sup>35</sup>

### **France – Violation of the right of asylum and schizophrenic policy of border control**

In northern France, the authorities do their utmost to keep migrants in French territory so that they do not reach British soil. In order to prevent migrants from accessing the harbour of Calais and the Eurotunnel terminal, the French authorities have set up 2 to 4 meters high and several kilometers long fences. This set up is complemented by video surveillance and infrared detectors.

In the South, France has *de facto* closed its border with Italy and drastically increased profiling and controls in the area of Ventimiglia and Menton. Refugees arriving in Italy are therefore unable to access the French territory to seek asylum. In order to prevent any attempt to cross "irregularly" to France, the Italian police dismantled in 2015 a makeshift camp, located only a few meters away from the French border, in which lived a hundred migrants. In May 2016, they evacuated the camp on the banks of the Roya. Several organizations reported forcible eviction of migrants, who had arrived to Ventimiglia towards more southern areas<sup>36</sup>.

### **Stranded migrants in Italy and Calais because of the schizophrenic French border control policy**

33 European Commission – press release, Commission opens infringement procedure against Hungary concerning its asylum law, 10 December 2015 [[http://europa.eu/rapid/press-release\\_IP-15-6228\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6228_en.htm)]

34\* European Parliament, Resolution of June 10, 2015 on the situation in Hungary (2015/2700(RSP)), [<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0227+0+DOC+XML+V0//fr>]

35\* Amnesty International, Annual report 2015/2016, Bulgaria, [<https://www.amnesty.org/en/countries/europe-and-central-asia/bulgaria/report-bulgaria/>]

36 For example, Presidio Permanente No Borders Ventimiglia, LIBERTÀ PER LE PERSONE IN TRANSITO A VENTIMIGLIA!, 29 May 2016 [<https://noborders20miglia.noblogs.org/post/2016/05/29/liberta-per-le-persone-in-transito-a-ventimiglia/>]

are forced to live in dire conditions, which violate their human rights. The emergency measures on housing announced or adopted by the authorities (containers for those who used to live in the Calais "jungle" after the evacuation of the camps<sup>37</sup> ; Grande Synthe camp built by Doctors Without Borders, and threatened with closure since that it was taken over by the State; a future humanitarian camp in Paris) are only temporary stopgap measures in the backdrop of a dramatic humanitarian situation.

### **Sweden - Introducing systematic controls at its border**

Since January 2016, Sweden carries out systematic controls at its border with Denmark. After a record of asylum applications in 2015 (163 000), and following the attacks in Paris in November 2015 and sexual assaults in Cologne and Stockholm on December 31, 2015, the country followed the European trend of increased focus on security. On 27 January 2016, the country announced the deportation of migrants whose asylum application had been rejected. According to the Minister of Interior, 60,000 to 80,000 people could be affected.

### **3. The increased use of prolonged detention**

Over the last years, EU Member States have increased the use of prolonged detention of "irregular" migrants and asylum-seekers on the grounds of immigration. Migrants irregularly entered the territory, asylum seekers awaiting the process of their application or waiting for their return after their claim has been rejected find themselves deprived of liberty<sup>38</sup>. The Special Rapporteur on the human rights of migrants had already stressed in 2012 that "there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased ».<sup>39</sup>

In international law, irregular migration is not a criminal offense. States parties to the 1951 Convention relating to the Status of Refugees shall neither "impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence" or "apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country."<sup>40</sup> The United Nations Working Group on Arbitrary Detention has also clearly pointed out that "criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate irregular immigration and leads to unnecessary detention" (A/ HRC / 7/4, para. 53)<sup>41</sup>.

FIDH recalls that the systematic detention of migrants and asylum seekers is inconsistent with

37 FIDH, Calais : Bulldozers do not make a policy!, 22 February 2016 [<https://www.fidh.org/en/issues/migrants-rights/calais-bulldozers-do-not-make-a-policy>]

38\* Special Rapporteur on the human rights of migrants, Annual report, 8 May 2015 [<http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx>]

Special Rapporteur on the human rights of migrants, Annual report, 2 April 2012, **39** [[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf)]

40\* 1951 Convention relating to the Status of Refugees, 28 July 1951, Article 31 [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>]

41\* Special Rapporteur on the human rights of migrants, Annual report, 2 April 2012, [[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf)]



international human rights law and international refugee law. In order not to be arbitrary, detention should be an exceptional measure of last resort, prescribed by law, necessary, reasonable and proportionate to the objectives pursued. In addition, detention can only follow an individual assessment of the case and happen when other less coercive alternatives have been considered and deemed insufficient.

Prolonged detention across Europe, often in dire conditions, bear serious consequences for rights of migrants and asylum seekers particularly in terms of physical and mental health. It is particularly worrying given that many migrants, asylum-seekers and refugees already suffer from post-traumatic stress often related to the reasons that caused their departure from their country of origin, the long and dangerous journey undertaken to come to Europe and / or their separation with members of their family<sup>42</sup>. FIDH is particularly concerned about the detention of vulnerable categories of migrants and asylum-seekers such as victims of torture, trafficking, sexual violence; minors including unaccompanied ones; pregnant women; old people ; people with disabilities and people living with HIV / AIDS.

### **Greece – A detention center**

The dramatic increase in arrivals from Turkey since the beginning of 2016 has created a humanitarian crisis in the country, to which the Government is failing to respond adequately. According to UNHCR, there were around 51,000 migrants and refugees in the country as of May 31, 2016. Their situation is dire in particular for the most vulnerable such as pregnant women, unaccompanied minors, old and disabled people. The closure of Idomeni, on the border of Greece and the former Yugoslav Republic of Macedonia, has not improved the dramatic situation of those who lived at the border given that the Greek authorities had not anticipated the creation of sufficient adequate reception centers. Since the EU-Turkey deal in March 2016, the Moria 'hotspot' on Lesbos island has become a detention center where men, women and children live behind barbed wire. They lack access to food, health services including much needed psychological support and information regarding asylum procedures.

The first expulsions on the basis of the EU-Turkey deal took place on 4 April. 200 migrants (mainly men from Pakistan) were expelled to Turkey by boat escorted by Frontex agents. FIDH expressed its concerns about the failures of the Greek asylum system, the lack of real opportunity for migrants to apply for asylum and have their application processed in accordance with international standards. FIDH documented cases of Pakistanis held in Moria hotspot, who wanted to file an application for asylum but had not been able to do so<sup>43</sup>. Members of the European Parliament, who visited detention centers in Turkey stated that none of the interviewed individuals, who had been expelled following the EU-Turkey deal, had been able to seek asylum in Greece or Turkey<sup>44</sup>.

On 20 May 2016, a Greek appeals committee questioned the premises of the EU-Turkey deal. It held that international protection could not be provided by Turkey to a Syrian national, who had reached Lesbos Greek island and was to be forcibly deported there following the EU-Turkey deal. The appeals committee explained that as a Syrian national, the applicant would not be able to enjoy there the full protection required under the 1951 Convention relating to the Status of Refugees in Turkey<sup>45</sup>. All decisions made on Greek appeal boards since then specify that

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42 UNHCR, « Table Ronde globale sur les alternatives à la détention des demandeurs d'asile, réfugiés, migrants et apatrides », 11/12 May 2011 [<http://www.unhcr.org/fr/4eccf4cd6.pdf>]

43 FIDH, Migrants deported to Turkey : the EU hits rock bottom, 4 April 2016 [<https://www.fidh.org/en/issues/migrants-rights/migrants-deported-to-turkey-the-eu-hits-rock-bottom>].

44\* What Merkel, Tusk and Timmermans should have seen during their visit to Turkey. Report from GUE/NGL Delegation to Turkey, May 2-4, 2016 [<http://www.statewatch.org/news/2016/may/ep-GUENGL-report-refugees-Turkey-deal.pdf>]

45\* The Guardian, Syrian refugee wins appeal against forced return to Turkey, 20 May 2016 [<https://www.theguardian.com/world/2016/may/20/syrian-refugee-wins-appeal-against-forced-return-to-turkey>].

deportation to Turkey violates international law.

### **The United Kingdom – excessive and indefinite detention of migrants**

In the United Kingdom, administrative detention on immigration continues to be used excessively in spite of international law which advocates that it should be a measure last resort (see above). A 2015 parliamentary inquiry emphasized that in 2013, 30,418 individuals entered detention in the United Kingdom against 4,309 in Germany, where the number of requests of asylum was four times higher<sup>46</sup>. This inquiry followed numerous allegations of abuses and sexual violence at the hands private guards managing detention centers.

This damning report highlights the serious consequences of virtually unlimited deprivation of liberty, on mental and physical health of prisoners and calls for a thorough reform of a "costly, inefficient and unfair" system<sup>47</sup>. To improve the situation, the report recommended in particular to limit the practice of immigration detention; not to deprive of liberty victims of torture, trafficking or people with severe mental disorders, pending a decision on their asylum application; and to limit the duration of any detention to 28 days. The inquiry also emphasized on the importance of improving access to a lawyer and access to health care. On this basis, the House of Lords suggested limiting detention to 28 days, but this proposal was rejected by the British government.

The Immigration Act 2016, adopted in May 2016, only sets a limit of 72 hours for the detention of pregnant women pending guidelines from the Home Office on the detention of vulnerable persons. The law worryingly limits the support provided to asylum seekers whose application was not accepted to those who lack means and are facing difficulties to leave the country. It also increases the powers of immigration officers in searches and confiscation of identity documents for individuals suspected of being returned illegally in the country.

### **Czech Republic – detention of migrants in degrading conditions**

In October 2015, the United Nations High Commissioner for Human Rights criticized the Czech Republic as being « unique in routinely subjecting these migrants and refugees to detention for 40 days, and reportedly sometimes even longer – up to 90 days – in conditions which have been described as degrading ». Under international law, the detention of migrants can only be used as a measure of last resort. According to the High Commissioner, violations of migrants' rights are systematic and "appear to be an integral part of a policy by the Czech Government designed to deter migrants and refugees from entering the country or staying there". The High Commissioner also criticized the inability of detainees to swiftly challenge their detention before a court, as well as increasingly xenophobic discourses by the Government. He also stated that the Czech authorities required migrants to pay 250 Czech crowns (around 9 euros) per day to cover expenses related to their detention. The Czech Ombudsperson had denounced the trauma suffered by migrant children surrounded by heavily armed personnel and witnessing degrading treatment of their parents.

### **Bulgaria – detention of unaccompanied minors**

In February 2016, Bulgaria's Ombudsperson acting as National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or

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<sup>46</sup> The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, 2015 [<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>]

<sup>47</sup> The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, 2015 [<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>]

Degrading Treatment or Punishment<sup>48</sup> (OPCAT) denounced a practice of the Bulgarian police to register unaccompanied refugee minors with unknown adults, in order to place them in detention<sup>49</sup>. Bulgarian law prohibits indeed the detention of unaccompanied minors. Sometimes children and adults registered together are not even of the same nationality. For instance, Afghan children were "assigned" to Pakistani adults. Subsequently, children are imprisoned in administrative detention centers for adults and do not enjoy the special protection granted by law to minors traveling alone.

## 4. Stigmatizing measures

### Switzerland – seizure of personal belongings

In Switzerland, upon arrival, migrants must file their property with a value superior of 1,000 Swiss Francs with the authorities. These funds are used to finance the assistance granted to asylum seekers<sup>50</sup>.

### Denmark – the Swiss copy-paste

On 26 January 2016, the Danish Parliament adopted a bill on the entry and stay of foreigners which provides for the confiscation of personal valuable belonging to asylum seekers, in order to finance their stay in Denmark. This law was officially aimed at discouraging migrants, asylum seekers and refugees who wish to join Denmark. Other "anti-migrant" measures were taken to reach the same objective. These include misinformation about asylum conditions in Denmark published in Lebanese newspapers, the use of detention for migrants, asylum-seekers and refugees upon arrival and of those whose asylum claim has been refused.<sup>51</sup>

### Belgium - xenophobic stereotypes

In February 2016, during the evacuation of part of the "jungle" of Calais, Belgium had restored the controls at its border with France. The authorities feared that those evicted from the camp would go to Belgium to reach the United Kingdom. Several hundred of migrants were blocked.

On 30 March 2016, the Belgian government has adopted measures aimed at some newly arrived migrants and asylum-seekers wishing to reside more than three months in Belgium, especially those keen on benefiting from family reunification. Refugees were exempted. They must sign a declaration that they will undertake, among others, to provide their children with the best training and education possible so that they "become active citizens in society." This document states that "integration into society is a condition to continue to enjoy the right of residence." Signatories will recognize certain principles such as the prohibition of forced marriage. They will commit to prevent and condemn all acts of terrorism, as well as not be violent in their household. They will agree to make the necessary efforts to ensure their own subsistence. These requirements, somehow stigmatizing and based on xenophobic stereotypes, should be applicable by the end of the year. An extension of the residence permit will be granted after an official assesses the knowledge of at least one official language of the country and how the person's effort in being integrated in the country.

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48\* Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment , Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006 [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>]

49\* See for example text in English in Global Detention Project, Submission to the UN Committee on the Rights of the Child: Bulgaria, 14 April 2016 [[http://www.globaldetentionproject.org/publications/submission-un-committee-rights-child-bulgaria#\\_ftn6](http://www.globaldetentionproject.org/publications/submission-un-committee-rights-child-bulgaria#_ftn6)]

50 Le Temps, « Requéranants ponctionnés à leur arrivée en Suisse : la polémique enfle », 15 January 2016 [<https://www.letemps.ch/suisse/2016/01/15/requerants-ponctionnes-arrivee-suisse-polemique-enfle>]

51\* FIDH, Denmark: Denmark: Dismay over the passage of a new immigration law, 27 January 2016 [<https://www.fidh.org/en/region/europe-central-asia/Denmark/denmark-dismay-over-the-l-87-bill>].

## **Wales – the red wristbands to identify asylum-seekers**

The Guardian disclosed a particularly the shocking identification system set-up by Clearsprings, a subcontractor of the Home Office, in May 2015 in Cardiff<sup>52</sup>. Asylum seekers accommodated by Clearsprings were forced to wear red wristbands to get the three meals they were entitled to on a daily basis. This discriminatory identification measure made them vulnerable to stigmatization. Once publicized, this policy generated such controversy that the company had to abandon the system. The scandal erupted a week after the British government decided to investigate the fact that the private company G4S painted in red the doors housing refugees in Middlesbrough in England<sup>53</sup>.

### **To ensure that the rights of migrants, asylum seekers and refugees are protected, the EU and its Member States must take the following measures:**

- ≡ The EU and its Member States should develop a coherent and well-coordinated migration and asylum policy with human rights at its heart.
- ≡ The EU and its Member States must ensure that cooperation in the field of migration with countries of origin and transit of migrants, asylum seekers and refugees respects human rights and do not directly or indirectly contribute to human rights violations. Clauses to this end should be introduced in all cooperation agreement on migration. Already existing agreements should be revoked or suspended until the third country party to the agreement effectively affords sufficient guarantees regarding its asylum system and the respect for human rights of migrants, asylum seekers and refugees.
- ≡ The EU and its Member States must commit to a fair share of responsibilities for resettling refugees. The revision of the Dublin Regulation gives the EU and its Member States an opportunity to review the rules in the matter.
- ≡ The EU and its Member States must open legal and safe migration channels to Europe. This implies an urgent and unconditional increase of their resettlement capacity, including through ensuring access to family reunification and granting humanitarian visas.
- ≡ The EU and its Member States must respect their international obligations on asylum. This includes *i.a* the obligation to respect and enforce the procedural safeguards provided for in international and European law on examining asylum requests as well as giving up the notion of "safe countries", which is inconsistent with respect for the right of asylum.
- ≡ The EU must also address more effectively the root causes of human rights violations that drive people to flee their country.

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FIDH is an international human rights NGO federating 178 organizations from close to 120 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration for Human Rights. FIDH's headquarters are in Paris and the organization has offices in Abidjan, Bamako, Brussels, Conakry, Geneva, The Hague, New-York, Pretoria and Tunis.

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<sup>52</sup> The Guardian Asylum seeker wristband policy to be dropped, 25 January 2016, [<https://www.theguardian.com/uk-news/2016/jan/25/government-to-be-challenged-in-commons-over-refugee-wristbands>]

<sup>53</sup> The Guardian Home Office Officials to make 'red door policy' inquiry trip to Middlesbrough, 20 January 2016, [<https://www.theguardian.com/uk-news/2016/jan/20/home-office-officials-red-door-policy-inquiry-middlesbrough>]