

STATEMENT

# European states must put human rights at the centre of their migration policies

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“European states’ current approach to the arrivals of refugees and migrants has transformed a manageable issue into an extremely divisive topic, in particular within EU member states. And it has caused immense suffering and hardship to thousands of people who sought our protection. It is time that European states put the human rights of migrants, asylum seekers and refugees, as well as the principle of responsibility sharing, at the centre of their migration and asylum policies.” said the Council of Europe Commissioner for Human Rights, Dunja Mijatović, in a statement she released today.

“Whilst states have the right to control their borders and ensure security, this cannot come at the expense of human rights. The recent adoption of European Council [conclusions](#), as well as decisions at national levels, raise a number of concerns that European states must address in order to meet the obligations under international human rights law which they have undertaken to respect.

First of all, any approach to migration in the Mediterranean should ensure a sufficiently resourced and fully operational system for saving human lives at sea. Recent tragedies resulting in hundreds of lost lives should remind us of the urgency to act. In this context, non-governmental organisations (NGOs) play a crucial role and should be free to use ports and other facilities for rescue operations and for helping migrants.

Regrettably, a number of Council of Europe member states are hindering the work of NGOs, which imperils the lives of many people. When member states coordinate rescue operations they should make full use of the available search and rescue capacities, including that of NGO vessels. Coordinating authorities should ensure instructions given in the course of rescue operations fully respect the human rights of rescued migrants, including by preventing them from being put in situations where their right to life would be threatened, or where they would be subjected to torture, inhuman or degrading treatment, or to arbitrary deprivation of their liberty.

Secondly, any external migration co-operation must be transparent and accountable. This includes the proposed regional disembarkation platforms. European states must carry out and publish a thorough analysis of any such proposals, looking at their potential impact on the rights of migrants, asylum seekers and refugees, and if necessary they should explicitly set out which measures they will take to avoid adverse impact. If the analysis shows serious threats for the protection of human rights, which cannot be prevented, the proposal should be withdrawn.

Once the implementation of a particular option begins, independent and effective monitoring must take place to assess compliance with human rights norms. Independence should be guaranteed by ensuring that the monitoring body does not have a political, financial or operational role to play in the implementation of the particular option. The outcomes of such monitoring should be public and have the capacity to stop any operations that put at risk the human rights of migrants and asylum-seekers.

In this context, European and national parliamentarians have a very important role to play. Last week, the Parliamentary Assembly of the Council of Europe adopted a number of [resolutions](#), setting out many of the principles outlined here. This will now require follow-up in national parliaments to ensure these principles are put into practice. Similarly, Ombudspersons and other human rights institutions can help ensure that European states uphold human rights principles and standards with transparency and accountability.

The third area of concern is disembarkation conditions. Proposals to disembark rescued migrants outside Europe require careful consideration from a human rights perspective. There must be clear procedures to safeguard human rights, assigning roles, responsibilities and accountability to EU institutions or agencies, member state or third country authorities, international organisations and others. Mechanisms for complaints or judicial review must be available to those who feel their rights are negatively affected by the activities of any of these actors.

Any place of disembarkation, whether outside or inside Europe, should provide effective protection against refoulement, in particular by ensuring access to an effective possibility to apply for international protection. This would require the presence of adequately trained staff, the availability of interpreters, access to legal aid, and the possibility for the review of decisions by an independent body.

Such places should provide for adequate reception conditions, with good quality accommodation, access to water, food and sanitary facilities, health care and educational facilities for children. These should provide a safe environment for those disembarked, including protection against violence, in particular sexual exploitation and abuse. In this respect, special measures should be put in place for the protection of vulnerable individuals, including children, women, LGBTI persons, ethnic or religious minorities, and victims of torture or trafficking.

As noted by [UNHCR and IOM](#), a clear procedure should be in place to ensure durable solutions, including resettlement, for those in need of protection, as well as safe returns for those who do not, to avoid overcrowding and disembarked persons being left in a situation of prolonged uncertainty.

In addition, places of disembarkation must not become centres where people are automatically deprived of their liberty. Any restrictions to their right to liberty should be clearly established in law, necessary and proportionate, taking into account the individual circumstances, with effective alternatives to detention made available in the place of disembarkation. As emphasised by numerous UN and Council of Europe bodies, including myself, the detention of children as a consequence of their or their parents' migration status constitutes a violation of their rights and therefore should not take place.

Lastly, the focus on finding regional solutions should not undermine the right of those who arrive in Europe to lodge an application for asylum. European states must therefore always refrain from pushing people back across the border without an individualised procedure, because this practice denies them an opportunity to file an asylum application. The current focus on arrivals should also not detract from the further development of fair procedures, and ensuring adequate reception conditions to those already on our continent. There are still important and urgent steps that European states must take in this respect and a need for greater responsibility sharing among them. To avoid further tragedies, the further expansion of safe and legal routes to Europe, including resettlement, humanitarian admissions and family reunification also remains a priority.

Over the past years, thousands of people in need of protection have died or endured incredible suffering in their desperate journey to find shelter in Europe. European states have moral and legal duties to make their asylum and migration systems more humane. As the number of new arrivals in Europe has gone down, political rhetoric has in fact only become more hostile. It is high time that Europe's political leaders show that human rights, the rule of law and European values still matter.”