

Statement to the European Council

Respect the right to seek asylum in Europe



When EU Heads of State and Government meet in Brussels on 18/19 June they will discuss measures to tackle irregular migration in the Mediterranean. These discussions are expected to build on dialogue from the Justice and Home Affairs (JHA) Council meeting of 4/5 June, including in relation to recent proposals from the European Commission contemplating the establishment of asylum and reception processing centres in Libya. The European Council on Refugees and Exiles (ECRE)¹ is concerned that these proposals could be seen as a tacit acceptance of recent violations of international law by Italy in pushing back migrants to Libya without any assessment of their need for protection. The European Council meeting therefore provides a timely opportunity for EU States to reaffirm respect for their international obligations and the right to seek asylum in Europe.

Ensuring that border controls allow access to asylum and comply with international law

Member States' obligations under international and European refugee and human rights law do not stop at the physical boundaries of the EU. States cannot abdicate their principles, values and legal commitments by doing outside their borders what would not be permissible in their territories. Furthermore, the obligation of non-*refoulement*, which prohibits returning refugees to countries where they may face persecution does not arise only when a refugee is within or at the borders of a state, but also when a refugee is under its effective or *de facto* jurisdiction outside its territory, including in international waters.

Libya is not a safe country for people in need of protection. It is not party to the 1951 Refugee Convention, has no functioning asylum system and therefore cannot guarantee protection to refugees. Furthermore, it has an extremely dubious human rights record. In Libya, people seeking protection are routinely detained, sometimes indefinitely and without legal oversight, in extremely poor conditions that violate their fundamental rights. While states have a legitimate right to control their borders, forcibly returning people to countries where they may face serious violations of their human rights and be pushed back into the hands of their persecutors violates international law.

The case against EU-sponsored external processing of asylum claims

Proposals to set up external joint processing or EU-sponsored 'reception schemes' in Libya or other third countries leave several fundamental questions unanswered:

- How would such initiatives comply with the 1951 Convention, the European Convention on Human Rights (ECHR) and other applicable international human rights instruments?
- How will protection and durable solutions be provided to those individuals recognised as in need of protection in order to avoid massive long-term warehousing of refugees? For example, at present 8000 refugees recognised by UNHCR in Turkey remain without a durable solution and are still awaiting resettlement.
- How would such initiatives work in practice and what would be the financial cost?
- Do such initiatives foresee the use of detention and, if so, how will this be compatible with states' obligations under Article 5 of the ECHR?

Similar proposals have been considered and rejected in the past on the basis of their incompatibility with the 1951 Refugee Convention and other international human rights instruments. When seeking support for his programme in 2004, European Commission President Barosso told MEPs "*I assure you that I stand against the setting up of camps outside the Union*".² Five years on, such proposals still do not constitute a credible, sustainable or rights-respecting approach.

Facilitating legal entry for refugees to prevent deaths at sea

Rather than seek to deflect their responsibilities to third countries, EU States should focus attention on introducing measures to ensure that refugees can safely access protection in Europe. This should involve a multifaceted approach combining protection-sensitive border controls with the greater use of resettlement, humanitarian visas and Protected Entry Procedures (PEPs). ECRE reiterates its call for nationals from the top refugee-producing countries to be able to obtain humanitarian visas, or be exempt from the need to obtain a visa. Such options must be explored if the EU is serious about finding a humane solution to irregular migration and the human smuggling of refugees to the EU, as well as reducing the number of lives lost at sea.

Sharing responsibility and upholding Europe's human rights tradition

ECRE agrees that the solution to tackling irregular migration requires common EU measures to show solidarity towards and better share responsibility with Member States on the external border of the European Union. However, ECRE stresses that proposals to facilitate the internal relocation of recognised refugees between Member States must not detract attention away from efforts to establish a Common EU Resettlement Scheme to facilitate the transfer of refugees from protracted situations in developing countries. There are now fewer than 240,000 asylum applicants registered in the 27 Member States of the EU, representing only a small fraction of a global population of refugees that UNHCR has recently estimated at over 11 million. UNHCR has estimated that 560,000 of this total are in urgent need of resettlement.³ ECRE therefore calls upon EU states to focus their attention on making more resettlement places available in order that Europe can take its share of global responsibility. This must be a key objective of the Stockholm Programme that is due to be adopted by the Swedish Presidency later this year.

During his recent visit to Italy, Libyan leader Colonel Gaddafi referred to Africans as having no "*political or personal identity*", and claimed that they "*don't have problems of political asylum*".⁴ In reality, statistics published in 2008 reveal that over 50% of asylum seekers arriving in Italy are recognised as refugees.⁵

When meeting in Brussels later this week, EU Heads of State and Government should ask themselves if cooperation in returning migrants to Libya represents a credible response to the challenge of tackling irregular migration, or is in line with Europe's longstanding human rights tradition. The EU should not be seeking to evade its responsibility to provide protection to refugees or to shift the burden to countries in North Africa or elsewhere. Rather EU Heads of States and Government should focus their discussion on how to build an accessible Common European Asylum System that can deliver high standards of protection, serve as a model to countries outside the EU, and better share responsibility both between Member States and with the rest of the world.

ECRE, June 2009

For further information contact the European Council on Refugees and Exiles (ECRE)

Rue Royale 146, 1000 Brussels
Tel: +32 (0) 2 234 3800 Fax: +32 (0) 2 514 5922
Email: ecre@ecre.org Web: www.ecre.org

¹ ECRE is an alliance of 69 refugee-assisting organisations in 30 countries working together to protect and respect refugees.

² José Manuel Barroso, President-Designate of the European Commission, *Speech to the European Parliament. European Parliament Plenary Session*, Strasbourg, 26 October 2004. Available [here](#).

³ UNHCR, *UNHCR Projected Global Resettlement Needs 2008*, available at: <http://www.unhcr.org/refworld/pdfid/47d6933f2.pdf>

⁴ <http://www.guardian.co.uk/world/2009/jun/10/gaddafi-visit-italy-berlusconi>

⁵ UNHCR, *2007 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, June 2008, available at: <http://www.unhcr.org/statistics/STATISTICS/4852366f2.pdf>