REFUGEE RIGHTS EUROPE

Toward a Rights-Based Reform of the Common European Asylum System

Refugee Rights Europe believes that the **European Union and its Member States are capable of operating an asylum system that upholds the human rights of every person seeking protection on European territory**. The reform of the Common European Asylum System is a strong opportunity to make this a reality and to **put lessons learned from recent years into practice, creating a system that works better** for the displaced, host communities, national governments and EU institutions. Such a system **safeguards human rights while saving human, material and financial resources** that go to waste when asylum is handled in an inhumane and inconsistent manner. In 2019 **Refugee Rights Europe is working with policy-makers at the national, European and international levels** to achieve positive reform.

Informed by **data gathered from over 6,000 displaced people** and civil society actors in Europe since 2016, and **with up-to-date expertise on key EU locations affected by forced migration**,[1] RRE is focusing on three core themes within the reform of the CEAS:

1. Realising Family Reunification

2. Countering Externalisation & Obstruction of Access to Asylum

3. Ending Deprivation of Liberty & Geographical Restriction

Based thereon, RRE issues the following recommendations:

- The New Obligation To Carry Out an 'Admissibility Procedure' Should Be Removed from the Proposed Dublin IV Regulation.
- The New Restriction on Providing Legal Representation/ Guardianship to Unaccompanied Minors Only in The Country 'Where They Are Legally Obliged to be Present' Should be Removed from the Proposed Dublin IV Regulation.
- Categories Qualifying for Family Reunification under the Proposed Dublin IV Regulation Should be Further Expanded to Include Aunts and Uncles.
- Disembarkation Platforms/ Arrangements Should be Prohibited in, or with, States Lacking a Functioning Asylum System adopted in National Legislation, that are not Party to the 1951 Geneva Convention and the 1967 New York Protocol, and/ or not Complying with International Human Rights Law in Practice.
- Negotiation on the Establishment Of 'Controlled Centres' Should be Halted.
- Third Country Cooperation Agreements Must Only be Permitted with States Operating a Functioning Asylum System Adopted through National Legislation, that are Party to the 1951 Geneva Convention and the 1967 New York Protocol, and Complying with International Human Rights Law in Practice.
- Article 8(3)(c) of the Proposed Recast Reception Conditions Directive should be Removed.
- Art. 11(a) & (b) of the Compromise Text of the Recast Reception Conditions Directive should be Removed.
- Geographical Restriction Implemented within the EU Hotspot Approach must be Lifted.

1. The Greek Hotspots, the French-Italian border-zone (in particular Ventimiglia) and the Northern France-UK border (in particular Calais).

Recommendations in Detail

1. Family Reunification

Effective family reunification procedures would mitigate dangerous bottle-neck scenarios in Europe, where individuals eligible for family reunification are stuck in inhumane conditions due to lack of access to the procedure and unnecessarily lengthy case processing. This exacerbates human suffering and encourages secondary movements while overcrowding and draining of resources breeds resentment among local populations as well as dwindling cooperation of frontline Member States. Effective family reunification is thus in the interest of displaced people, host communities and governments alike, yet the Dublin IV Proposal restricts, rather than facilitates access to family reunification.

Recommendations

- **The New Obligation to Carry Out an 'Admissibility Procedure' Should be Removed from the Proposed Dublin IV Regulation.**[2]

  The proposed obligation on Member States of first entry to assess, before applying Dublin criteria,[3] whether a claim is inadmissible (where individuals come from a 'country of first asylum' or a 'safe third country') or can be processed in an accelerated procedure (where individuals come from a country on the EU Common List of Safe Third Countries of Origin or are considered a security threat) potentially denies large proportions of asylum seekers the right to unify with family members in the EU.[4] This undermines the primacy of family unity enshrined in Art. 8 ECHR and Art. 7 EU Charter. The procedure adds a further layer to already complex asylum procedures and prolongs the period applicants spend in legal limbo.[5] Finally, limiting the application of Dublin criteria to those falling outside the above categories renders frontline Member States solely responsible for all others, increasing already disproportionate pressure on them.

- **The New Restriction on Providing Legal Representation/ Guardianship to Unaccompanied Minors Only in the Country 'Where They Are Legally Obliged to be Present' Should be Removed from the Proposed Dublin IV Regulation.**[6]

  Unaccompanied minors should always have immediate access to guardianship[7] as well as legal representation, and the Member State they are present in should be responsible. The Proposal appears to stipulate that minors outside of the Member State they are legally obliged to be in, must first conduct a 'best interest assessment' without legal representation with the relevant authorities, to determine the responsible Member State. This places wholly unrealistic requirements on children, complicates their procedure and in practice, creates potentially indefinite periods in which children remain without guardianship or legal representation, contravening the primacy of the child's best interests enshrined in, Art. 3 CRC, Art. 24 EU Charter and Rec. 15 of the Proposed Dublin IV Regulation.

- **Categories Qualifying for Family Reunification under the Proposed Dublin IV Regulation Should be Further Expanded to Include Aunts and Uncles.**[8]

  The addition of siblings and family links established in transit[9] as categories qualifying for family reunification is a welcome development in the proposed Dublin IV Regulation. However, to strengthen the primacy of the Right to Family Life provided in Rec. 16 of the Proposal, in accordance with Art. 8 ECHR and Art. 7 EU Charter, this should be expanded to include aunts and uncles. Moreover, as proposed by ECRE,[10] expansive definitions of family, assessed on an individualised, case-by-case basis, in light of individuals' actual circumstances rather than pre-determined notions of 'nuclear family' should be prioritised.

2. See Chapter II, Art. 3(3), available at: https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF
3. This inverses the current system, whereby Dublin criteria, including family provisions, are applied before admissibility assessments and examinations on the merits of a claim, giving primacy to family unity.
4. As highlighted by actors such as FRA: https://fra.europa.eu/en/opinion/2016/fra-opinion-impact-children-proposal-revised-dublin-regulation, p. 19; and ECRE: https://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/ECRE-Comments-Dublin-IV.pdf, p. 8
5. As the delays caused by the 'admissibility procedure' in the Greek Hotspots exemplify.
6. See Chapter II, Art. 8
7. The EU Parliament's Amendments to the Proposal are a welcome development in this regard, see Amendment Nr. 90, available at: http://www.europarl.europa.eu/doceo/document/A-8-2017-0345_EN.pdf
8. See Chapter II, Art. 2(g)
9. Family relations which were formed after leaving the country of origin but before arrival on the territory of the Member State.
10. See ECRE, October 2016: https://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/ECRE-Comments-Dublin-IV.pdf, p. 14

2. Externalisation & Obstruction of Access to Asylum

Amidst the deadlock surrounding the Dublin IV negotiations, externalisation of EU asylum is gaining traction. Lacking any basis in human rights or refugee law, concepts such as 'Regional Disembarkation Platforms' and 'Controlled Centres' threaten to weaken and offshore EU protection obligations. Moreover, the very similar existing 'Hotspot' approach violates human rights and traps refugees and displaced people in inhumane living conditions for prolonged periods, while failing to bring about efficient procedures or equitable responsibility sharing.[11]

Recommendations

- **Disembarkation Platforms/ Arrangements Should be Prohibited in, or with, States Lacking a Functioning Asylum System Adopted in National Legislation, that are not Party to the 1951 Geneva Convention and the 1967 New York Protocol, and/or not Complying with International Human Rights Law in Practice.**

  Negotiations on Disembarkation Platforms or Arrangements beyond EU territory should be halted until EU institutions are able to deliver guarantees on the operationalisation of such sites' human rights compliance in practice. Specifically: the provision of humane and dignified reception conditions not amounting to detention; swift access to the asylum procedure including free legal aid and access to effective remedies, as well as prohibition of external asylum processing which would contravene Art. 3 ECHR, Art. 18 EU Charter, and the 1951 Geneva Convention.

- **Negotiation on the Establishment Of 'Controlled Centres' Should be Halted.**

  The concept,[12] which merely reinforces the existing, failed Hotspot approach,[13] should be abandoned and replaced by open reception and asylum processing centres. Such centres must under no circumstances hinder access to the EU asylum process (which would contravene Art. 14 UDHR), through the use of arbitrary 'selection' procedures, the application of truncated asylum procedures with diminished due process guarantees, or to facilitate unlawful returns of protection seekers to locations beyond EU territory.[14] Open centres must guarantee access to the full asylum procedure as provided under EU and international law, including free legal aid and the right to an effective remedy, while upholding the principle of non-refoulement without exception. Moreover, such centres must provide humane and dignified conditions, adequate and timely vulnerability assessments, effective security and SGBV safeguarding, as well as access to education for children within 3 months.[15]

- **Third Country Cooperation Agreements Must Only be Permitted with States Operating a Functioning Asylum System Adopted through National Legislation, that are Party to the 1951 Geneva Convention and the 1967 New York Protocol, and Complying with International Human Rights Law in Practice.**

  Prior to concluding Agreements, Member States must carry out Human Rights Impact Assessments – assessed, in addition to the above, against Art. 44 & 45 of the Proposed Asylum Procedures Regulation[16] - vetted by an independent human rights body such as the Council of Europe. Member States must ensure regular independent monitoring of the Agreements' implementation (specifically for human rights compliance), including the EU-Turkey Agreement and EU cooperation with Libya.[17] Cooperation must be suspended in cases of serious or repeated human rights violations or other gross misconduct.

11. See Medecins Sans Frontiers, March 2019: https://www.msf.org/eu-turkey-deal-continues-cycle-containment-and-despair-greece-refugees; Greek Council for Refugees, April 2019: https://www.gcr.gr/media/k2/attachments/Report_Samos.pdf
12. EU Commission, July 2018: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-controlled-centres-eu-member-states_en.pdf
13. EU Commission, June 2018: https://ec.europa.eu/commission/sites/beta-political/files/migration-disembarkation-june2018_en.pdf
14. For further detail on such practices in Italian and Greek Hotspots, see: https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/detention-and; http://eumigrationlawblog.eu/implementation-of-the-eu-turkey-statement-eu-hotspots-and-restriction-of-asylum-seekers-freedom-of-movement/
15. Required by Art. 14 Directive 2013/33/EU and Art. 14 Proposal for a Recast Reception Conditions Directive.
16. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation package/docs/20160713/proposal_for_a_common_procedure_for_international_protection_in_the_union_en.pdf
17. Which has been repeatedly condemned by major human rights groups, e.g. HRW, January 2019: https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya; and repeatedly declared unworkable by UNHCR: https://www.ecre.org/unhcr-declares-libya-unsafe-for-returns-amid-increased-violence-in-the-capital/ ; https://www.dw.com/cda/en/unhcr-urges-eu-to-stop-sending-migrants-to-libya/a-48792348

3. Deprivation of Liberty & Geographical Restriction

Detention is increasingly employed on EU territory, including in cases of children,[18] as a migration management tool, a means of deterrence and/or to compensate for inadequately functioning reception and asylum systems. Such practice compounds the suffering of vulnerable and often traumatised individuals while violating human rights obligations and wasting valuable resources necessary to sustain large-scale detention schemes.

Recommendations

- **Article 8(3)(c) of the Proposed Recast Reception Conditions Directive Should be Removed.**

  The proposed provision broadens Member States' powers to detain individuals on grounds of non-compliance with restrictions of movement imposed on them.[19] Restrictions on individuals' movement lie in stark contrast to Art. 5 ECHR, Art. 6 EU Charter, as well as Art. 26 & 31(2) of the 1951 Geneva Convention. Moreover, as exemplified by the Greek Hotspots, these very restrictions lead to human rights violations that leave displaced people little choice but to seek humane living conditions and effective protection elsewhere.

- **Art. 11(a) & (b) of the Compromise Text of the Recast Reception Conditions Directive Should be Removed.**

  It is now internationally established that detention is never in the best interests of the child.[20] While Art. 11 of the Compromise Text,[21] makes progress toward a definitive stance against the detention of children, par. 11(a) and 11(b) codify two grounds on which children can be detained.[22] This contradicts the primacy of the child's best interests enshrined in Art. 22 of the Directive, and the international consensus that 'the detention of any child because of their or their parent's migration status constitutes a child rights violation and contravenes the... best interests of the child'.[23] Moreover, the wording of par. 11(b), permitting detention where minors' 'safety' and 'wellbeing' is 'guaranteed', is alarmingly vague and risks broad discretion when authorities detain a child in practice.

- **Geographical Restriction Implemented within EU Hotspot Approach must be Lifted.**

  As is now well-documented by the EU's own human rights institutions[24] as well as major NGOs and civil society organisations,[25] the system of geographical restriction leads to sustained human rights violations and disproportionate pressure on states at the EU's external borders. This approach amounts to a system of de facto detention in places such as the Greek islands (albeit spread across a wider geographical area), and must end. In line with Art. 26 and 31(2) of the 1951 Geneva Convention, asylum applicants on EU territory must be allowed to move freely within the Member State they are present in and claim asylum in open reception and identification centres as outlined above.

18. For the latest developments, see PICUM, March 2019: https://picum.org/wp-content/uploads/2019/04/Child-Immigration-Detention-in-the-EU-Final-ENG.pdf
19. See Art. 7(2) Proposal Recast Reception Conditions Directive.
20. OHCHR, February 2018: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22681
21. Available at: http://www.statewatch.org/news/2018/nov/eu--council-asylum-reception-13699-18.pdf
22. If an accompanied minors' parents or primary care givers are detained and if unaccompanied minors' safety and well-being are guaranteed. For further commentary see, e.g. ECRE, August 2018: https://www.ecre.org/ecre-policy-paper-asylum-at-the-european-council-2018-outsourcing-or-reform/
23. See Joint General Comment of the Committee on the Rights of the Child and the Committee on Migrant Workers' Rights, 2017: https://www.refworld.org/docid/5a12942a2b.html, and UNHCR's Position Regarding the Detention of Refugee and Migrant Children in the Migration Context, 2017: http://www.refworld.org/docid/5885c2434.html
24. EU Fundamental Rights Agency Updated Opinion, March 2019: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-hotspots-update-03-2019_en.pdf
25. See https://www.hrw.org/news/2019/03/14/ngos-calling-european-leaders-end-humanitarian-and-human-rights-crisis-europes; https://www.amnesty.org/en/latest/news/2018/12/greece-and-the-eu-must-move-asylum-seekers-to-safety/