

European Commission initiative – New Pact on Migration and Asylum

Feedback from Refugee Rights Europe

Refugee Rights Europe believes that the New Pact on Migration and Asylum is an opportunity for shifting the approach to migration and asylum within the EU from a merely security-driven and crisis-mode approach to a rights-based approach which upholds EU values of human dignity, the rule of law and human rights. Despite its profound conviction that the EU Migration and Asylum policies can be more rights-focused, Refugee Rights Europe also sees the risk that the New Pact might conversely come to further normalise and deepen current trends witnessed across Europe. These include the increased use of pushbacks at internal and external land and maritime borders of the EU, further externalisation of migration and asylum policies, restricted access to asylum on EU territory, and the accompanying aggravation of the already dire humanitarian situation at Europe borders.

The European response to asylum and migration must therefore be directed towards sustainable solutions upholding without exception individuals' access to asylum as per Article 80 of the TFEU and in full compliance with international and European human rights and refugee law. Such a response implies that displaced people can access Europe in a safe and dignified way. Expanding legal channels to and across the EU is therefore necessary, both for people who fit the traditional 'refugee' definition as contained within the 1951 Geneva Convention, as well as those having been displaced from their home countries due to other forms of protracted crises, including climate change, entrenched extreme poverty and generalised violence. People always have and always will travel to Europe by their own means and without necessarily being in possession of the required paperwork: these people are rights holders under international and European human rights and refugee law. European border management must guarantee those rights under all circumstances: when enforced by Member States or the European Border and Coast Guard Agency, to ensure that individuals are treated in a humane and rights compliant manner. Ultimately, asylum and migration policies should be managed in a humane, responsible and consistent manner as other policy areas within the European Union acquis, and in a less politicised and haphazard way. This includes the elaboration and implementation of a sustainable and systematic responsibility sharing mechanism involving all Member States.

Refugee Rights Europe hopes for this New Pact to:

- 1. Expand safe and legal pathways to and across the EU** to protect individuals from violent criminal trafficking rings and from life-threatening journeys across land and sea. In all circumstances, displaced people must be offered the opportunity to apply for asylum including when they present themselves spontaneously at borders.
- 2. Strengthen the full and harmonised implementation of the Common European Asylum System as it already exists.** Indeed, the inconsistent implementation of the CEAS creates distrust between Member States and leads to increasingly unilateral decision-making based on supposed national interest only, often in violation of international and EU law. This lack of harmonised implementation of the CEAS by Member States and only partial compliance with the agreed EU rules has led to a scenario wherein illegal pushbacks and containment have become central aspects of the EU's asylum system.
- 3. Pave the way for a revision of the Dublin III Regulation** in order to establish a reliable and systematic solidarity mechanism that guarantees asylum seekers' rights and provides Member States with a framework for fair sharing of responsibilities within an enhanced and consistent EU protection system. Such a system must ensure that effective solidarity between Member States applies during and beyond crisis situations, and must take into account the individual circumstances and preferences of prospective asylum seekers, including but not limited to

family links, as well as the best interest of children. For that reason, the country of first entry criteria must be omitted.

- 4. Guarantee a rights-based management of European internal and external borders.** While displaced people travelling to and across Europe are rights-holders and have notably the right to apply for asylum and to be protected against *refoulement*, inhumane and degrading treatment and arbitrary detention, violations of these rights are being witnessed daily across the EU. Not only are these violations contrary to international and European human rights and refugee law but they also contribute to a sharpening of the divide around common EU values, such as human dignity, the rule of law and human rights. In addition, they arguably serve to undermine the EU external image and international reputation and also risk having a negative impact on European social cohesion, contributing to the further polarisation of societies through the normalisation of violence against newcomers, and the tolerance of populist and xenophobic political groups who instrumentalise the issue of border management for political gains.
- 5. Increase Members States' and the European Border and Coast Guard Agency's accountability for their border practices.** All too often, pushbacks and rights violations at Europe's internal and external European land and maritime borders are not denounced or investigated. Existing provisions such as the European Commission's infringement procedures, the EBCGA's complaint mechanism and the EU Ombudsman initiatives and inquiries must be systematically used. In addition, the New Pact must include a proposal aimed at facilitating the reporting of rights violations at borders and increasing monitoring, investigations and convictions of actors responsible for such violations.
- 6. Refrain from further externalising European asylum and migration responsibilities to third countries.** The New Pact must not pave the way for the opening of facilities in third countries which would lead to external processing of asylum claims. In addition, third country cooperation 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. Finally, the introduction of a systematic and mandatory 'admissibility procedure' based on the concepts of 'safe third country' and 'country of first asylum' must be removed from all proposals.
- 7. Offer an alternative narrative about migration and asylum** grounded in facts and contributing to empathy, solidarity and social cohesion. In picturing people seeking safety as "threats" or "invaders", which the present initiative risks doing, the current European narrative around migration and asylum is conducive to fiercely negative perceptions and attitudes towards displaced persons. It also contributes to the further polarisation of societies around core values, in particular security vs human dignity and rights. Refugee Rights Europe would welcome a New Pact that upholds to what Commissioner Schinas described as "our European way of life" during a hearing with MEPs, namely as "being open to the world and extending heart and home to those who are less fortunate".