DRC POLICY BRIEF

IMPLICATIONS OF THE EU'S OUTSOURCING OF PROTECTION RESPONSIBILITIES AND MIGRATION CONTROL

The Danish Refugee Council calls for a critical reflection on the consequences and humanitarian implications of the trend towards externalisation in EU asylum and migration policies.

The EU-Turkey Statement of March 2016[1], which externalised protection responsibilities in exchange for funding and other inducements to Turkey, demonstrated the lengths to which the EU is willing to go to find quick-fix solutions to the pressure on its borders. One year after the launch of the Statement, it has been followed by several new policy initiatives and agreements[2] that **consolidate the outsourcing of protection responsibilities and migration control and as the predominant EU approach** to managing mixed migratory flows.

This DRC Policy Brief looks at the consequences of the EU trend to externalise protection responsibilities and migration control for people on the move, as evidenced by DRC's operational presence in Turkey, Greece and the Western Balkans.

The global challenge of displacement and migration calls for a unified, comprehensive and long-term response, and DRC welcome the attention and resources that the EU has dedicated to strengthening the management of displacement and migration. **So far however, the EU has not adequately assessed the implications of its new measures from a protection and rights perspective**. In assessing the implications of its migration management measures, DRC calls for the EU to look beyond what is presented as successful containment of specific routes, reduced arrivals at the EU's borders, and increased return rates, and carefully consider both the immediate and long-term unintended consequences and humanitarian implications. The EU must honor the objective of its policies, namely to save lives, reduce the need for embarking on haphazard and dangerous journeys, ensure effective access to asylum procedures and uphold the dignified return of migrants and rejected asylum seekers.

Key EU policy initiatives and agreements following the EU-Turkey Statement, which institutionalise a practice of externalising protection responsibilities and migration control:

- the **New Partnership Framework with third countries (June 2016)** that is modelled on the EU-Turkey Statement and aims to leverage all existing EU and Member State instruments and tools available for external cooperation with a number of priority countries in order to curb refugee and migrant movements to Europe;

- the **Joint Way Forward (October 2016)** – an agreement with the Afghan Government, signed in the margins of the Brussels Donor Conference on Afghanistan, to accept an unlimited number of returns of Afghan nationals, who are irregularly present in EU Member States;

- **Joint Action Plan on the Implementation of the EU-Turkey Statement (December 2016)** – which urges the Greek Government to make necessary amendments to the national legislation to 1) allow the abolition of exemption of family cases and vulnerable persons from Admissibility Assessment and 2) to limit the appeal steps in the context of the asylum procedure;

- the **Joint Communication on the Central Mediterranean Route (January 2017)** and **Malta Declaration (February 2017) -** a key outcome of the Malta Summit on 3 February 2017 that endorsed the bilateral MoU between Italy and the internationally recognised Libyan Government aimed at stemming migratory flows, particularly from Libya to Italy;

1 EU-Turkey Statements: http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/
2 New Partnership Framework with Third Countries (June 2016): COM(2016) 385 final; Joint Way Forward (Oct 2016): https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf ; Joint Action Plan (Dec 2016): https://ec.europa.eu/commission/sites/beta-political/files/december2016-action-plan-migration-crisis-management_en.pdf; Malta Declaration on the external aspects of migration: addressing the Central Mediterranean route (Feb 2017) http://www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/ ; Renewed EU Action Plan on Return (March 2017) COM(2017) 200 final

FEATURES AND CONSEQUENCES OF THE EU EXTERNALISATION POLICIES

Restoring order in migratory flows

A narrative of unprecedented crisis is legitimising an erosion of refugee protection.

The multiple migration policy initiatives and partnership agreements launched in the past year have been developed in a context of strong narratives of unmanageable flows and unprecedented crisis. This 'crisis narrative' has three overall implications:

- It fuels the rising trend of European xenophobic and anti-immigrant populism and increases tension between refugee and migrant populations and host between communities;

- It addresses mixed flows as a whole, and generally does not differentiate appropriately the needs of those on the move;

- It warrants the use of short-term temporary measures, which have given leeway to and legitimised the undermining of rights.

Order in the migratory flows in Greece: extensive use of detention

After the launch of the EU-Turkey Statement, people who are arriving on the Greek Islands are detained in the Hotspots following a procedure, which has been strongly criticised by civil society organisations as arbitrary. Delays in the asylum procedures on the islands and the prolonged entrapment in facilities and sites that lack adequate services and accommodation are causing frustration and tension among refugees and migrants. In an attempt to control the situation the authorities are increasingly resorting to the controversial practice of arrest and detention on public order grounds.

Despite efforts to provide appropriate space, unaccompanied minors are still being detained due to a lack of open accommodation facilities and deficiencies in age assessment procedures and the identification of unaccompanied minors. The increased number of administrative detainees coupled with the questionable detention conditions, continue to represent a serious protection risk on the Islands in Greece.

DRC launched its operation in Greece in November 2015, and has a daily presence in Moria, Lesvos with a protection and legal assistance capacity. The above observations are based on DRC's protection data. DRC is also present on the mainland.

There are numerous examples of the way in which this is taking place: a general "race to the bottom" and erosion of humanitarian standards and human dignity as a way of countering perceived pull factors; expedited asylum determination procedures; a growing tendency to differentiate between individuals based on nationality; and the extensive and increasing use of detention, including of children and people with serious vulnerabilities. Rather than focusing on sustainable solutions with respect for human rights, shortsighted and short-term measures, including containment and deterrence, are taking precedence and being legitimised by a narrative of unprecedented crisis.

- **DRC calls for a balanced and positive narrative on refugee protection framed in terms of manageability and solutions.** Framing asylum seekers as illegal and movements as overwhelming is destructive and detracts from efforts being directed at addressing the root causes of displacement and forced migration and finding solutions for the displaced.

- **DRC calls for the appropriate reflection of the similarities and differences of those on the move in policies and the application of legal frameworks.** Everyone on the move, regardless of status, mode of travel and country of origin, must have their fundamental

human rights upheld. A migration management framework must ensure that the reception, processing and return or readmission of those not qualifying for asylum is conducted in safety, dignity and with respect for human rights, and recognise the particular protection concerns and vulnerabilities faced by refugees by upholding and applying the Refugee Convention.

Containment and deterrence: facing detention, abuse, ill-treatment and push-backs

Despite the "closure" of the Western Balkans route, refugees and migrants continue to find their way to Macedonia and Serbia, many in the hands of scrupulous smugglers, and with the intention to continue their journey to Western Europe.

In Macedonia, the policy of tolerance that allowed refugees to freely transit through the country after the border closure was transformed to a policy of detention. Refugees and migrants are detained in so-called "transit-centers" with limited freedom of movement, and are faced with risk of arbitrary deportations back to Greece. Refugees and migrants caught by the police outside the transit-centres are in many cases deported without an individual examination of their claim, or explanation of the grounds for their deportation.

In Serbia, continued arrivals, and the limited possibilities to move onward, has resulted in the number of refugees and migrants to steadily build up. Responding to the strict border controls and entry limitations on the border to Hungary and trying to regulate the migratory flows through Serbia, the Serbian authorities supported the adoption of informal "waiting lists" to enter Hungary. This policy, however, has allowed the Hungarian authorities to enforce brutal measures to catch those who are not going through the official entry points: beatings, dog bites, the use of pepper spray and other types of inhumane treatment are regularly reported by refugees being pushed back to Serbia. Hundreds of persons have been forced back to Serbia by Hungarian authorities. Croatia has also regularly been pushing back people, although no similar violence has been reported.

Since the beginning of the refugee crisis, DRC has deployed a protection capacity in both Serbia and Macedonia with the specific purpose of supporting the authorities in providing protection to refugees and migrants along the Balkan route, and have conducted consistent protection monitoring since October 2015.

Cooperation with Third Countries on migration management

Short-term objectives of stemming onward flows to Europe foster restrictive measures and rights-violations.

While we welcome strengthened cooperation with third countries on improving reception and asylum systems, the current EU policy on stemming irregular migration to Europe is promoting a steady erosion of the international refugee protection regime and fundamental human rights. The EU is trading its political leverage for externalised border controls and compromising its role as a key actor in foreign policy dialogue. The emphasis on stemming onwards flows in cooperation with third countries unintentionally promotes increased use of restrictive measures such as detention, ill-treatment and possible refoulement to countries of origin.

- **DRC calls for the EU and Member States to maintain a rights-based approach to migration and refugee protection**. Conditionalities based on returns and readmissions and the ability of States to prevent onward movements should not form the basis of partnerships with third countries or of the allocation of aid. The objective of reducing arrivals to the EU must never be at the expense of ensuring access to protection for those in need.

- **DRC calls for solidarity and responsibility sharing both within the European Union and globally**. The EU must actively contribute to improving refugee protection in regions of origin, without undermining the right to seek asylum in Europe. The EU should lead by example in its support to the establishment of an international system of solidarity and responsibility sharing to manage movements of refugees and migrants by shouldering its fair share.

Saving lives and combating human smuggling

Containment strategies make access to protection more difficult and nurture human smuggling in the absence of safe and regular pathways.

A genuine objective of saving lives must include safe and regular pathways for mobility. Contrary to the declared objective of saving lives, the EU migration framework omits to adequately respond to the need for safe and regular pathways. Rather than emphasise safer mobility, the EU policy initiatives emphasise less mobility. While containment strategies and the outsourcing of migration control and protection responsibilities to third countries make protection needs and rights abuses invisible to the European public, they do not lower the number of people in need of protection. Rather, they lead to the criminalisation of border crossings; nurture human smuggling rather than dismantle it[3]; make access to crossing borders contingent upon resources and means; and push more people to use covert and more between dangerous routes in the search for protection.

- **DRC calls for safe and regular pathways for mobility and access to protection,** including through humanitarian admission, resettlement, family reunification and other safe admission schemes, and expanded opportunities for regular migration.

- **DRC calls for resettlement to be preserved as an unconditional and durable protection instrument for vulnerable refugees** that should not be tied to readmission and returns, and that is coordinated by UNHCR.

No way out: Human smuggling on the increase

Visa restrictions for Syrians entering Turkey by air or sea, border closures and the ongoing construction of a wall along the Turkish-Syrian border have made it de facto impossible for Syrians to cross into Turkey regularly, thus according to DRC field research resulting in:

1. a shift in migration routes from Syria (west-ward, to Hatay province);

2. increasing smuggling prices (from only USD 20-50 last year up to USD 600, and in some cases USD 1,000 presently). Smuggling fees in the western provinces of Turkey to the EU countries are costlier, starting from USD 500 or USD 1,000 and even as high as EUR 20,000 per person if air travel and fake passports are involved, and

3. more reported abuse and exploitation involved in the smuggling.

A DRC study carried out among refugees and migrants (Syrians, Iraqis, Afghanis, Iranians, Sudanese and Congolese) in 4 Western provinces of Turkey in November 2016 shows that between 73% and 93% of respondents entered Turkey irregularly, and 40% of respondents indicated that they had paid between USD 1,000 and USD 5,000. People are forced to rely on smugglers at a much greater rate than previously. While the erection of a wall does not seem to reduce the volume of migration flows, its human costs are immeasurable. Border restrictions do not deter refugees from crossing irregularly. Instead they increase reliance on smugglers.

DRC has been operating in the border areas of southeastern Turkey (Kilis, Hatay and Urfa) since 2013.

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3 See e.g. DIIS report 2017:03. Europe and the Refugee Situation. Human Security implications; .

Ensuring effective access to asylum procedures and upholding dignified return

The outsourcing of protection responsibilities puts the right to seek asylum and protection against refoulement at risk.

Increasing return and readmission rates is a key objective of the new EU policies and agreements, and is a central part of the wider deterrence strategy. DRC acknowledges the right of States to return rejected asylum seekers and migrants – provided that the decision to deny asylum, or withdraw a residence permit has been made with due regard to national and international human rights standards. The externalisation of the asylum procedure to a third country, as seen in the EU-Turkey Statement, must be based on a genuine assessment of the capacity and willingness of receiving countries to adhere to international and European human rights safeguards.

- **DRC calls for all legal safeguards to be fully respected and for protection to be guaranteed in case of return or readmission**. The potential readmission of third country nationals in need of international protection to countries of transit where protection cannot be guaranteed contradicts the core principle of the 1951 Refugee Convention. In the face of closing borders and deterrence policies, the right to seek asylum must be safeguarded.

The immediate consequences and unintended humanitarian implications of the EU's outsourcing of protection responsibilities and migration control are clearly surfacing. DRC reiterates the need for a thorough and critical assessment of protection implications.

Outsourcing protection: detainment and risk of refoulement

It is not only apprehended migrants entering or departing Turkey through irregular means who are detained in removal facilities, but also asylum seekers, refugees and migrants sent back from the EU under the EU-Turkey Statement. Local NGOs, including DRC partners, and UNHCR confirm that they have difficulties gaining permission to visit detention facilities. Further legislative changes introduced in October 2016 by means of Executive Order (n. 676) have dismantled safeguards to protect foreigners from refoulement or otherwise unlawful deportation, based on determinations made by administrative authorities instead of a court, and with no guarantee for recourse to judicial review.

As part of its mixed migration work in Turkey, DRC works with local partners to provide legal assistance to asylum seekers, refugees and migrants in detention.

About DRC

DRC delivers protection-focused programmes all along displacement routes from regions of origin in the Middle East, Central Asia, Horn of Africa, and West Africa, to transit areas in Iran, Turkey, Libya, Tunisia and South-Eastern Europe, as well as in Denmark as one of the destination points in Europe.

DRC is uniquely positioned with knowledge about people on the move, their situation in regions of origin, and their needs and protection concerns along the transit routes and in destination points. DRC coordinates, aggregate and disseminate analysis on mixed movements through its global structure on Mixed Migration – the Global Mixed Migration Secretariat (GMMS) – drawing on inter-agency regional entities in East Africa, the Middle East, Central Asia and West Africa.