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Contribution to the European Commission's consultation on the post-Stockholm agenda

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The National Red Cross Societies of the Member States of the European Union and the International Federation of Red Cross and Red Crescent Societies welcome the public consultation launched by the European Commission on the future of Home Affairs policies - "*An open and safe Europe – what next*"¹ as it allows us to make known our humanitarian point of view and recommendations in relation to the future migration, asylum and border European Union (EU) policy agenda. As we have done during the discussions leading to the adoption of the Stockholm programme² and of The Hague programme³, we would hereby like to put forward our perspective on the future of EU migration and asylum policies. This is based on our experience, our global network and our commitment to protect and assist migrants by addressing their needs and vulnerabilities.

We agree with the European Commission that Home Affairs policies have undergone a profound transformation during the last two decades and we celebrate the achievements of the EU and its Member States, which have led to the foundations for a common legislative framework and operational cooperation across the EU. We consider that key future challenges lie in the implementation of EU migration and asylum legislation, and in the need to draw lessons from the past 20 years (both in terms of policy-making and of funding experiences). The implementation and monitoring of policies should now be the main focus leading to a truly harmonised system on migration and asylum. We support the European Commission's role in monitoring and supervising the implementation of EU legislation at national level, and call for reinforcement of the links with Civil Society Organisations as we have the capacity to provide information as well as unique practical experience.

While the format of the new agenda for Home Affairs remains uncertain, we would like to stress the importance of ensuring transparency, accountability and democratic dialogue in the definition of its content. We hope that the next programme will allow for adequate cooperation with Civil Society in the elaboration, implementation and evaluation of EU policies and programmes. At the 31st International Conference of the Red Cross and Red

¹ http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2013/consulting_0027_en.htm

² RCEU (2008) [Opinion of the National Red Cross Societies of the Member States of the European Union and the International Federation of Red Cross and Red Crescent Societies, "Freedom, Security and Justice: What will be the future?" – Consultation on priorities of the European Union for the next five years \(2010-2014\)](#), 12 November 2008.

³ RCEU (2004) [Opinion of the National Red Cross Societies of the EU Member States and the International Federation of Red Cross and Red Crescent Societies on COM\(2004\)](#), 14 September 2004.

Crescent the Movement⁴ in 2011, States agreed to work towards enhanced cooperation between public authorities at all levels and National Red Cross and Red Crescent Societies in order to promote respect for diversity, non-violence and social inclusion of all migrants; to enhance cultural awareness between migrant and local communities; to promote through formal and non-formal education, humanitarian values and the development of interpersonal skills to live peacefully together; and to enhance social cohesion through the engagement of local and migrant populations and civil society organisations in voluntary service, community and sport programmes.⁵ With this in mind, we call for the next programme to be based on a spirit of partnership, and to allow for the EU, and its Member States and agencies to closely cooperate with Civil Society Organisations active in the field of migration and international protection inside and outside the EU.

During the implementation of the Stockholm Programme, we witnessed the increasing role of Human Rights instruments and of the judiciary in interpreting home affairs policies and in assessing their compatibility with fundamental rights. The next years should provide an opportunity for the EU to review the impact of the common European legislative framework on international obligations, with a view to ensuring that the rights of all persons, irrespective of their legal status, are not violated. There should be an evaluation of measures such as carrier sanctions⁶ that impose financial penalties on private transport companies carrying persons who do not possess the necessary travel documents and should such measures be found to be in breach of Human Rights Law, in particularly the right to seek asylum and the right to leave a country including one's own, then they should be revised. The EU must ensure that migration takes place in safety and with full respect for fundamental rights.

Through Resolution 3 adopted during the 31st International Conference of the Red Cross and Red Crescent, States have undertaken to ensure that within the framework of applicable international law, their "national procedures at international borders, especially those that might result in denial of access to international protection, deportation or interdiction of persons, include adequate safeguards to guarantee the dignity and safety of all migrants". We believe that legal channels for migration including in cases of asylum, family reunification and labour purposes will crystallize the full benefits of migration be it for the migrant, the country of origin or the country of destination. In February 2013 we put forward 10 ideas and suggestions for setting up such safe and effective legal avenues for persons in need of international protection to access the EU, which we hope will serve as a starting point for more detailed discussions.⁷ We remain committed to supporting their implementation in the context of the post Stockholm Home Affairs agenda.

The following six recommendations are designed to feed into the reflection that will lead to the definition of the Post Stockholm migration and asylum agenda. They highlight what we consider to be key priorities for the next few years. These are guided by our belief that a truly open Europe should be based on clear values and principles, and that the aim of the European Home affairs agenda should be to reduce the vulnerabilities of migrants.

⁴ At the International Conference, representatives of the components of the Movement meet with representatives of the States Party to the Geneva Conventions. Together they examine and decide upon humanitarian matters of common interest and any other related matter.

⁵ 31st International Conference of the Red Cross and Red Crescent, [Resolution 3 – Migration: Ensuring Access, Dignity, Respect for Diversity and Social Inclusion](#), November 2011.

⁶ Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, OJ L 187, 10.7.2001.

⁷ RCEU(2013), [Legal avenues to access international protection in the EU](#), 27 February 2013.

1. Protect and respect human rights of migrants – irrespective of their legal status

As a humanitarian network we believe that people made vulnerable as a result of migration policies should receive fair and humane treatment. The human rights and dignity of migrants – irrespective of their legal status - must be protected and respected. Migrants in an irregular situation clearly belong to the most vulnerable people in European society. The term 'illegal migrant' should not be used to refer to this group, as it further stigmatizes and criminalises already vulnerable persons. Because of their precarious legal status, in many countries such migrants have limited or no access to basic medical, social and educational services. In addition, we are concerned that the possibilities to detain migrants are increasing, putting their life, health and social wellbeing at risk.

- Access to medical treatment for all migrants should be made effective without negative consequences, especially for pregnant women, children and the elderly. Basic services such as education for children and labour rights should be guaranteed for everyone across the EU. Current legislation which complicates or even criminalises the provision of humanitarian aid to migrants should be revised and abolished. This requires that the right to access all migrants in need is upheld - including access to those currently in detention – especially to be able to provide them with humanitarian assistance and tracing services.
- Sufficient funding should be made available at national level to guarantee all migrants access to adequate health, housing, justice and social services in dignified conditions. This would help to tackle the issue of destitute migrants.
- Detention should only be used for a minimal period and as a last resort, and it should be subject to judicial review. Current detention practices need to be reviewed in order to assess whether they are necessary and proportional. Alternatives to detention should be further developed and promoted. Conditions of detention should also be regularly reviewed, so that the human rights and dignity of detained migrants are protected and respected, taking into account the specific needs of vulnerable persons.
- Victims of human trafficking must be recognized as victims. Such recognition should be unconditional, irrespective of their cooperation in criminal procedures. This status determination (referral and protection) should be made a priority, including by ensuring their access to asylum procedures or other protection measures.

2. Counter negative attitudes towards migrants, like racism, xenophobia and discrimination

Migrants are often among the worst affected following the onset of a crisis.⁸ In addition, the many benefits of migration and the contribution of migrants to the countries of origin, transit and destination tend to be overlooked in the public discourse on migration. Awareness raising of the positive contribution of migrants to EU development and economic growth is essential in order to counter stereotypes that feed discriminatory attitudes and lead to situations of exclusion, poverty and racism. Migration should not be regarded as a threat or just as an instrument to respond to the specific needs of the labour market, but as an opportunity to open up society by means of cultural exchanges and dialogue between the population of the hosting countries and migrants.

⁸ IFRC (2013), [Think differently, Humanitarian impacts of the economic crisis in Europe](#), October 2013.
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- Measures to promote integration should be available to all migrants, including asylum seekers and refugees, on the basis of need. The Common Basic Principles on integration should remain the main benchmark and target in integration programmes. This applies in particular to principle one, which envisages that integration is a continuous two-way process of mutual accommodation.
- Positive experience of cultural diversity and co-existence of communities should be more widely disseminated so as to promote both awareness of the realities of migration and positive attitudes, as well as to reduce fear of migrants.
- Actions promoted and supported by the EU should go beyond civic initiatives and language tuition to include measures that facilitate family reunification. This is a human right and an important dimension in integration. Such actions should also provide for the physical and psychological welfare of all migrants as a prerequisite for integration.

3. Support migration policies that are guided by the principle of respect and dignity towards migrants

Existing migration policies should be reviewed to ensure that they are fair and truly create opportunities for legal and safe migration in dignity, whether for employment purposes or for family reunification. The promotion of a consistent labour migration framework across the EU would help to mitigate the negative consequences of demographic change and an ageing population. Yet migration cannot be managed solely from the point of view of economic and demographic need; this topic deserves humanitarian attention. From a humanitarian point of view, migration schemes and debates should be guided by the principles of humanity, respect and dignity, with careful provision made for the needs and interests of migrants.

- Strong legal provisions governing migrant rights, decent work, social protection and the portability of social rights should be mainstreamed into the existing labour migration framework to ensure that legal migration policies are fully rights-based. Such a framework would optimize the positive effects of migration for development.
- Effective mechanisms should be in place to protect migrant workers against exploitation, in particular by guaranteeing effective access to justice and access to complaint mechanisms for all migrants irrespective of their administrative status.
- Future mobility partnerships should be based on clear human rights and labour rights standards. The implementation of existing ones should be reviewed.
- There should be a review of the adequacy of current labour migration channels in reflecting the needs of the EU employment market. Consideration should be given to establishing additional channels that increase opportunities for legal migration to the EU for employment purposes.

4. Implement a well-functioning Common European Asylum System in a spirit of EU solidarity and shared responsibility

In view of the transposition of the new asylum package we would like to invite the EU to use this as an opportunity to simplify asylum procedures at national level and to ensure access to fair and high quality asylum systems that provide a uniform status throughout the Union. In

particular, we would encourage the EU to support the introduction of a single and uniform status for all persons eligible for international protection in the EU which as far as possible builds on the rules and standards pertaining to refugee status and promotes equal treatment of refugees and beneficiaries of subsidiary protection. Existing integration policies should be evaluated and reviewed to ensure that a protection-sensitive approach is upheld, in particular with regard to Family Reunification and Tracing.

- Access to the Common European Asylum System remains the key challenge for the EU in the years to come. Legal avenues to access international protection within the EU must be put in place. In particular, the issuing of humanitarian visas must be promoted, with exemptions from EU visa regulations considered for residents of countries where there is a humanitarian crisis and for refugees formally recognised by UNHCR.
- Existing notions and procedural devices that undermine examination of individual asylum applications should be abolished. All claims should be processed individually and considered on their own merit, without resorting to generalised assessments such as ones based on nationality, for example. Throughout the process all asylum seekers should be given leave to remain and access to independent legal counsel, until a secure legal status has been granted or return has taken place.
- As illustrated by current pressures on external border States, the Dublin system which characterises the Common European Asylum System is unsatisfactory and requires review. Discussions on the mutual recognition of refugee status decisions, on free movement rights for refugees and relocation schemes must be advanced as a concrete illustration of EU solidarity.
- In accordance with Article 31 of the 1951 Convention relating to the status of refugees, illegal entry for the purpose of seeking international protection must not be penalised. We believe that people seeking protection should not be detained, and we urge EU decision makers and Member States to ensure that any national frameworks governing asylum reception limit the possibility of detention and envisage a priori other alternatives, in order to make this truly a measure of last resort.⁹
- The Common European Asylum System must guarantee that Member States and EU institutions allocate sufficient resources, including adequately trained staff, to processing asylum applications and to the reception of asylum seekers.

5. Uphold border management policies and practices that are respectful of the rights and dignity of all migrants, irrespective of their legal status

EU border procedures should not result in the denial of access to international protection and they should include adequate safeguards to guarantee the dignity and safety of all migrants. Rescue at sea must be implemented effectively. Border control measures, even far away from the EU territory, must always be in line with the EU Charter of Fundamental Rights, the European Convention on Human Rights and the principle of non-refoulement; they must not lead to push-backs or pull-backs at external (land, air and sea) borders. The increasing criminalisation of illegal entry often leads to increasing vulnerability and humanitarian emergency situations. Increasingly, people travel and arrive at the external borders in “mixed

⁹ RCEU, [Letter on the revised Directive laying down minimum standards for the reception of asylum seekers](#), 10 June 2013.

flows” with multiple vulnerabilities.¹⁰ They should be treated humanely and be subject to individual assessment . They must receive information about their rights in a language they can understand, while those who express protection concerns must be guaranteed access to fair and proper asylum procedures.

- It is vital to create an effective, uniform, fast and easily accessible legal remedy mechanism for migrants who claim to have been denied access to protection by the EU, its Member States or their border agents. This mechanism should result in a timely decision on their right to enter the EU to ask for asylum. An independent border monitoring mechanism should also be set up to complement this.
- Policy discussions on smuggling should be clearly distinguished and dissociated from those on trafficking. The granting of protection status for victims of human trafficking should not be made dependent on cooperation in criminal proceedings. More efforts must be put into the fight against human trafficking than into irregular migration.
- Border management agreements and cooperation with third states should only be signed and implemented if they strictly comply with fundamental rights, including the right to seek asylum. In order to enhance transparency, the European Parliament should be involved in any negotiations with third countries.
- In cases of interception or rescue at sea, it must be made clear that final disembarkation may only take place at a place of safety where adequate procedures and reception services are available. To this end, all public officials involved should be properly trained and the conditions monitored by independent organizations. Individuals, companies and organisations which provide support or assistance to migrants in distress must not be penalised.

6. Address the needs of migrants in the countries of origin and transit through the external dimension of the EU asylum and migration agenda

European National Societies have expressed concerns about the current externalisation of EU migration policies and its impact on migrant vulnerabilities.¹¹ It is essential that the external dimension of the EU asylum and migration agenda should serve to address the needs and rights of migrants in the countries of origin and transit, and be rooted in principles of solidarity and the protection of fundamental rights. Capacity-building of immigration and asylum authorities and stakeholders, including the judiciary and civil society organisations in third countries, is important. However, it should always be complementary and not a substitute for measures that ensure access to protection in the European Union. Third country support beyond resettlement should be considered as secondary to the establishment of high quality EU migration and asylum policies.

- In their external actions, EU Member States should promote the implementation of relevant international Human Rights instruments to the highest standard. With regard to the external dimension of migration, border and asylum policies, the EU should actively promote universal accession to, and full implementation of, the 1951 Refugee Convention and its 1967 Protocol, as well as respect for the right to leave one’s country and for due application of the principle of non-refoulement. In this context, we

¹⁰ IFRC, [Migrants smuggled at sea- ensuring their dignity and safety: an IFRC perspective](#). 20 April 2012.

¹¹ RCEU (2013), [Shifting borders. Externalising migrant vulnerabilities and rights?](#), 6 November 2013.

strongly encourage EU support for protection and assistance capacity-building in third countries. Readmission agreements should only be signed with countries of origin where all migrant's rights are guaranteed.

- The external dimension of EU migration and asylum policies should be guided by the principle of solidarity. Resettlement is a mechanism for responsibility sharing and as such is a concrete demonstration of international solidarity. It should remain a complementary tool for protection that provides durable solutions which take into consideration the situation of particularly vulnerable refugees. We welcome the joint EU Resettlement Programme and encourage the EU and its Member States to commit to the resettlement of a substantially higher number of refugees, while at the same time guaranteeing the quality and sustainability of these programmes.
- The EU must adhere to its Millennium Development Goal commitments and official development assistance programme, including dedicating 0.7% of gross national income to aid by 2015. Both donors and governments of aid recipients must improve the effectiveness of aid, especially by strengthening democratic ownership, increasing civil society participation, and improving accountability for the use and distribution of aid. Donors should not be allowed to condition their official development assistance on the capacity and/or willingness of developing countries to collaborate in migration control, e.g. through readmission clauses. Migrant worker remittances must not be a substitute for official development assistance or related EU commitments.

We thank you for your attention and for having given us this opportunity.