

The Human Rights Yardstick

for assessing migration agreements between EU and third countries

The right to seek and obtain asylum

- 1 Is the third country party to the Refugee Convention (and additional Protocol)?
- 2 Does the country protect refugees?
In other words:
 - a. is an asylum procedure established in legislation?
 - b. do migrants access this procedure in practice?
 - c. are those in need of protection granted refugee status in practice?
 - d. do refugees have access to housing, education, medical care, work and social security in practice?
 - e. do refugees have access to justice when being refused refugee status, housing, education, medical care or social security?
- 3 If not, does the EU ensure protection in the EU or another safe country?
- 4 Can nationals and migrants leave the country unimpeded?



Everybody has the right to seek and obtain asylum if s/he is being persecuted or if his/her life is in serious danger because of violent conflict. A refugee has the right to housing, education, medical care, work and social security equal to nationals of that country, in order to build a new and safe existence.

The prohibition of refoulement (returning migrants)

- 5 Is the country safe or does the country return or send migrants to a country where there is a threat to their life or personal integrity?
- 6 If migrants are being turned away:
 - a. Is the migrant returned after an assessment of whether for him/her personally:
 - a. the country is a first country of asylum, where his/her refugee status has been confirmed, s/he enjoys sufficient protection as a refugee, and the country is willing to take him/her back?
 - b. the country is a safe third country with which the refugee has a relevant connection, where there is no threat to his/her life or personal integrity, s/he can effectively seek asylum, and the country is willing to take him/her back?
 - c. the country is a safe country of origin, where there is no threat to his/her life or personal integrity?
 - d. the migrant has access to justice?
 - b. Is the general human rights situation assessed on a regular and thorough basis, using objective and up-to-date information?



It is prohibited to return or send someone to a country where there is a threat to his/her life or personal integrity. This threat of torture or other cruel, inhuman or degrading treatment or punishment or a threat to his/her life, needs to be assessed on an individual basis for each migrant.

The prohibition of collective expulsion

- 7 Do the agreements provide guarantees against collective expulsion, i.e. guarantees that every migrant gets the chance to seek asylum based on the examination of his/her individual situation?



A migrant may never be returned or sent to a third country unless this migrant had the opportunity to seek asylum, based on an individual assessment of his/her situation. This is also valid for migrants picked up at sea. Migrants may never be (collectively) expelled on the basis of their group background or origin only.

The right to access to justice

- 8 Does the migrant have effective access to the courts and is s/he not returned as long as legal proceedings are ongoing?



The right to access to justice, i.e. the check by the judiciary on decisions of the executive branch of Government, and effective remedy, is equally valid for refugees, asylum seekers and other migrants. To ensure their human rights are not being violated, they need to have access to justice and the guarantee to await the decision of the highest court in safety and security.

The prohibition of discrimination

- 9 Do the agreements distinguish between migrants on the basis of race, religion, nationality or any other ground?

a. if so, is there a valid and objective justification for making this distinction?



The prohibition of discrimination is fundamental. Agreements can thus not distinguish between groups of migrants on the basis of race, religion, nationality or other grounds, without a valid reason.

The right to life

- 10 Do the agreements prevent people from drowning at sea?



Under this right countries need to take measures to protect the right to life of people to the extent possible. Not expelling migrants to potentially unsafe countries falls under this. But equally does saving lives at sea and combating human trafficking.

- 11 Do the agreements ensure legal ways of entering the EU?

The right to reception and prohibition of detention

- 12 Are the reception conditions of asylum seekers acceptable and do asylum seekers have access to care and education?



- 13 Are (rejected) asylum seekers being detained?

a. if yes, does legislation accurately describe the conditions and maximum duration?

b. are there legitimate grounds for detention, i.e. other than only the asylum application of the migrant?

c. is the decision to detain made on individual grounds and are there no less severe alternatives?

d. is there a possibility in legislation and practice to appeal against detention?

e. are the living conditions in detention reasonable, including clothing, food, medical care, safety and sanitation facilities?

The reception of asylum seekers needs to meet minimum standards to enable them to go through the asylum procedure in dignity and safety. Detention is only allowed as a measure of last resort and under strict conditions. This equally holds for the detention of (rejected) asylum seekers.

Democratic checks and the rule of law

- 14 Is it clear who made the agreements with the third countries, which parliament is responsible for democratic oversight and which judges for checking whether or not the agreements and the decisions resulting from them violate human rights?



When it is legally unclear who made the migration agreements, no one can be held accountable - neither politically nor legally - when human rights are being violated. It should be crystal clear which court the migrant can turn to when s/he thinks his/her human rights are being violated.

Refugee = someone with a well-founded fear of being persecuted because of his/her race, religion, nationality, membership of a particular social group or political opinion. In practice someone fleeing a war which poses a serious threat to his/her life is also considered a refugee.

Asylum seeker = someone seeking protection (asylum) as a refugee in a country other than his/her country of origin because of persecution or violent conflict.

Migrant = Someone who moves to another country or region on a temporary or permanent basis. In the context of this yardstick asylum seekers and refugees are included in this category.

In 2016 agreements negotiated between EU countries and Turkey, aimed at managing migration from Turkey via the Greek islands to the EU, entered into force. The main objectives of this so-called 'EU-Turkey deal' were: to encourage protection of refugees in their region of origin, prevent deaths at sea, and combat people smuggling. Since then new migration pacts are being negotiated with other third countries, such as Libya, Nigeria and Afghanistan.

It is not unlikely for the number of people leaving their country to flee from hunger and drought, violence or poverty, to increase in the coming years. The Netherlands Institute for Human Rights and the Meyers Committee are aware that migration is a source of great concern to citizens and governments in the EU. However, managing migration should not compromise fundamental human rights.

This human rights yardstick summarizes those human rights which may be jeopardized by the planned migration agreements between EU and third countries. Most of these rights apply to refugees and/or asylum seekers, some also to other migrants. This yardstick can be used as a tool for policy makers, politicians, journalists and concerned organizations and citizens who negotiate these agreements or monitor them.

If the answer to one or more questions in this yardstick is 'no', chances are that the human rights of refugees, asylum seekers and/or other migrants cannot be sufficiently safeguarded.

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