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**FRAMEWORK  
FOR COUNCIL OF EUROPE WORK  
ON MIGRATION ISSUES**

**2011-2013**

**Proposal by the Secretary General**

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## EXECUTIVE SUMMARY

Migration is a complex and evolving phenomenon that has considerable human rights implications for most European countries.

Today, **the human rights challenges in the field of migration have become more pressing, complex and difficult to address.** Moreover, many international organisations have increased their presence in the migration field. This requires rethinking of the Council of Europe work in this area with a view to making it more coherent, effective and visible, better co-ordinated internally and externally and such that it is capable to respond timely to the emerging (or emergency) issues affecting member States. **The work of the Council of Europe with its unique human rights perspective should complement the activities of other actors.** Duplications must be avoided.

Migration-related activities are undertaken by many Council of Europe's institutions and departments and focus on (1) developing standards to guide national migration policy and practice, (2) monitoring the relevant obligations of the member states and (3) providing targeted assistance in developing national policy instruments that comply with those standards.

This document formulates proposals on how migration activities of the Council of Europe can be reorganised with a view to improving their effectiveness and coherence, and achieving better impact. In particular, it proposes that the Organisation's **work on migration should shift focus from developing new standards to promoting more effective and responsible use of the already rich body of standards and instruments (conventions, recommendations, guidelines etc.) and ensuring appropriate follow-up** to the monitoring results. Standard-setting activities should be carried out on ad hoc basis depending on needs identified by member States.

The future work of the Council of Europe should focus on areas where it can offer a unique and useful contribution based on its core values, existing standards and recognised expertise. These areas are 1) **integration of migrants** (including **combating xenophobia, intolerance and discrimination** as well as promoting migrants participation in and interaction with the receiving societies), 2) **human rights dimension of asylum and return procedures** (including legality and conditions of **detention** of irregular migrants) and 3) integration of **internally displaced persons** (IDPs).

## INTRODUCTION

### 1. **Migration raises several human rights challenges for European societies.**

The Council of Europe has played and continues to play an important role in:

- a) setting standards on migration-related issues based, in particular, on its major human rights instruments (ECHR and the ESC);
- b) assessing and promoting compatibility of national legislation, policies and practices with those standards;
- c) contributing to strengthening the cohesion of the European societies.

2. This paper aims to offer concrete proposals for strengthening the impact of the Council of Europe activities and to ensure that they focus on the areas where the organisation has expertise and recognised added value. The proposals presented in this paper are primarily intended to structure the activities of the organisation in **2012-2013** (see, particularly, Appendix II). However, responding to the volatile situation in the Southern Mediterranean and possible mass arrival of asylum-seekers and migrants in the member States of the Council of Europe, this paper also formulates proposals for **activities to be undertaken in 2011** in the member States confronted with **mass arrival of migrants and asylum-seekers** (these proposals are presented in Appendix I).

3. For the purposes of this paper, the terms "migration" and "migrants" refer, depending on the context, to a variety of situations and persons that belong to different legal categories, including emigrants, returning migrants, immigrants, refugees, asylum-seekers, persons of immigrant background, migrant workers and their families, irregular migrants, victims of trafficking and smuggling, as well as IDPs.

## OBJECTIVES AND ORGANISATION OF WORK

4. **The principal objective of the proposed reorganisation is to ensure that Council of Europe's activities are coherent, co-ordinated and visible in order to achieve a better impact.** This requires a transversal and integrated approach that goes beyond a mere mechanism of information exchange between the Council of Europe institutions and within the secretariat. The aim is to design a strategy connecting activities carried out by different departments into a coherent transversal project that responds best to the needs of member States and adds value to the work of other international organisations active in the same field.

5. **The Council of Europe has already developed a substantial body of standards** (both treaty based and soft law) related to migration but more needs to be done to secure their implementation. This does not mean that standard-setting activities in this field should cease. It means however that where a need for new standards is identified, these can be developed on an ad hoc basis.

6. There is also a **sufficiently developed system of monitoring** bodies that includes the European Court of Human Rights (ECtHR), the European Committee of Social Rights (ECSR), European Commission against Racism and Intolerance (ECRI), Group of

Experts on Action against Trafficking in Human Beings (GRETA), European Committee for the Prevention of Torture (CPT), the Commissioner for Human Rights and the Committee of Ministers itself when acting as a treaty body, which consistently focus on migration related issues. The Parliamentary Assembly, as well as the Congress of Local and Regional Authorities, have also frequently highlighted migration-related issues and made numerous recommendations to the Committee of Ministers and member States.

7. The proposed re-organisation of the migration work of the Council of Europe should therefore ensure sufficient follow-up of this work by practical assistance activities implemented in the member States. **The key focus of the migration related work in the future should be on targeted co-operation activities closely linked to the monitoring findings.**

8. The Council of Europe activities in the field of migration should thus seek to:

- a) ensure that Council of Europe institutions, in particular monitoring bodies, have a co-ordinated and coherent approach to migration policies and practices from a human rights perspective, that they are mutually reinforcing, avoid overlapping, are able to respond and react in time to human rights challenges in the field of migration, engage in constructive dialogue with the authorities in member States and civil society, and develop structured co-operation with monitoring mechanisms of other international organisations;
- b) provide a follow-up to the relevant judgments, decisions, conclusions and reports of the monitoring bodies of the Council of Europe offering appropriate guidance, opportunities for exchanging and evaluating good practices and tailored assistance to the member States in addressing the issues, shortcomings and gaps identified. Partnerships with the Council of Europe Bank (CEB) and other international organisations should be pursued.

#### **PROPOSED AREAS OF WORK**

9. There are three areas of migration-related work which Council of Europe bodies and other international organisations (EU, UNHCR, IOM) - have identified as particularly critical from the human rights perspective:

- a) Integration of Migrants; Fighting Xenophobia, Intolerance and Discrimination; Respect for Diversity;**
- b) Human Rights dimension of Asylum and Irregular Migration (including, in particular, issues related to asylum and return procedures, legality and conditions of detention and criminalisation of irregular migration);**
- c) Internally Displaced Persons (IDPs)<sup>1</sup>,.**

10. Co-operation projects shall comprise **awareness-raising activities undertaken by the various departments of the Council of Europe**, including those that constitute part of the regular follow-up to monitoring results (seminars and Round Tables). Upon

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<sup>1</sup> The three areas are presented in greater detail in the appendix II to this document. For each area, existing standards and relevant monitoring instruments are briefly outlined together with a short description of existing and proposed or suggested co-operation activities.

request, **targeted co-operation activities** should be pursued in all above areas, aiming at providing member States with capacity to address shortcomings identified in their law in practice. These activities may take the form of **legislative expertise, training and other capacity building assistance**, whenever possible, in the framework of Joint Programmes with the EU. In the same spirit, the Council of Europe can contribute to setting-up of **networks** of members States authorities that face similar problems to **promote sharing of good practices**. Some of the existing networks (e.g. the network of Intercultural Cities) have already proven their relevance in this field.

11. Two specific activities are proposed in addition to the co-operation activities indicated above:

a) The development of **guidelines on language learning by migrants** and persons belonging to communities of immigrant background. This activity shall include the adaptation of the Common European Framework of Reference for Languages (CEFR) for integration purposes.

b) Adoption of a Recommendation by the Committee of Ministers codifying ECtHRs case-law and CPT's standards and providing further guidance to member States. The adoption of **European Rules for the detention and other measures restricting the rights of aliens** would indeed facilitate the tasks of member States as well as, mutual trust and co-operation in matters of irregular migration and return. The drafting of the rules could be entrusted to a small working group of experts which would submit the draft text to the competent Steering Committee for adoption before transmission to the Committee of Ministers.

12. At a later stage the Council of Europe could start work on a Committee of Ministers **Recommendation on criminal aspects of irregular migration**. This Recommendation would aim at providing policy makers and law enforcement agencies in member States with criteria enabling them to distinguish persons engaging in criminal activities of human trafficking and smuggling from persons that are victims of these criminal activities and persons that provide aid to such victims. The same procedure as described above could be used for this activity.

## APPENDIX I

### ACTIVITIES TO BE IMPLEMENTED IN 2011 WITH REGARD TO THE POSSIBLE MASSIVE ARRIVAL OF ASYLUM-SEEKERS, REFUGEES AND MIGRANTS IN SOUTHERN MEDITERRANEAN

1. On 15 March 2011, the Committee of Ministers held a debate on the above issue at the initiative of the Secretary General. The Committee of Ministers stressed among other things the importance of ensuring the human rights of those who fled or may flee the South Mediterranean and invited the Secretary General to refine his proposals regarding the elaboration of emergency action plans, including possibly at European level, as well as regarding the training of officials dealing with requests for asylum.
2. Over the last months more than 23,000 people fled from Northern Africa, most of them crossing from Tunisia to the island of Lampedusa, in Italy. This represents only a small percentage of population movements taking place in the region as a result of the ongoing instability. More than 460,000 people have fled from Libya to neighbouring African countries. It is therefore high time to **anticipate** the needs that further population movements may create in member States of the Council of Europe, **co-ordinate** the response to these needs and **accelerate** the procedures that determine whether the persons concerned are in need of international protection and whether they can be returned to their countries of origin.

#### Emergency Action Plans

3. Member States, in particular those that are likely to experience an imminent large-scale arrival of asylum-seekers and migrants, **should consider developing emergency action plans**. These action plans should enable the competent national authorities to **assess** the directions and scales of potential migration flows, provide an inventory of available resources and anticipate needs (in terms of human and material resources). They should review in particular the material and logistical capacity of a member state to accommodate and provide access to procedures for a large number of persons, paying particular attention to the specific needs of the most vulnerable groups (elderly persons, non-accompanied minors, women, persons who suffered trauma etc.). The emergency action plans should **identify possible shortages** and explore **opportunities for drawing in additional resources**, including in the framework of co-operation with other member States and relevant partners (in particular UNHCR, EU, IOM). In this framework, the Action Plans should identify the **needs to recruit additional personnel** to process asylum applications, offer tailored assistance to asylum-seekers and refugees and facilitate or enforce the return of persons who are not in need of international protection. Action plans should outline what **additional trainings** should be offered to newly recruited staff.
4. The Action Plans should also set up mechanisms for **co-ordination** of different governmental and local authorities involved, ensuring, where relevant and appropriate, the involvement of judicial authorities too. A national co-ordinator might be appointed to ensure the coherence of the national responses to mass arrival of migrants and asylum seekers and for mobilising necessary resources from internal and external sources.

Review the efficiency of applicable procedures

5. In the framework of the Emergency Action Plans member States should also **review the relevance and efficiency of their asylum and return procedures**. Recent judgments of the ECtHR indicate that lengthy and inefficient procedures expose individuals to prolonged uncertainty and insecurity and, sometimes, to prolonged deprivation of liberty that may result into a series of violations of the ECHR.

6. The people that may flee the instability in the region may be economic migrants, persons in need of temporary international protection; asylum seekers; persons that are recognised as refugees or asylum seekers in the countries they flee from (or by the UNHCR). It is highly advisable that the Emergency Action Plans provide for an **early profiling** of persons that arrive in member States, so as to **direct them to the appropriate procedures and measures**. This will help avoiding, on the one hand, any push-backs of persons that seek international protection and, on the other hand, directing persons that do not seek such protection towards complex procedures for the determination of their status.

7. It is also necessary that **the issue as to whether a person arriving in a member State can be returned or not to his/her country of origin** (or another country), when such a return can take place and under what conditions, **should be considered at the earliest possible stage of the procedure**. Such a consideration should include in particular Article 3 of the ECHR. The practice according to which issues relating to the determination of refugee status are addressed separately from considerations of temporary protection and from possible measures of forced return are likely to create additional complexity. This undermines the rights of the individuals concerned as well as the interests of the authorities.

8. It is finally necessary that the review of the applicable procedures addresses the issue of **the legality, the duration and the conditions of a possible deprivation of liberty** of the persons concerned, as well as the remedies that are available and accessible to them to challenge their detention.

Council of Europe action

9. **As previously indicated, the Council of Europe cannot and does not want to have any leading role in the management of migration flows. It can and must however assist its member States to face the human rights challenges that may be created by the situation in South Mediterranean.** The Council of Europe should stand ready, therefore, to advise and assist the authorities of its member States to conceive and implement the Emergency Action Plans, in particular as regards the review the applicable procedures and practices and their swift and adequate implementation in full respect of Council of Europe standards.

10. In this respect, it is suggested that the CoE:  
 (a) provides **expert legal analysis** to member States that so request as to the **review of the applicable procedures and practices** relating to asylum and return, in view of possible large-scale arrival of migrants and asylum seekers. This activity will be given priority in the framework of ongoing co-operation activities of the CoE. It shall be co-ordinated with UNHCR and EU (EASO, FRONTEX).

(b) provides **training** to officials involved, including to additional personnel that may be recruited to process the increased number of asylum applications and provide necessary assistance to arriving migrants. Asylum and Immigration Officers will be the main recipients of the trainings, but separate modules may be offered to members of the judiciary, to the personnel of the detention facilities, to persons offering humanitarian and psychological assistance (particularly to the vulnerable groups of migrants), and others. The content and methodology of trainings should be co-ordinated with and complement the trainings offered by the European Union (particularly EASO) and UNHCR. The objective should be to offer a joint training programme where each organisation would contribute with its unique experience and expertise. In the framework of the above activities, the Council of Europe, should:

- raise awareness and understanding of the relevant sections of the ECHR and the practice of the ECtHR in the context of treatment of arriving migrants and processing asylum application;
- provide guidance in applying legal (especially appeal) procedures, including accelerated asylum procedures;
- offer modules on human rights dimension of detention and forced return of irregular migrants (with references to relevant standards developed by the organisation, such as Twenty Guidelines of Forced Return, Guidelines on Human Rights Protection in the Context of Accelerated Asylum Procedures, Recommendation on 'Life Projects' for Unaccompanied Migrant Minors etc);
- improve intercultural competence of personnel who offer assistance to migrants and asylum-seekers.

## APPENDIX II

### AREAS OF POSSIBLE ACTIVITIES IN THE FIELD OF MIGRATION FOR 2012-2013

#### I. INTEGRATION OF MIGRANTS; FIGHTING XENOPHOBIA, INTOLERANCE AND DISCRIMINATION; RESPECT FOR DIVERSITY

##### *Standards*

1. Integration of migrants and persons of immigrant background has been a central area of the work of the Council of Europe in the migration field over many years. The principal objective of the work carried out in the field of integration is to promote the development of such policy and practice in member States that would ensure equal and non-discriminatory access of migrants (including refugees) to rights and services, offer them opportunities for positive interaction with the host societies and encourage their active participation in the life of these societies. It also aims to address the manifestations of racism and xenophobia towards migrants.

2. Beyond the ECHR (whose provisions are of course applicable to all persons including foreigners) a considerable body of hard and soft law has been developed. The European Social Charter, the European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at the Local Level are particularly relevant in this context. There are also numerous recommendations adopted by the Committee of Ministers that offer guidance and advice to the member States on facilitating the integration of migrants in the labour market, promoting the integration of migrant children and youth, encouraging the interaction and participation of migrants in the life of their societies, and others (Rec(2000)15, Rec(2002)4, Rec(2004)2, Rec(2004)9, Rec(2006)9, Rec(2007)10, Rec(2008)4, Rec(2008)10, Rec(2011)1, Rec(2011)2). Several of ECRI's general policy recommendations (as well as several recommendations of the Parliamentary Assembly) provide also useful guidance to member States' authorities in this field.

3. Combating discrimination and preventing vulnerability of particular groups of migrants (such as unaccompanied migrant minors, elderly migrants, migrants with disabilities) has also been an important area where the Council of Europe developed standards such as the Recommendation on life projects for unaccompanied minor migrants (Rec(2007)9), relevant sections of the Disability Action Plan (Rec(2006)5) and the draft Recommendation on preventing vulnerability of elderly migrants (approved by the European Committee on Migration (CDMG) in 2010 and currently examined by the Committee of Ministers).

4. In recent years (2009/2010), the Council of Europe has been a pioneer in undertaking a critical assessment of existing integration policies and developing new approaches to integration that would be translated into innovative policy initiatives. This work resulted in a recommendation by the Committee of Ministers on interaction between migrants and receiving societies (CM/Rec(2011)1) and accompanying policy guide ("*Building Migrants' Belonging through Positive Interactions – a Guide for policy-makers and practitioners*") and report ("*Exploring Interactions in Migrant Integration: Connecting policy, research and practice perspectives on recognition, empowerment, participation and belonging*").

5. In addition, the publication 'Living Together', a handbook on Council of Europe standards on media's contribution to social cohesion, intercultural dialogue, understanding, tolerance and democratic participation, is a useful tool which provides a contextual analysis of Council of Europe standards in this area (available in English, French, Albanian, Bulgarian, Russian, Turkish and Ukrainian). This handbook has been inspired, *inter alia*, by the Committee of Ministers Recommendation Rec(97)20 on "hate speech". The Committee of Ministers has also adopted a declaration on the role of community media in promoting social cohesion and intercultural dialogue (11 February 2009).

6. The Council of Europe has undertaken considerable work on facilitating and promoting intercultural dialogue at national and local levels. The White Paper on Intercultural Dialogue and the Declaration on human rights in culturally diverse societies (adopted by the Committee of Ministers in July 2009) are particularly notable examples of the Council of Europe contribution in this field. This work should be continued and expanded with a view to contributing further to the development of positive interaction between migrants and the host societies, which should help strengthen the cohesion of the European societies.

7. The Council of Europe also developed standards in the area of foreign language acquisition, which are already extensively used by the member States in setting-up requirements for language knowledge by migrants – Common European Framework of Reference for Languages (CEFR). Guidelines and tools have been developed to help policy makers and practitioners in their use of this reference instrument for migrants.

8. It is suggested to envisage **the development of guidelines on language learning by migrants and the adaptation of the CEFR for purposes of integration of migrants and persons belonging to communities of immigrant background.**

9. Considering the extensive body of the Council of Europe standards in the field of integration (most of which are quite recent and address the current and emerging integration challenges) and with the exception of the above suggestion (par.8), it appears that there is **no immediate need to develop new standards in this field**. We should focus on promoting the use of these standards in the member States for the integration of migrants in a comprehensive manner, taking into account all aspects of their life, be it social, cultural or economic.

### *Monitoring*

10. The ECtHR and the ECSR monitor the respect by States Parties to the ECHR and the ESC of rights that are recognised to everyone, including migrants or that safeguard specific rights of migrants (Article 19 of ESC). The **ECRI**, the monitoring body of the Council of Europe entrusted with dealing with racism and intolerance, **is obviously in the forefront of the Council of Europe monitoring activities in the field of measures promoting integration and non discrimination of migrants**. ECRI carries out regular reviews on national policy and practice and, in its reports, often identifies cases of discrimination and xenophobia against migrants and persons of immigrant background and makes appropriate recommendations. The integration of migrants is also an area often addressed by the Commissioner for Human Rights is very active. Certain provisions of the Framework Convention for the Protection of National Minorities (in particular Article 6 referring to the need to secure a climate of tolerance) may be relevant for persons of

immigrant background and their observance is monitored by the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) and the Committee of Ministers. Finally, the Consultative Committee of the Convention on the Legal Status of Migrant Workers supervises the implementation by the national authorities concerned of the provisions of this convention.

### *Co-operation*

11. A considerable number of activities have been undertaken in recent years involving different internal and external partners. The following activities are particularly worth mentioning:

- a) Intercultural cities;
- b) Network of Cities for Local Integration Policies for Migrants (CLIP);
- c) Linguistic integration of adult migrants – surveys, conferences and publication of policy guidelines including tools and case studies;
- d) Integration of children from a migrant background – development of guidelines concerning the languages of schooling;
- e) Integration of migrant women – series of regional seminars;
- f) Framework for Integration policies for Ukraine;
- g) Life projects for unaccompanied minor migrants;
- h) Integration of migrant children through promoting participation of their parents;
- i) Integration of young migrants and refugees in the working life;
- j) Promoting co-development initiatives – series of seminars and roundtables;
- k) A Forum on “Achieving social cohesion in a multicultural Europe” .

12. Consistent co-operation has been developed with the UNHCR, which has repeatedly been a partner in the organisation of regional events (seminars/workshops/roundtables) on such issues as access of migrants and refugees to rights and services, local integration policies, integration of refugee women and children as well as, more generally, on human rights of migrants (Azerbaijan, Cyprus, Estonia, Portugal, Russia, Ukraine).

13. The principal objective of co-operation activities in the field of integration is to promote the development of such policy and practice in the member States that would ensure equal and non-discriminatory enjoyment of fundamental civil, political and social rights (including access to services) by migrants and refugees, offer them opportunities for positive interaction with the host societies and encourage their active participation in the life of these societies.

14. However, **the above activities seem to be fragmented and do not appear to be the result of a coherent overall Council of Europe strategy**. Most importantly there seems to be no bridge between the findings of key Council of Europe monitoring bodies (ECRI, ECtHR, ECSR) and the above activities. In particular, whereas some room for co-operation activities in the execution of relevant ECtHR’s judgments may exist through DGHL’s assistance programmes and HRTF projects, it is quite visible that no co-operation activities aim to address specifically ECRI’s and ECSR’s findings, other than the Seminars and Round Tables (organised by these monitoring bodies themselves and which aim more at raising awareness on the mechanism and its findings rather than to provide assistance to authorities). Co-operation in areas such as non discriminatory access to housing, employment, education and health does not seem to benefit from a coherent and

evidence based approach that would progressively address legislative gaps, practical shortcomings and implementation failures that are however identified rather clearly in monitoring results. Equally, the fight against prejudice, discrimination, racism and intolerance does not seem to benefit directly from any major co-operation activity of the Council of Europe. **The future work of the Council of Europe** in the field of migration **needs to address** as a matter of priority **the lack of consistency between monitoring findings and co-operation** in the field of integration.

15. In this respect, **National Human Rights bodies** (anti-discrimination authorities, Ombudsmen, NHRI) are privileged partners. Ongoing, close working relations already exist as part of ECRI's activities, but also as part of co-operation activities with Ombudsman and Human Rights institutions (e.g. Peer-to-Peer Network). Full use of the potential of these networks should be made for migration issues not only as a multilateral *forum* but **also bilaterally** to enable them to develop advocacy capacities for the relevant Council of Europe instruments in the domestic arena and develop a communication channel with the Council of Europe monitoring bodies (including judicial or quasi-judicial bodies). Bearing in mind the extraordinary multiplying effect that co-operation with these bodies may have for the Council of Europe's message, **investing in the co-operation with National Human Rights bodies must be seen as an essential component of the Council of Europe's strategy** to achieve the long term objective of combating discrimination and promoting integration.

16. The EU Stockholm Programme and Action Plan, aiming *inter alia* at developing a comprehensive EU policy to combat discrimination, racism and xenophobia and promoting equality and integration offers a window of opportunity to promote, through several EU instruments and policies, the major Council of Europe Human Rights standards in this field. This should be pursued as a matter of priority. To this end - and on the basis of the Memorandum of Understanding between the EU and the Council of Europe - the secretariat, including the Secretariat of Monitoring bodies, should co-operate closely with the European Commission teams that will be preparing EU instruments and projects implementing the Stockholm Programme Action Plan. Regular consultations and exchanges have proven efficient in other areas (e.g. procedural rights of persons accused, trafficking in human beings) and it is to be expected that similar consultation processes will produce encouraging and conclusive results.

17. A more coherent and comprehensive approach of the Council of Europe co-operation activities in the field of integration of migrants and fight against racism and intolerance should comprise:

- **Bilateral co-operation on the basis of ECtHR judgments, ECSR decisions and conclusions, ECRI recommendations and Committee of Ministers recommendations.** This should include upon request **legislative assistance** / assistance to develop national policies and Action Plans, but also **training** for officials (including, for instance, to law enforcement agents, judges and prosecutors on hate speech, racist crime, discriminatory behaviour of authorities and private persons etc), local authorities, journalists, trade unions, students etc and capacity building for authorities (for instance on collecting data, registering and reporting racist incidents etc).

- Creating and facilitating the operation of networks to **share experiences and identify good practices** (the network of intercultural cities and CLIP are examples of such activities).

Finally, the Council of Europe can **add a human rights component to** infrastructure and **development projects** that may be undertaken by other International Organisations (EU, UNDP) and by the CEB in this field.

18. Naturally, the Parliamentary Assembly and the Congress of Local and Regional Authorities have an important **political role** to play at national and local level to reinforce and contribute to the work undertaken within the Council of Europe in this area.

## **II. HUMAN RIGHTS DIMENSION OF ASYLUM, IRREGULAR MIGRATION AND RETURN**

### **a. Asylum and Asylum Procedures**

#### *Standards*

19. Border management is a prerogative of member States and the Council of Europe has not developed any comprehensive binding instrument on either border control or asylum, the latter being regulated at international level by the Geneva Convention on the Status of Refugees. This being said, it is quite obvious that the issue of border management, asylum and return of rejected asylum seekers has a major human rights dimension under the ECHR (particularly, its articles 2, 3, 8, 13, 34 and protocols 4, 7 and 12) as well as under article 39 of the Rules of the Court (interim measures)<sup>2</sup>.

20. The Committee of Ministers has developed a solid body of soft law that offer guidance to the member States on specific aspects of national asylum policy and practice that would fully comply with the human rights standards. The 'Twenty guidelines on forced return' (prepared by the CAHAR), the Committee of Ministers Recommendations R(99)12 on the return of rejected asylum-seekers and Rec(2005)6 on exclusion from refugee status, as well as the Committee of Ministers Guidelines on human rights protection in the context of accelerated asylum procedures (CM(2009)51) are the most recent examples of the standards developed by the Council of Europe in this area.

21. Whilst the importance of the issue of asylum and the need to promote respect for existing human rights standards in this area has been stressed on many occasions by the Committee of Ministers, the Parliamentary Assembly and the Commissioner for Human Rights, it seems that, at this stage, there is **very limited need for Council of Europe standard-setting activities in this area**.

#### *Monitoring*

22. Questions of asylum, asylum procedures and return of rejected asylum seekers are monitored by the ECtHR and the execution of relevant judgments is supervised by the Committee of Ministers. Beyond specific individual cases, the European Court of Human Rights has repeatedly examined cases related to compliance of national asylum

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<sup>2</sup> There are also other Council of Europe conventions which directly apply to the situation of asylum-seekers and refugees, such as the European Convention on Action against Trafficking in Human Beings, the European Convention on Extradition and the European Agreement on Transfer of Responsibility for Refugees.

procedures with the European Convention on Human Rights and there already exists considerable case law on this subject. The recent case of MSS against Belgium and Greece highlights the prominence of this topic in the work of the Court and the relevance of ECHR and the Court's case-law for the definition of the member States' asylum policies and practices. The same questions are often addressed by ECRI, the CPT, the Commissioner for Human Rights and the Parliamentary Assembly.

### *Co-operation*

23. Co-operation activities of the Council of Europe in the area of asylum have decreased in recent years and are currently limited to a small number of events organised together with the UNHCR.

24. However, the prominence of asylum issues in the European public and political debate (also in the Committee of Ministers and PACE), in the case-law of the ECtHR, in reports of ECRI and the Commissioner for Human Rights, as well as in conclusions of other monitoring bodies of the Council of Europe highlights the need to re-activate and strengthen co-operation activities in this field. The principal objective of any co-operation activities in this area is to ensure that human rights of foreigners intercepted at the border, and persons who file or wish to file applications for asylum are respected. Co-operation activities should **seek to improve the capacities of authorities working in this area** (also in terms of procedural rights and facilities offered to asylum seekers).

25. The review of EU asylum policies initiated under the Stockholm Programme and Action Plan and the follow-up to be given to the MSS judgment of the ECtHR create a particular need for close co-operation with EU-Commission to make sure that the EU asylum framework does not generate risks of structural violations of the ECHR.

26. Future co-operation activities should focus on **targeted bilateral technical co-operation** in addressing the issues identified by the ECtHR (and other monitoring bodies). Such co-operation may take the form of:

- assistance in **developing national legal instruments** (laws, specific protocols, guidelines, action plans) that will be based on and respect Council of Europe standards;
- assistance in **developing the capacity of relevant national authorities** and services, in particular in member States that start to encounter asylum issues and seek to develop appropriate responses; this may include **training** of personnel of border guards with a view to improving their human rights awareness and intercultural competence in working with asylum-seekers (particularly in the context of reception and forced/voluntary return).

The Council of Europe should also **facilitate sharing good practices** among national authorities active in this area by developing networking activities and events (including for NHRS and Ombudsmen).

27. The Council of Europe should engage in the above activities in close partnership with several partners: UNHCR<sup>3</sup>, IOM (especially on voluntary return), FRONTEX, FRA, Red Cross (especially on developing emergency mechanisms and on activities aimed at

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<sup>3</sup> The presence of an office and staff of UNHCR in the Council of Europe has contributed to ensuring that joint activities in the field of asylum have been implemented in the past. This office will be instrumental in developing and deepening co-operation between the Council of Europe and the UNHCR in this field.

vulnerable groups of people), ICMC (on traumatised people) etc. It should be noted that whilst the Council of Europe cannot in principle offer any assistance in developing **infrastructure projects** (that may well be needed in this area), it can usefully complement such projects run by other international organisations (EU, IOM, CEB) by adding a training or advising component.

## **b. Detention of migrants and asylum-seekers**

### *Standards*

28. In its work on the human right issues with regard to the detention of migrants, the Council of Europe concentrates on two principal aspects: Legality of detention and detention conditions. The European Convention on Human Rights is the most important instrument in protecting the rights of people in detention including of irregular migrants (and – increasingly – of asylum-seekers). Articles 3, 5 and 13 are particularly relevant in this respect. The Committee of Ministers' Twenty Guidelines on Forced Return' offers member States guidelines on detention conditions, including specific provisions for children and families, length of detention, as well as on the conditions under which the detention can be ordered. The Parliamentary Assembly of the Council of Europe has repeatedly raised concerns related to detention of irregular migrants and asylum-seekers in its recommendations (see, for example, Rec 1900 (2010) on Detention of asylum seekers and irregular migrants in Europe).

29. It is suggested that **there is a need to develop specific standards on detention of irregular migrants** based on the extensive analysis of the case-law of the ECtHR and CPT standards (**European Rules for the detention and other measures restricting the right to liberty of aliens**). Such rules will facilitate the tasks of member States as well as mutual trust and co-operation in matters of irregular migration and return.

### *Monitoring*

30. The CPT is the main and unique monitoring mechanism active in this field at European level. CPT's action identifies cases of non-compliance of existing detention conditions to human rights standards and formulates recommendations on how the situation can be improved. In several judgments, the ECtHR has found violations of Articles 3 and 5 of the ECHR (ill-treatment because of poor detention conditions of foreigners, in particular pending deportation; legality of detention). The ECRI, although not directly focused on the detention issues, occasionally identifies problems in this area as well.

### *Co-operation*

31. The principal area for co-operation activities is the implementation of the recommendations made by the CPT and ensuring that the recurrent problems identified by the Court's decisions are adequately addressed by the national authorities. Co-operation activities may address general detention conditions and/or the specific situation of particularly vulnerable people (children, elderly, women, people who suffered trauma, victims of trafficking etc.).

- Again, **targeted bilateral technical co-operation in the form of legislative expertise and training should be a priority for the Council of Europe.** In this respect, co-operation can be established with the EU (FRONTEX, FRA) as well as with the UNHCR and IOM. To the extent that such co-operation activities support national efforts to execute judgments of the ECtHR, a co-financing by the HRTF can be sought.

- In line with the principle of subsidiarity, the Council of Europe should also seek to develop the national authorities' capacity to monitor detention of foreigners. This could be done in co-operation with the National Preventive Mechanisms for the Prevention of Torture (NPM) by using the European NPM Network that has just been set up by the Council of Europe.

32. It needs to be stressed that conditions of detention are often related to poor infrastructure. Whenever possible, the Council of Europe should complement **infrastructure projects** run by other International organisations (EU, IOM, and the CEB) by adding a training or advising component to these projects.

### c. Irregular Migration

#### *Standards*

33. There are very few standards developed by the Council of Europe on irregular migration. However, as the European Convention on Human Rights covers every person irrespective of his/her legal status of being an "irregular" migrant, it applies to irregular migrants in all member States of the Council of Europe. Several provisions of the European Social Charter also apply to irregular migrants, making provisions on their minimal rights for shelter, health etc. Instruments adopted by the Committee of Ministers, such as Rec(2007)9 on life projects for unaccompanied migrant minors and 'Twenty guidelines on forced return' address specific issues of irregular migration.

34. The need to identify a series of minimal rights for "irregular migrants" remains to be assessed. The variety of situations covered under the term "irregular", the close link between this notion and the rapidly changing national framework on foreigners (that can transform a regular migrant onto an irregular one and vice-versa) and the specific needs that some categories of irregular migrants may have (children, elderly, disabled, people who suffered trauma etc) make any standard-setting in this field risky and difficult. The EU-FRA has engaged in a series of very detailed studies on irregular migrants. It is suggested that the need for (and feasibility of) standard-setting in this area be evaluated when the EU-FRA studies have been completed.

35. The Commissioner for Human Rights has expressed concern over the tendency to **criminalise irregular migration.** At a later stage (possibly by the second half of 2013) the Council of Europe could start work on a Committee of Ministers **Recommendation on criminal aspects of irregular migration.** This Recommendation shall aim at providing policy makers and law enforcement agencies in member States with criteria enabling them to distinguish persons engaging in criminal activities of human trafficking and smuggling from persons that are victims of these criminal activities and persons that provide aid to such victims. The same procedure as described above may be used for this activity.

### *Monitoring*

36. Monitoring of the existing standards is entrusted to the ECtHR and the ECSR. The Committee of Ministers supervises the execution of ECtHR judgments and decides the follow-up to be given to ECSR decisions and conclusions. The ECRI and the Commissioner for Human Rights often identify problems faced by irregular migrants in accessing fundamental rights. Consequently, it appears that there is no need for any other monitoring process.

### *Co-operation*

37. Co-operation activities of the Council of Europe in the field of irregular migration may take the following forms:

- **bilateral co-operation activities** in the form of legislative assistance, training and capacity building in the framework of the execution of judgments of the ECtHR and as a follow-up to ECSR findings, can and must take place (and may be funded, at least in part, by the HRTF). This may be extended to cover national authorities' activities (including NHRS and NPMs) aiming at providing assistance to intercepted irregular migrants who suffered trauma whilst crossing borders or at sea.

- **development of networks among interested national authorities and exchange of experiences and good practices** in this challenging and constantly evolving area. Specific co-operation activities might be carried out jointly with the EU. Examples of such co-operation already exist: A range of co-operation activities will be undertaken with the governments of Andorra, Belgium, France and Italy to **promote the use of the Committee of Ministers Recommendation on life projects for unaccompanied migrant minors**. This work can be continued and strengthened by involving UNHCR and governments of other countries. In particular, it may focus on providing training to 'front-line professionals' and raising awareness of relevant national services. Internally, this work can co-ordinated with the Transversal Programme 'Building Europe for and with Children'. **Similar networks may be envisaged on the basis of the "Twenty guiding principles on forced return"**.

## **III. INTERNALLY DISPLACED PERSONS (IDPs)**

38. Although the issue of IDPs is very specific and exists only in a number of member States of the Council of Europe, it has an important human rights dimension, in particular in respect of promoting local integration and development of IDPs communities with a view to defusing potential tensions between IDPs and local residents.

### *Standards*

39. As IDPs are nationals of a country where they reside, all the standards that exist for other citizens apply to them, in particular, the European Convention on Human Rights, European Social Charter, Framework Convention for the Protection of National Minorities and other treaties. Specific standards on IDPs have been developed by the Committee of Ministers (Recommendation Rec(2006)6 on internally displaced persons).

### *Monitoring*

40. All human rights monitoring instruments of the Council of Europe are relevant to the situation of IDPs, but mainly the ECtHR, the ECRI, the ECSR and, where relevant, the organs of the Framework Convention on the Protection of National Minorities (Committee of Ministers and ACFC).

### *Co-operation*

41. The Council of Europe possesses particularly relevant experience and expertise in community development and integration of vulnerable groups of IDPs. Established co-operation in this area exists with the UNHCR, UNICEF and the authorities of the countries concerned (Georgia, Bosnia and Herzegovina, Serbia, Armenia, Azerbaijan).

42. Further co-operation activities may take the following form:

- Assistance in implementing relevant judgments of the ECtHR, ECSR decisions and ECRI recommendations (**legislative expertise, training, capacity building**). This may include specific activities **promoting awareness** of governmental officers of IDPs issues and possible solutions to existing problems faced by IDPs in regards to effective access to social, political and economic rights, promoting their employment or self-employment through community development initiatives as well as ensuring the integration of IDPs children.

43. Co-operation activities can be implemented in the context of Council of Europe Action Plans for such countries as Armenia, Azerbaijan and Georgia.

44. Projects for IDPs have often a major infrastructure component. The Council of Europe may seek to cooperate with organisations that run infrastructure projects (e.g. EU, UNDP, CEB) adding a training / advising / capacity building component. The Council of Europe has already developed partnerships with UNHCR, UNICEF, EU, as well as international NGOs (World Vision, Oxfam, etc.) in this respect.

### **APPENDIX III LIST OF ACRONYMS**

ACFC - Advisory Committee on the Framework Convention for the Protection of National Minorities  
CAHAR - Committee of Experts on Legal Aspects of Asylum, Refugees and Stateless Persons  
CDMG – European Committee on Migration  
CEB - Council of Europe Bank  
CEFR - Common European Framework of Reference for Languages  
CLIP - Cities for Local Integration Policy  
CLRAE - Congress of Local and Regional Authorities of Europe  
CPT - European Committee for the Prevention of Torture  
EASO – European Asylum Support Office  
ECHR - European Convention on Human Rights  
ECtHR - European Court of Human Rights  
ECRI - European Commission against Racism and Intolerance  
ECSR - European Committee of Social Rights  
ESC - European Social Charter  
EYCB – European Youth Centre in Budapest  
FRA - European Union Agency for Fundamental Rights  
FRONTEX - European Agency for the Management of Operational Cooperation at the External Borders  
GRETA - Group of Experts on Action against Trafficking in Human Beings  
ICMC – International Catholic Migration Commission  
IDPs - internally displaced persons  
IOM – International Organisation of Migration  
NHRS/I - National Human Rights Structures/Institutions  
NPM - National Preventive Mechanisms for the Prevention of Torture  
PACE - Parliamentary Assembly of the Council of Europe  
UNDP – United Nations Development Programme