Development Adrift
The EU Migration Partnership Framework:
The Emerging Paradigm of Security and Conditionality

Key Concerns:

- Despite the failure of the EU-Turkey deal to safeguard the rights of refugees, asylum seekers and migrants, the deal is being used as a model for future cooperation with non-EU countries.

- The EU Migration Partnership Framework agreed on 6 June 2016\(^2\) aims to outsource border control and security to partner countries, without providing adequate safeguards to prevent human rights abuses and violations of the right to asylum and the principle of non-refoulement.

- The Partnership Framework emphasises returns and readmission of people, without adequate attention to the protection needs and human rights of people in need.

- The Partnership Framework includes positive and negative incentives for non-EU countries to cooperate on curtailing migration and proposes a re-orientation of the EU’s development cooperation towards halting migration. Development cooperation should be to the benefit of the most vulnerable and marginalised in developing countries, not as leverage to prevent migration into the EU.

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\(^1\) The other two papers in the series are:

The impact of the EU-Turkey deal

On March 17-18th this year, EU leaders voted in favour of a deal with Turkey designed to stem migration and refugee flows into Greece. The deal was heavily criticised for disregarding international law, by ignoring the rights of refugees, asylum seekers and migrants. More in-depth analysis of the deal can be found in Trócaire’s policy paper “Refugees, Migrants and Asylum Seekers: where to from here? – The implications of the EU-Turkey Deal”3. The EU has labelled the deal a success and a template to follow in the future. The argument is that the deal has successfully curtailed the number of people coming to Europe via Greece. If a different criteria is used, one that puts the protection needs and human rights of refugees, asylum seekers and migrants at the heart of success, then the deal has arguably been an abject failure. The deal has resulted in almost 60,000 vulnerable women, men and children being kept in inappropriate conditions in detention camps in Greece (and increase of 30% since the EU-Turkey deal came into force)4, in people being returned without having their asylum claim individually assessed5 and denied safeguards they are legally entitled to under international law. There have been several reports of violence against refugees and migrants at the Turkish border, including reported unlawful killings by Turkish border guards6. In response to the deal, Doctors

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5 IOM Weekly flow compilation no. 20, 14 July – available here
6 https://www.theguardian.com/world/2016/apr/05/greece-deport-migrants-turkey-united-nations-european-union
7 http://www.independent.co.uk/news/world/middle-east/turkish-border-guards-shoot-eight-syrian-
without Borders have announced that they will no longer take funding from the EU or EU member states “in opposition to their damaging deterrence policies and continued attempts to push people and their suffering away from European shores”\(^8\). The deal is a one-sided, self-serving strategy, and does nothing to provide a lasting solution for those seeking asylum. Desperate people have simply looked for other routes, such as attempting the crossing from Libya to Italy. The International Organization for Migration (IOM) has found that 227,316 people have entered the EU by sea from January to July this year, compared to 141,969 people arriving by sea in the same period last year. The number of people who have lost their lives attempting the perilous crossing has also risen as 2,920 people have lost their lives so far this year (accurate as of 3 July), up from 1,838 deaths in the same period last year\(^9\). The deal has done nothing to break the business model of smugglers, it has simply prompted a geographic shift in movement.

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refugees-dead-including-women-and-children-trying-to-reach-a6996696.html

\(^8\) http://www.msf.org.uk/article/msf-to-no-longer-take-funds-from-eu-member-states-and-institutions
\(^9\) https://www.iom.int/news/mediterranean-migrant-arrivals-2016-227316-deaths-2920
The new EU Migration Partnership Framework

“Positive and negative incentives should be integrated in the EU’s development policy, rewarding those countries that fulfil their international obligation to readmit their own nationals, and those that cooperate in managing the flows of irregular migrants from third countries, as well as those taking action to adequately host persons fleeing conflict and persecution. Equally, there must be consequences for those who do not cooperate on readmission and return.”

EU Migration Partnership Framework – as adopted by the European Council

The widespread criticism, and failure, of the EU-Turkey deal has not deterred the EU from using it as a model to follow. With the agreement of the new EU Migration Partnership Framework, announced on 7 June, the EU continues down the road of security and border control aimed not at lasting solutions to the root causes of large movement of refugees and migrants, but instead at shifting the impact of the crisis further away from the EU’s borders. In many ways, the Migration Partnership Framework (the Framework) goes further than the EU-Turkey deal, and represents a threat not only to the protection needs and rights of vulnerable people, but also to effective, inclusive development cooperation, focused on local ownership and genuine partnership.

The framework aims to reach “comprehensive partnerships”, called “compacts” to better manage migration.
The stated, short term objectives of the compacts are:
- To save lives in the Mediterranean sea;
- To increase the rate of returns to countries of origin and transit;
- To enable migrants and refugees to stay close to home and to avoid taking dangerous journeys.

It also includes calls for immediate action to be taken with key partners in the following areas where specific and measurable targets should be set:
- Work with key partners to improve the legislative and institutional framework for migration;
- Concrete assistance for capacity building on border and migration management, including providing protection for refugees;
- Increasing rates of return and readmission with a preference to voluntary return and a focus on reintegration;
- Stemming the irregular flows while offering legal migration channels, including increased resettlement efforts.

Areas of concern in the agreed framework:

1. Security over Protection
The Framework makes commitments to international law, human rights and the principle of non-refoulement, and an assurance that all work carried out as part of the framework must be in accordance with international law.

However, this commitment would carry greater weight if previous policies underscored commitments which ensured that protection needs and respect for human rights are at the core of its migration policies. The framework makes the claim that the EU-Turkey deal is “In full accordance with EU and international law” \(^{10}\). Trócaire and other NGOs have previously challenged this narrative, finding that the deal does in fact violate international law \(^{11}\). The Framework pays lip service to human rights and humanitarian law, by making general commitments without providing any details on how safeguards will be put in place to ensure rights are respected in all aspects of the framework. Failure to ensure adequate conditions and due process in asylum requests in the implementation of the EU-Turkey deal demonstrates clearly that the lack of safeguards inevitably leads to violations. The detailed description of measures envisioned to tackle border control, compared to the lack of detail in the commitment to respect international law, make it clear that the EU’s focus remains on keeping people out, rather than respecting international law.

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\(^{10}\) COM(2016) 385, page 3.

\(^{11}\) For more info about the ways the EU-Turkey deal conflicts with international law, see Trócaire’s policy paper on the deal: https://www.trocaire.org/sites/trocaire/files/resources/policy/refugees-migrants-asylum-seekers-

See also comments by the Parliamentary Assemble of the Council of Europe raising questions about the legality of the deal: http://assembly.coe.int/nw/xml/news/News-View-EN.asp?newsid=6132&lang=2&cat=8
their rights and preventing violations of the principle of non-refoulement.

**Furthermore, the Framework allows the EU to partner with, including providing financial assistance and technical support, countries with documented records of widespread human rights abuses.** Such assistance will be conditional to cooperation on migration policy, not on improvements in the human rights situation in the country. One of the countries included as a possible partner under the new framework is Eritrea – a country where a recent UN inquiry found that crimes against humanity had been committed in a widespread and systematic manner in detention facilities, military training camps and other locations.

Sudan, another country with a history of systemic human rights violations, is also being considered.

The EU-Neighbourhood policy put in place in 2004 included a commitment to human rights. In practice the policy became focused on building political and economic partnerships with countries such as Tunisia (under President Ben Ali) and Egypt (under President Mubarak), while human rights and democracy issues became increasingly marginalised.

**2. “Saving lives” – Outsourcing security**

The Framework makes numerous references to how the EU-Turkey deal has saved lives, and how future, similar deals will do so as well. Yet it is clear from research conducted by the IOM that the EU-Turkey deal has not resulted in fewer desperate people perishing in the Mediterranean Sea. It has simply pushed people to look for other, even more dangerous ways of crossing into Europe, including attempting the crossing from Libya to Italy, a longer journey in even more dangerous waters. In response, the EU is working with Libyan authorities to “enhance their capability to disrupt smuggling and trafficking in Libya and perform search and rescue activities to save lives so that security in Libyan territorial waters improves.” Libya is a country plagued by human rights violations and an absence of rule of law and there are no safeguards in place to ensure that people intercepted by the Libyan coastguard or other forces are afforded their human rights and protected from violations. There are also no safeguards in place to ensure that people who are fleeing persecution and looking to seek asylum are not forcefully returned, in violation of the principle of non-discrimination. Human Rights Watch has argued that the EU is in practice deputising Libyan forces to help seal the EU’s borders.

Outsourcing protection of the EU’s border safety to neighbouring countries only shifts Europe’s responsibility for safe and
responsible migration policies to countries of origin and transit, while increasing the risk of human rights violations and violations of the principle of non-refoulement. Desperate people will continue to look for ways to cross into the EU.

3. Carrots, sticks and conditionality – the new migration partnership
A key component of the framework is the use of “positive and negative incentives” for countries in relation to migration issues. It amounts to a stick and carrot approach, whereby countries are rewarded for working with the EU on migration issues, while there are consequences for failing to cooperate. Insidiously, the framework lists a number of potential rewards, but provides no details of what the negative incentives could amount to.

The Framework states that increased coherence between migration and development policy is important and that positive and negative incentives for managing migration should also be included in the EU’s development policy.

This call for coherence also extends to development cooperation agreements of individual EU Member States and the Framework pushes for specific and measurable increases in the number and rate of returns and readmissions as previous dialogues with partner countries have shown “a gap between expectations and results on returns and readmission”24. What the Framework is proposing is to put in place a system of narrowly focused aid conditionality with reducing migration to the EU as the primary objective. This is in conflict with the Accra Agenda for Action25, the Paris Declaration on Aid Effectiveness and the Busan Partnership for Effective Development Cooperation27, which have aimed to move the international community further away from conditional aid and towards inclusive partnerships and local ownership – international agreements in which the EU and its member states were very active players. Yet with the framework, the EU is advocating more conditionality targeted not at democratic or human rights improvements, but narrowly at returns and readmission of irregular migrants and unsuccessful asylum seekers.

The Framework does include a long-term commitment to address the root causes of irregular migration. However, this commitment is short on detail, when compared to the inclusion of immediate actions with specific measurable targets on improving legislative frameworks for migration, border and migration management, increased rates of return and readmission and stemming irregular flows of migrants.

While conditionality focused on improvements in the protection and enjoyment of human rights aimed at improving the lives of people living in the recipient country, could be justified, given they are international norms

22 See Box on page 5.
27 http://www.oecd.org/development/effectiveness/busanpartnership.htm
applying to all countries, conditionality focused on implementation of policies designed solely for the benefit of the donor country go against good development orthodoxy, are counter-productive and sinister. Development cooperation should be poverty focused - based on helping the most vulnerable and marginalised in developing countries, in line with the European Development Consensus agreed in 2005.28 It should not be manipulated into a tool for the EU to curtail unwanted migration.

Ireland’s responsibility as an EU member state

The EU Migration Partnership Framework is an extremely worrying development in migration policy. The Framework is problematic in itself from a human rights perspective, as is the new narrative it uses for development cooperation. This new paradigm is in stark contrast to the EU Council Conclusion of May 2014, which reaffirmed the promotion of human rights, democracy, the rule of law and good governance and of inclusive and sustainable growth, as the two basic and mutually reinforcing pillars of the EU’s development policy29. As the EU embarks on a process to renew its Development Consensus in light of the Sustainable Development Goals, there is a danger that this narrative will overshadow all other priorities.30

The EU cannot claim to be committed to ensuring respect for human rights and humanitarian law while knowingly providing support to governments that violate the human rights of their citizens and displaced persons. The fact that this is what is being done, without adequate safeguards and accountability mechanisms, and for the purpose of a naïve concept of ‘EU security’ is a damning indictment of the EU’s claim to be the global vanguard on human rights and democracy.

As a member of the EU, Ireland has agreed to this Framework despite it being incompatible with Ireland’s development cooperation approach31, and serious concerns highlighted by the majority of TDs in the Dáil debate of the EU migration and refugee crisis on 28 April 201632.

Trócaire reiterates its call on Ireland to take an active role within the EU, to ensure that the EU’s migration policies are human rights and protection focused and do not erode the work towards global poverty reduction and promotion and protection of human rights.

On 19 September, the UN General Assembly (UNGA) will hold a High-level Meeting (HLM) to address large movements of refugees and migrants. Ireland has taken on the role of co-facilitator for the HLM together with Jordan. The expected outcome is a political declaration that will be adopted as an UN GA resolution. The HLM provides an opportunity to re-affirm the need for a humane approach to migrants, refugees and asylum seekers that prioritises the protection needs of vulnerable people, and

32 https://www.kildarestreet.com/debates/?id=2016-04-28a.33
ensures respect for obligations under refugee and human rights law.

Recommendations

The Irish Government must re-evaluate its support to the EU Migration Partnership Framework, including financial contributions, based on the following concerns:

- The focus on returns and readmission over protection needs and human rights concerns.
- The lack of safeguards to ensure the rights of refugees, asylum seekers and migrants.
- The emerging paradigm shift in EU development cooperation towards migration management and the use of conditionality for the benefit of EU member states.

In the context of implementation of the EU Migration Partnership Framework, the Irish Government must take the following actions:

- Call for independent monitoring of the Framework to ensure respect for international law, including human rights and the principle of non-refoulement.
- Call urgently for an independent, evidence-based report on how the new approach will impact the stated EU commitment to use development cooperation to eradicate poverty, as enshrined in the Lisbon Treaty.
- Call on the formulation of a clear plan to ensure full transparency in all policies and actions, including financial contributions, taken by the EU under the Framework.

In the context of the UNGA High-level Meeting to address large movements of refugees and migrants, the Irish Government must take the following action:

- Call on the European Commission to provide a detailed outline of how the principles and commitment envisioned in the HLM outcome document33, especially those on responsibility sharing and respect for human rights, can be met under the EU Migration Partnership Framework.

33 The outcome document is currently in draft stage. The latest draft (12 July) can be found here: http://www.un.org/pga/70/wp-content/uploads/sites/10/2015/08/High-Level-Meeting-on-addressing-large-movements-of-refugees-and-migrants.pdf