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COMECE – Commission of the Bishops' Conferences of the European Community

- Working group on Migration -

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ICMC – International Catholic Migration Commission

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**Comments on the European Commission's Communication on
"Policy priorities in the fight against illegal immigration of third
country nationals" COM (2006) 402 final**

Introduction

Our organisations represent Churches throughout Europe - Anglican, Orthodox, Protestant and Roman Catholic - as well as Christian agencies particularly concerned with migrants and refugees. As Christian organisations, we uphold the dignity of the human individual and we are deeply committed to the concept of global solidarity and the promotion of a society that welcomes strangers.

We recognise that irregular migration is a complex phenomenon and represents a major challenge for European societies. Our common Christian belief and our common ethical convictions deeply commit us to safeguarding the human dignity of migrants and refugees as well as their families. We believe that human beings, whether they have lost their legal status, ended up in a legal limbo or have tried to enter the European Union by irregular means must never be considered as "illegal". We therefore share the view of the Commission that a responsible debate is needed to stop discrimination and racism against these human beings.

We acknowledge the comprehensive approach outlined in the communication to tackle irregular migration, especially the commitment of the EU to protect and promote human rights both internally and externally.

External dimension – border management and safeguarding human rights

Migratory movement to the EU is of a mixed nature and thus it is of utmost importance to provide appropriate and differentiated solutions for all human beings involved. In this context we recall that even refugees often have to resort to smugglers or traffickers to escape persecution and reach a safe place. To ensure that Member States respect the provisions of protection and asylum for refugees and other people of concern, we support and recommend to take into account the UNHCR 10 Point Plan of Action on "Addressing mixed migratory movements" when developing European Union policy further. The 1951 Refugee Convention must be the guiding principle.

Moreover the recommendations of the Meijers Committee on the proposal for a Regulation establishing a mechanism for the creation of Rapid Border Intervention Teams should be taken into consideration. The Standing Committee considers amendment of the current proposal necessary, “in order to explicitly guarantee that teams of EU border guards will not participate in border policies employed by individual Member States which amount to categorically refusing entry to third country nationals without allowing them to lodge a claim for asylum or an appeal against the refusal of entry”.

The concrete plans outlined in the Communication address border management and controls and readmission agreements in an effort to prevent irregular movement. This approach is regrettably translated in an insufficient allocation of financial resources to address human needs resulting from tragedies as they are occurring presently at EU external borders.

We are convinced that this approach does not offer a long-term solution as migrants looking for a better future will be forced to explore other entry points and even more dangerous smuggling routes. For about ten years now, we can observe the consequences of ever stricter border policies: While these policies and measures are not capable of managing immigration, more and more vulnerable people risk their lives. It is more urgent than ever to develop comprehensive action to address the root causes of forced migration.

While recognising the need for a joint approach regarding return measures as a part of a comprehensive approach to irregular immigration we want to underline the necessity of ensuring respect for fundamental rights of migrants on migratory routes. We are concerned that the so-called transit zones are increasingly becoming extrajudicial spaces where the rights of individuals are not adequately safeguarded. Therefore the EU external cooperation agreements and instruments must ensure the full application of international human rights standards in these zones, in compliance with all the relevant international treaties.

The promotion of human rights standards should be an essential part of dialogue and cooperation with countries of origin and transit. The inclusion of general clauses concerning the protection of human rights of migrants and refugees into bilateral or multilateral agreements represents a first step into the right direction. It should be followed by the development of concrete foreign policy instruments in order to ensure that these general clauses apply efficiently. Furthermore the effective protection of human rights of migrants should be subject of regular assessment. Developing common standards on return based on international human rights standards would be a proactive step strengthening the credibility of the European Union's commitment to protect and promote fundamental rights and to ensure at the same time coherence between external and internal action.

Internal dimension- Irregular migrants and the role of NGOs and churches

Rather than continuing to build higher fences and persuading other countries to restrict exit from their territory, fair, open and transparent legal labour migration channels to the EU, both for skilled as well as for unskilled workers need to be opened up and advertised as an alternative. There are reasons to believe that with an opening of immigration possibilities less people would be forced to resort to dangerous and life-threatening courses of action as a last desperate attempt to enter the EU.

Given the numerous examples of exploitation and slavery in the so-called “informal economy” we would like to stress once again the necessity to promote the ratification of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) as soon as possible. Minimum labour standards as well as basic social rights must be enforced and monitored to protect people effectively against the indiscriminate and arbitrary conditions imposed by reckless employers.

Special attention should be devoted to the most vulnerable migrants also in irregular situations. Handicapped people, families and unaccompanied minors deserve special protection. For the protection of the right of the children, families in irregular situation should be integrated rather than returned. Regularisation schemes for migrants in irregular situations – under certain conditions - represent a positive means of improving the individual situation of exploited migrants and should be considered as a possible response to the demands of the labour market instead of demonising such measures as “pull-factors”.

Our Churches and Church organisations provide spiritual, social and legal services for migrants in both regular and irregular situations as well as refugees in order to assist them in improving their living conditions. An EU policy approach to irregular migration should acknowledge the humanitarian nature of these activities and ensure that the people who provide these services are not prosecuted and convicted before a criminal court.

Due to our experience in the work with migrants, we are quite familiar with current practices and impacts of regularisation measures in Member States. Therefore we wish to express our interest in being consulted during the elaboration of the study on practices and effects in 2007 as announced in the Communication. As we have been participating in the Carriers’ Liability Forum since its inception, we would hope to contribute to it in the future, particularly with regard to humanitarian concerns.

With regard to joint return flights, we reiterate our comment on the draft return directive: “Independent monitoring mechanisms for the removal procedures have proven to be an important instrument in the procedures of removals. NGOs and churches are involved in such monitoring at national levels. As more and more joint operations will be carried out at EU level, we see an urgent need to provide for a framework for monitoring removals at the various stages also at EU level.”¹

Unfortunately cooperation with civil society does not seem to be in the focus of this communication and the distinctive role and experience of churches and church related agencies in addressing complex issues resulting from migration are not fully acknowledged. It is striking that NGOs are only mentioned as information-providers on undocumented workers, not as partners in ensuring a human rights-based policy approach. We are deeply concerned about the misconception regarding the role of NGOs, churches and church agencies in the context of setting up a common European migration policy. Over the past several years, good consultative procedures have been developed by the Commission and DG Justice and Home Affairs/Freedom, Security and Justice and particularly by its Directorate B4 Immigration and Asylum. We would welcome that consultative instruments with NGOs and churches will once again be more frequently and effectively used.

Recommendations

The EU’s commitment to safeguarding fundamental human rights should be clearly reflected in its policy proposals to address the phenomenon of irregular migration. We therefore recommend to the EU and its member states:

- to encourage a responsible debate to stop discrimination and racism against irregular migrants
- to provide appropriate and differentiated solutions for human beings involved in mixed migratory movements
- to take into account UNHCR’s 10 Point Plan of Action on “Addressing mixed migratory movements”
- to ensure international human rights standards in transit

¹ Comments of the Christian organizations to the proposed directive on common standards for return policy, March 2006

- to enhance international human rights standards in dialogue and cooperation with third countries
- to agree on a common return policy based on international human rights standards
- to establish fair, open and transparent legal labour migration channels to the EU
- to ratify the 1990 UN Convention on the Protection of the Rights of all Migrant Workers and Their Families (ICMW)
- to enforce minimum labour standards and basic social rights
- to apply regularisation schemes to improve the individual situation of the irregular migrant and as a response to labour demands.
- to adopt a more consultative approach towards NGOs, churches and church related agencies, by involving them also – but not exclusively - in the study on practices and effects of regularisation measures in Member States
- to protect churches, church organisations and NGOs from prosecution and conviction before criminal courts when providing humanitarian aid for irregular migrants

We are convinced that a more humane and more comprehensive approach to tackling irregular migration will be beneficial to individuals and European societies. Thus we hope that the actions in this field will be based on values of solidarity and freedom, rule of law and equality, as well as the protection of refugees and persons in need.

30 November 2006