

## PERCO<sup>1</sup> Position Paper on the Vulnerabilities along the Migratory Trails to the EU and to the Schengen area

### Preamble

Humans have been migrating since the existence of mankind, this in order to respond to the universal and legitimate aspiration for a better life but also as an answer to the need to guarantee one's living security of existence<sup>2</sup>. In fact, at all times, mobility has been one of the ways by which people have tried to protect themselves and their families against physical violence and threat or in search of a safe and dignified life.

Unfortunately, this access to an adequate standard of living, which has been recognized as a fundamental right<sup>3</sup> and assorted with a legal and institutional arsenal, is too often violated. In fact, current migration policies, focused on a security and repressive approach, prevent States from confront real dangers and to respond to migrants' needs. And this repressive and restrictive attitude represents also a factor of insecurity for migrants and the whole population.

**The extensive practical experience of PERCO Red Cross and Red Crescent National Societies in the field of migration and asylum shows that EU migration policy choices have negative consequences on migrants<sup>4</sup> wellbeing and expose them to great vulnerabilities along the migratory trails to the EU and the Schengen area as well as to that whole region<sup>5</sup>.**

This position paper aims to create awareness on the risks along the migratory trails and the vulnerabilities increasingly stemming from those risks. As Red Cross and Red Crescent National Societies, we call on European and national authorities to implement the recommendations presented in this document to prevent and reduce such vulnerabilities.

### Vulnerable migrants and the Red Cross and Red Crescent Movement<sup>6</sup>

The Movement components' approach to humanitarian assistance is strongly linked to vulnerability. In fact, the Movement's intervention in crisis is prioritized primarily on the extent of vulnerability and the humanitarian needs of people and not on their legal status or on political and economic aspects of migration<sup>7</sup>.

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<sup>1</sup> PERCO, the *Platform for European Red Cross Cooperation on Refugees, Asylum Seekers and Migrants* is a network of migration experts from National Red Cross Societies of Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Serbia, Spain, Sweden, Switzerland and the United Kingdom. This PERCO Position paper was developed by the PERCO Working Group on the Vulnerabilities along the migratory trails, consisting of representatives of the National RC Societies of Belgium, Finland, Netherlands, Portugal, Serbia, Spain, Sweden, Switzerland, UK and of representatives of the CCM, the RC EU Office and the IFRC.

<sup>2</sup> "From securitarian approach to security of existence", working document of the Seminar on freedom of movement, 11<sup>th</sup> and 12<sup>th</sup> of December 2014.

<sup>3</sup> Art.25 of the Universal Declaration of Human Rights.

<sup>4</sup> According to the IFRC migration policy, in this position paper we will use the term "migrants" referring to "persons who leave or flee their habitual residence to go to new places – usually abroad – to seek opportunities or safer and better prospects".

<sup>5</sup> See also "PERCO Expert Opinion on the Vulnerabilities of Migrants Caused by the Lack of Legal Status", 8th of May 2015.

<sup>6</sup> The International Red Cross and Red Crescent Movement is the largest humanitarian network in the world. Its mission is to alleviate human suffering, protect life and health, and uphold human dignity especially during armed conflicts and other emergencies. It is present in every country and supported by millions of volunteers. The "Movement" is made up of the following components: the National Red Cross and Red Crescent Societies (NSs), the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC).

<sup>7</sup> The approach of the Movement to migration is strictly humanitarian and based on the recognition of each migrant's individuality and aspirations. It focuses on the needs, vulnerabilities and potentials of migrants, irrespective of their legal status, type, or category. 10 policy

The Red Cross Red Crescent Movement looks at migrants' vulnerabilities from a holistic point of view. The Movement is guided by the respect for the dignity and rights of vulnerable people, as established by international humanitarian, human rights and refugee law. It contributes to providing assistance and protection to vulnerable people, deals with their immediate needs and seeks to offer them a sustainable future.

The notion of vulnerability has a special relevance in IFRC's *Migration Policy*, in which is underlined that the Movement approach "to migration is strictly humanitarian and based on the recognition of each migrant's individuality and aspirations. It focuses on the needs, vulnerabilities and potentials of migrants, irrespective of their legal status, type, or category"<sup>8</sup>. **This means that humanitarian assistance to migrants shall depend on the needs of migrants and it must prevail over the legal (or other) category to which they belong. This is a unique and highly inclusive approach to assistance among international organizations, which prioritizes humanitarian needs over legal or administrative status.**

### **Migration legal framework**

Migration is a historical phenomenon regulated by a set of international laws that are binding for States. Within this set of laws, the International Human Rights norms are generally applicable to every person as a consequence of being human, irrespective of their migration status. Persons do not acquire them because they are citizens, workers, or have any other status. As affirmed by the Universal Declaration of Human Rights (UDHR), "all human beings are born free and equal in dignity and rights"<sup>9</sup>.

We would like to recall that a basic principle of International Human Rights Law, is that **States have obligations not only to respect, but also to protect and fulfil human rights**. The *duty to respect* requires the State not to take action that directly violates a particular right. The *duty to protect* requires the State, through national legislation, policy and practice, to ensure the protection of rights, including by taking steps to prevent third parties from violating rights. The *duty to fulfil* imposes on a State's obligations to facilitate, provide or promote access to human rights.

While there is no single legal framework protecting migrants, provisions protecting migrants can be found in domestic and international law. Among the most relevant are the *Geneva Convention Relating to the Status of Refugees* of 1951, and its *Protocol Related to the Status of Refugees* of 1967 (altogether, the Geneva Refugee Convention), and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, that is the most important universal instrument concerning immigrant workers.

Concerning the EU context, the Charter of Fundamental Rights constitutes the core instrument for the protection of fundamental rights<sup>10</sup>. It lays down in a single text the range of civil, political, economic and social rights granted to European citizens and all persons resident in the EU. "The Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law."<sup>11</sup> Authorities in the EU therefore have a fundamental duty to respect human dignity and to support effective access to basic human rights<sup>12</sup>. In this framework, **we would like to recall the obligation of Member States to respect "the provisions of this Charter (...) when implementing Union law" (Art. 51).**

Migration today is a highly charged and contested political issue in a large number of States and migrants are seen as scapegoats for political and social anxieties about security, national identity and economic crisis. Unfortunately, despite the important and binding legal framework described before, these political tensions have a negative impact on national laws, which set the framework within which migrants' human rights are threatened. In fact, an increasing number of States are adopting more restrictive rules in this field with negative consequences on migrants and the whole population inside and outside Europe and the Schengen area.

Therefore, **we remind States of the resolution on migration adopted at the 31st International Conference of the Red Cross and Red Crescent<sup>13</sup> in November 2011.** The resolution expresses concern about the alarming

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principles guide the Red Cross Red Crescent approach towards migration. These are set out in the *IFRC Policy on Migration* adopted in 2009.

<sup>8</sup> IFRC Migration Policy, 2009, pg.2.

<sup>9</sup> Article 1, Universal Declaration of Human Rights (UDHR), 1948.

<sup>10</sup> The Charter of Fundamental Rights of the European Union O.J. (2010/C 83/02), 30.03.2010.

<sup>11</sup> Ibidem.

<sup>12</sup> "Supporting safe passage: Europe can and must do more", RC EU office Statement, 24<sup>th</sup> of April 2015.

<sup>13</sup> At the International Conferences, 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.

humanitarian situation of migrants in situations of distress and vulnerability, at all stages of their journey, and the ongoing risks that migrants face in regards to their dignity, safety, and access to international protection. States agreed to ensure Red Cross Red Crescent National Societies enjoy effective access to all migrants, irrespective of their legal status, in order to deliver humanitarian assistance and protection services without being penalized.<sup>14</sup> States agreed also 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”<sup>15</sup>.

### **Vulnerabilities along the migratory trails**

According to the latest UN publication on “Trends in international migration”: *“The number of international migrants worldwide has reached 232 million in 2013, up from 175 million in 2000 and 154 million in 1990.”*<sup>16</sup>

**Even though today more people than ever are living abroad, migration has become a great risk for an increasing number of people in the last years.** Limited opportunities for safe and regular migration to the EU<sup>17</sup> drive migrants and would-be refugees to resort to the services of smugglers and embark on dangerous sea or land voyages and the different modes of unauthorized border-crossing carry specific risks. This exposes them to risks that can result in both physical (sexual violence, abuse, robbery, etc.) and psychological trauma and increased vulnerability. In this way, in some cases this trauma is experienced in the country of origin as a result of poverty, neglect, conflict, persecution or physical or sexual violence. For many others it is experienced on route and the journey itself often could represent a traumatic experience. Many do not survive these perilous journeys.

The factors affecting migrants’ vulnerabilities along the migratory routes are numerous: absence of status, family separation, impoverishment and socio-economic hardship, unsafe journeys through hostile environments (area of conflict, desert, open sea) as well as the criminalization of migration and immigration detention. Gender as well as other indicators of diversity (i.e. age, nationality, disability) play also a crucial role in many cases exacerbating these vulnerability.

Contrary to common perceptions, migrants’ journeys are often very long with numerous stages. Moreover, during those long journeys, migrants could be arrested and detained in centres that are often characterised by extreme overcrowding, alarming sanitary conditions as well as cruel and inhuman treatments. Along the migratory trails, migrants could also be confronted with racist and hostile societies. Often it is difficult for them to even show in public, given the constant harassment they could face from the population in the streets and other public spaces<sup>18</sup>. Those discriminations could lead to health problems and even to death due to migrants’ fear of being discovered, persecuted and detained.

In addition to that, in transit countries, an increasing majority of people fall outside the existing protection regime, while, too often, the quality and delivery of protection for those migrants, who fall within existing norms, do not comply with international standards.

### **Increasing number of reported deaths at EU borders**

Until today there is no official data concerning the number of migrant deaths at European borders, but according to the NGOs who attempt to document this phenomenon, the number of reported deaths rose from dozens at the beginning of the 1990s, to hundreds or even thousands per year at the outset of 2000s<sup>19</sup>. **Today,**

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<sup>14</sup> 31st International Conference of the Red Cross and Red Crescent, Resolution 3 – Migration: Ensuring Access, Dignity, Respect for Diversity and Social Inclusion, November 2011.

<sup>15</sup> Ibidem.

<sup>16</sup> UN, Press briefing for the publication of “Trends in International Migrant Stock”,

<http://www.un.org/en/development/desa/population/publications/migration/migration-report-2013.shtml>

<sup>17</sup> Although this Paper primarily refers to EU member states, similar problems can also be encountered in other European states as well as in other regions.

<sup>18</sup> “A view from the ground: Human Security Threats to Irregular Migrants across the Mediterranean”, Derek Lutterbeck -

[http://www.um.edu.mt/\\_data/assets/pdf\\_file/0004/232339/Chapter\\_10.pdf](http://www.um.edu.mt/_data/assets/pdf_file/0004/232339/Chapter_10.pdf)

<sup>19</sup> Of course, such calculations are partial: first, because the attention given to this issue by organizations that protect the rights of migrants has significantly increased over the same period. Likewise, media coverage of ‘migration dramas’ has intensified. It can thus be considered that, as much as a true increase in numbers of deaths, the development of (admittedly imperfect) measuring tools, combined with the magnifying effects of the media, have contributed to the explosion of these figures. On the other hand, several factors have an opposite

**the number of migrants who die in their attempt to reach European countries amount to a human tragedy, affecting thousands of people<sup>20</sup>, including those fleeing armed conflict, other situations of violence, famine and other catastrophes affecting their countries of origin. Only in the first four months of 2015, more than 1600 persons died in the Mediterranean, and on April 19<sup>th</sup> 2015 alone more than 800 migrants died on their way to reach the European Union. The majority of those dead migrants remain unidentified and therefore are missing persons, depriving their families of the right to know and to mourn and honour their remains.<sup>21</sup>**

**Operational experience of PERCO Red Cross and Red Crescent National Societies has shown that the intensification of EU border and security controls has not resulted in increased protection and safety for migrants along the borders despite official announcements. In fact, several reports on the situation of migrants outside EU borders<sup>22</sup> have shown that the action taken to prevent the irregular entry of migrants have a negative effect on the vulnerability of migrants and negatively affects potential asylum seekers who are on their way to seek international protection in EU countries.<sup>23</sup>**

For this reason, we can affirm that **current policies have dramatic consequences for the lives and well-being of migrants, as they are forced to use ever more dangerous routes in search of a safer place to live in.** Among the key vulnerabilities that will be analysed in the RC EU Booklet on Vulnerabilities along the migratory trail<sup>24</sup>, **the following can be highlighted as in need of urgent action:** the increasing numbers of reported missing and deaths at sea and along the external border of the EU, the large number of victims of trafficking in human beings and the loss of family links.

**The need to act immediately is pressing and urgent.**

**PERCO therefore, in line with the Fundamental Principles of the Red Cross and Red Crescent Movement, and considering the humanitarian mission of the Red Cross and Red Crescent National Societies to support vulnerable people, makes the following recommendations to States. These recommendations also stem from our conviction that migration policies should aim to reduce the vulnerabilities of migrants:**

- **On Migration policies** – Over the recent years, States have made preventing, controlling and combatting irregular migration a priority with dramatic consequences on the lives and the well-being of migrants along the migratory trails. For this reason, we recommend to:
  - According to Art.2 Protocol No.4 of the ECHR, migration measures such as mandatory visa requirements, sanctions on carriers or management agreements with Third countries should not interfere with the right of all people to leave the country they are in.
  - Seek to facilitate movement of vulnerable migrants through consular presence, simplified procedures and access to embassies in third countries and limiting the use of re-entry bans.
  - Create opportunities for legal and safe migration in dignity, whether for employment purposes or for family reunification.<sup>25</sup>
  - Create legal avenues to access international protection within the EU.”<sup>26</sup>

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effect, including the invisibility of a likely significant but unknown proportion of deaths along migratory routes (Migreurop, Atlas of migration in Europe, pg.140).

<sup>20</sup> In December 2014, IOM announced that the number of migrants killed in 2014 while fleeing their home countries in the hope of better lives has more than doubled to nearly 5,000 from the previous year. Much of the increase reflected a surge in drowning of Middle Eastern and African migrants crossing the Mediterranean from North Africa toward Europe, often in overloaded and unseaworthy vessels run by smugglers. In 2014, 3,419 have drowned in the Mediterranean [http://www.nytimes.com/2014/12/04/world/number-of-migrants-killed-while-fleeing-soars.html?\\_r=0](http://www.nytimes.com/2014/12/04/world/number-of-migrants-killed-while-fleeing-soars.html?_r=0)

<sup>21</sup> First Conference on the management and identification of unidentified decedents, with an emphasis on dead migrants: the experience of European Mediterranean countries, Milan, Italy, 22-23 November 2013, ICRC, LABANOF, ItRC.

<sup>22</sup> RC EU Office: ‘Shifting Borders. Externalising migrant vulnerabilities and rights?’, 2013; Migreurop: ‘European Borders: Controls, Detention and Deportations’, 2009/2010 report (e.g. pp. 7, 63); Norwegian Helsinki Committee (NHC), Norwegian organization for asylum seekers (NOAS), Aitima: ‘Out of the backdoor: The Dublin II regulation and illegal deportations from Greece’, October 2009 (e.g. p. 16); European Union Agency for Fundamental Rights (FRA): ‘Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner’, 2011 (e.g. p. 20 para. 3); UNHCR: ‘Observations on Greece as a country of asylum’, December 2009 (e.g. p. 4).

<sup>23</sup> RC EU Office, ‘Legal Avenues to Access International Protection in the EU’, 27 February 2013 and RC EU Office, ‘Position Paper on Access to International Protection’, 11 November 2011.

<sup>24</sup> Soon to be published.

<sup>25</sup> For more details, see RC EU Office ‘Contribution EC consultation on the Post-Stockholm agenda’, 21 January 2014.

<sup>26</sup> For more details, see RC EU Office Position Paper on ‘Legal Avenues to Access International Protection in the EU’, 27 February 2013.

- Elaborate clear procedures and remedies for the operationalisation of the 1951 Convention in the context of legislation on border measures, including carrier sanctions and border monitoring.<sup>27</sup>
  - Cooperation Agreements with Third Countries should only be signed and implemented if they strictly comply with fundamental rights, including the right to seek asylum.<sup>28</sup> Suspend agreements with third countries that do not respect fundamental rights of migrants.
  - Ensure that migrants – irrespective of their legal status – have effective access to justice and remedies.
  - Do not return people fleeing conflicts and insecurity to neighbouring countries if not in full respect of the principle of non-refoulement.
  - European Governments should not link their official development assistance on the willingness of developing countries to collaborate in migration control, e.g. through readmission clauses<sup>29</sup>.
  - Address the added vulnerabilities of migrants linked to the migratory trails by providing additional medical and psychological support.
  - Consider aggravating circumstances of torture, rape, and other forms of psychological and physical violence, in assessing protection needs of asylum seekers.
  - Enhance the understanding of the dynamics that render some groups more vulnerable and why.
- **On policies in favour of victims of trafficking in human beings** - Limited opportunities for safe and regular migration to the EU drive a large number of migrants and would-be refugees to fall in the hands of human traffickers. In this respect, we recommend that:
    - All victims of trafficking in human beings should enjoy protection from prosecution or punishment for criminal activities that they have been compelled to commit as a direct consequence of being subject to trafficking in human beings. This includes any legal consequences to staying in a country without the permission of the authorities, or not having legal (personal) documentation.
    - Victims of human trafficking (included e.g. children of victims) must be recognized as such and provided with appropriate support and protection according to applicable national and international law<sup>30</sup>. Such recognition should be unconditional and irrespective of their cooperation in criminal procedures. This status determination should be made a priority, including by ensuring their access to asylum procedures or other protection measures<sup>31</sup>, and this should be the overarching consideration to prevent heightened vulnerability.
  - **On family separation and loss of family links<sup>32</sup>** - The International Red Cross and Red Crescent Movement receive numerous requests from families of persons who went missing along the migratory trails. Our Movement receives these requests because of our worldwide *Family Links Network*, through which family members try to restore family links after conflict, situations of violence, disaster and migration<sup>33</sup>. On this basis, we call on States to:
    - Support and facilitate the unique role and work of the Red Cross and Red Crescent Movement in the field of restoring family links. This support should come from the States concerned, as well as from the relevant institutions of the European Union, notably by ensuring that no restrictions be imposed on the components of the Movement in the collection, management

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<sup>27</sup> As affirmed in article 26(1) of the CISA.

<sup>28</sup> RC EU Office, "Contribution EC consultation on the Post-Stockholm agenda", 21 January 2014, <http://www.redcross.eu/en/upload/documents/pdf/2013/Migration/RCEU%20contribution%20EC%20Post%20Stockholm%20consultation%20final.pdf>

<sup>29</sup> Ibidem.

<sup>30</sup> E.g. the Council of Europe Convention on Action against Trafficking in Human Beings.

<sup>31</sup> Ibidem.

<sup>32</sup> For more details on family reunification, see RC EU Office, ECRE, "Disrupted Flight - The Realities of Separated Refugee Families in the EU", 2014 - [http://www.redcross.eu/en/upload/documents/pdf/2014/Asylum\\_Migration/RCEU%20ECRE%20%20Family\\_Reunification%20Report%20Final\\_HR.pdf](http://www.redcross.eu/en/upload/documents/pdf/2014/Asylum_Migration/RCEU%20ECRE%20%20Family_Reunification%20Report%20Final_HR.pdf)

<sup>33</sup> "Missing persons in the Mediterranean Sea: the families' right to know", Hearing at the Committee on Migration, Refugees and Population, Mr Stephane Ojeda, ICRC, 29 November 2011, Paris.

- and transfer of personal data aimed at tracing missing persons and restoring family links, in line with its data protection policy<sup>34</sup>.
- Inform migrants of the existence of RFL services and facilitate their access to such services including in detention facilities.
  - Give detained migrants access to means of communication and consular services.
  - **On Family reunification:**
    - A protection-oriented approach to family reunification procedures should be applied, in order for the right to family reunification to be effective.
    - Facilitate family reunification and limit legal, practical and/or administrative obstacles which limit or prevent family unity.
    - Apply broad criteria for family reunification and allow entry into the EU of those who have relatives residing there, granting visas that allow them to live and work legally.
      - Family reunification should be granted to family members in the broad sense of the term, not just to nuclear family members. Systematically consider reunification of family members beyond the nuclear family, particularly if they are dependants.
  - **On rescue and deaths at borders and at sea** – The Mediterranean Sea has become a vast human cemetery. Only in the first four months of 2015 more than 1600 people have drowned<sup>35</sup> and there is a terrible risk of further catastrophic loss of life in the future if States will not act immediately. Furthermore, those deaths and disappearances left behind thousands of families and relatives without any news concerning the fate of their loved ones. Therefore, we recommend,
    - **On rescue at sea<sup>36</sup>, to:**
      - Strengthen the Search and Rescue (SAR) operations. We urge that the State members of the EU respect the 1974 International Convention for the Safety of Life at Sea (SOLAS) and the 1982 Montego Bay Convention<sup>37</sup> which enjoins that every State shall promote the establishment, operation and maintenance of an adequate and effective Search and Rescue Service regarding safety on and over the sea regulated by the SAR Convention<sup>38</sup> or the Convention of Hamburg<sup>39</sup>.
      - In cases of interception or rescue at sea, it must be made clear that final disembarkment may only take place at a place of safety<sup>40</sup> where adequate procedures and reception services are available.
        - A “safe port” does not necessarily mean the “closest” port, since this latter port is in many cases the location where the refugees, for reasons of nationality or status, might be subjected to persecution or inhumane or degrading treatment.
        - Develop and adopt a common definition of the criteria to identify a specific port as a “safe” port for disembarkment for persons who might be in need of international protection.

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<sup>34</sup> “Migration – Taking a look beyond the safe Mediterranean. Cooperation strategies between home and host countries”, ICRC, Rome, 9 December 2013.

<sup>35</sup> [http://www.nytimes.com/2014/12/04/world/number-of-migrants-killed-while-fleeing-soars.html?\\_r=0](http://www.nytimes.com/2014/12/04/world/number-of-migrants-killed-while-fleeing-soars.html?_r=0)

<sup>36</sup> RC EU Office, “Contribution EC consultation on the Post-Stockholm agenda”, 21 January 2014, <http://www.redcross.eu/en/upload/documents/pdf/2013/Migration/RCEU%20contribution%20EC%20Post%20Stockholm%20consultation%20final.pdf>

<sup>37</sup> This Convention enjoins that “every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him”.

<sup>38</sup> Every State, on the basis of regional agreements, is competent for rescue operations in an established SAR zone; in the Mediterranean Sea, jurisdiction is regulated by the 1997 Agreement on a Provisional SAR Plan.

<sup>39</sup> Obligation ratified by the Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014, article 9.

<sup>40</sup> The Convention of Hamburg at Chapter 1.3.2., established that the rescue operations are to be considered as concluded only when there has been a transfer to a place of safety and the Resolution MSC.167(78) adopted on 20 May 2004 clarifies that a safe place is the place where the rescue operations are considered concluded and where the safety of the survivors is no more in danger.



- Individuals, companies and organisations which provide support or assistance to migrants in distress must not be penalised.
- We demand that all rescue operations guarantee the family unity and consequently, in the case of rescue operations being made by more than one ship, that all survivors be transferred to one and the same location in order to assure the reunification of the families. If that is not possible, we request that the registration of the survivors in the various locations of landing be made immediately at the disembarkment. And, in order to facilitate as quickly as possible a family reunification, we furthermore demand that effective communication be established between the different responsible reception actors, even in the case of different Member States. States should then, facilitate the family reunification procedures.
- **On deaths along the migratory trails:**

A reliable evidence-based approach is needed, not only to better keep track of the number of victims, but also to initiate discussions on how to avoid such dramas to take place. In this perspective:

  - States should encourage common definition of the addressed issues and accounted catastrophes and victims in order to facilitate crosscheck official, State-led, civil society and researchers' counts.
  - States should improve and when needed implement, a mechanism to count and identify the migrant deaths during migration<sup>41</sup>.
- **For the identification of dead migrants<sup>42</sup>:**
  - We recall the right of all families to know<sup>43</sup> what became of their loved ones.<sup>44</sup> In order to implement this right, we urge States to support and facilitate the unique role and work of the Red Cross and Red Crescent Movement in the field of Restoring Family Links<sup>45</sup>.
  - We call on States to promote:
    - The cooperation between the different authorities in charge of the identification of dead decedent's;
    - The cooperation and coordination between national authorities and the RLF services of the Red Cross and Red Crescent Movement in order to facilitate the transmission of information about the fate and whereabouts of the missing migrants to their families.
  - We urge States to make every effort toward the identification of human remains, including the migrants, ensuring the collection of post-mortem data in line with international standards.<sup>46</sup>
    - The data collection must be systematic and according to international standards. It must include details on the filing of any document, as well as details on any identification marks, photos, clothing and other items found with or on the corpse. Furthermore, it should include DNA data, so that

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<sup>41</sup> Demand already addressed: European Council (Stockholm Program, para. 6 and 6.1.6), the Council of Europe (Parliamentary Assembly Recommendation 1467 (2000); Commissioner for Human Rights, 2007 issue paper), IOM, UNHCR, Amnesty International, European Union Agency for Fundamental Rights (FRA), and numerous other IOs, NGOs, community groups, activists and scholars.

<sup>42</sup> First Conference on the management and identification of unidentified decedents, with an emphasis on dead migrants: the experience of European Mediterranean countries, Milan, Italy, 22-23 November 2013, ICRC, LABANOF, ItRC. And "Addressing Migrant Bodies on Europe's Southern Frontier. An agenda for research and practice", Simon Robins, Iosif Kovras and Anna Vallianatou, June 2014.

<sup>43</sup> A range of legal instruments have steered norms relating to those missing in situations of armed conflict, from International Humanitarian Law and International Human Rights Law. These all emphasize that it remains the responsibility of the state to make all efforts to ensure that families are informed of the fate of missing loved ones. Whilst there is no comparable framework in international law relating to missing migrants, the norms established in law clearly mandate states to take all possible measures to identify the dead.

<sup>44</sup> The European Court of Human Rights found that the silence of a government concerning the fate of the Missing "in the face of the real concerns of the relatives [of the missing], attained a level of severity which could only be categorized as inhuman treatment", as per Art.3 of the European Convention on Human Rights (ECHR) which states that "No one shall be subjected to torture and inhuman or degrading treatment or punishment", without exception. This is an explicit articulation of the obligations of any State, given the suffering of the families of those unaccounted for. According to precedents in the Court's jurisprudence, the mere lack of thorough investigation of all possible violations of Art.3 constitutes in itself, regardless of the existence of any proof, a procedural violation of the same article of the Convention.

<sup>45</sup> See recommendations under point "On family separation and loss of family links".

<sup>46</sup> Such as the Council of Europe – CoE - standards - e.g. autopsy procedures, CoE Recommendation 99/3.

they may be compared with those of the relatives of the deceased for conclusive identification.

- We encourage States to develop a national and standardised database of dead migrants with all the necessary information and data (such as connecting the bodies to the specific shipwreck that resulted in each migrant's death), with different access levels and in line with data protection legislation and ensuring the protection of personal integrity. This database should facilitate the identification of human remains in order to give an answer to the families and relatives without any news concerning the fate of their loved one;
- We recommend the implementation of common forensic protocols and standards, at national and European levels and ensure the implementation of existing protocols and forms (i.e. consistent with CoE Recommendations and with INTERPOL's<sup>47</sup> and the ICRC guides and forms).
- We call States to build national and European capacities, where required, for the identification of dead decedent's:
  - Tailored training for coast guards, forensic practitioners and others engaged in the collection and management of migrant bodies in humanitarian protocols for dead body management;
  - Promote a coordination and cooperation between Medical Legal Institutes and forensic laboratories at national and European level, for the identification of unidentified dead migrants.
- We call on the EU to establish a fund specifically for the identification of bodies, for the post-mortem data collection and to give a dignified burial to the deceased or the repatriation of the corpses in cases where families desire it. Such a fund should also be used for the ante-mortem collection of data from the relatives located in the migrant's country of origin and/or for those leaving abroad. This procedure is not currently practiced.
- We call on States where families are based to provide them with a structure or a mechanism, to which these families could willingly turn to in order to ask and to get information on the fate of their relatives<sup>48</sup>.

**Above all, we call on States to implement all possible, necessary and proportional measures to stop the continuing deaths of migrants immediately.**

**With our global network we stand ready to work with governments on the implementation of concrete actions in support of migrants and to contribute to humanitarian efforts in the short and long term.**

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<sup>47</sup> <http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/Forms>

<sup>48</sup> "Missing persons in the Mediterranean Sea: the families' right to know", Hearing at the Committee on Migration, Refugees and Population, Mr Stephane Ojeda, ICRC, 29 November 2011, Paris.