

ECRE MEMORANDUM ON THE OCCASION OF THE BELGIAN PRESIDENCY OF THE EU (JULY – DECEMBER 2010)



1. General remarks

As Belgium takes over the Presidency of the EU time is running for achieving a Common European Asylum System (CEAS) by 2012 as has been confirmed by the European Council in the Stockholm programme and in the Stockholm Action Plan. ECRE therefore very much welcomes the fact that the Belgian Presidency has made asylum one of its priorities.

ECRE has always supported the concept of a CEAS that is based on high standards and ensures effective and durable protection. This must be based on a full and inclusive interpretation of the 1951 Refugee Convention and other relevant human rights treaties. At the same time, ECRE has been advocating at EU level for a CEAS that ensures access to the territory for persons in need of international protection. The best protection regime will be of little use if refugees are unable to reach the EU's territory.

At the start of the Belgian Presidency, ECRE presents its views on what steps need to be taken in order to uphold the EU's commitment of establishing a CEAS by 2012 which ensures that the rights of persons in need of international protection are fully respected. The Belgian Presidency has stated its intention to focus primarily on making progress on a number of legislative files in the field of asylum. However, in addition, preparatory work for launching the European Asylum Support Office (EASO) will have to be made while the director of EASO will also be appointed during its presidency. The informal Justice and Home Affairs Council in July and the Ministerial Conference on Asylum in September are two important moments during the presidency where the future of the EU's asylum policy and the Member States' commitment to the CEAS will be discussed at the highest level. ECRE urges Member States to use this opportunity to give new impetus to the development of an asylum policy that is humane, fair and efficient and upholds Europe's longstanding tradition of providing a safe haven to those in need of international protection. The following recommendations focus on the EU's legislative agenda in the field of asylum, the role of the EASO in the development of the CEAS, the EU's role in resettlement of refugees, and access to the territory for persons in need of international protection.

2. Legislative Harmonisation

The discussions on the Commission proposals recasting the first phase asylum instruments have proven to be difficult so far. While no progress was made under the Spanish Presidency with regard to the Commission proposals recasting the Reception Conditions Directive and the Dublin Regulation, discussions were started in the Council and the European Parliament on the Commission Proposals recasting the Qualification Directive and the Asylum Procedures Directive.

ECRE has generally welcomed the Commission proposals as a positive development in the construction of a CEAS. The result of the first phase of harmonisation has been disappointing as the level of protection granted to asylum seekers and refugees in the EU asylum *acquis* is generally low. In addition, certain standards enshrined in EU asylum legislation are at odds with international refugee and human rights law

and standards. Therefore ECRE has consistently advocated for the adoption of high standards of protection based on the full respect of the 1951 Refugee Convention and other human rights standards, including the EU Charter on Fundamental Rights. ECRE calls on the EU institutions to clearly reaffirm this objective and to ensure that the flaws in the EU asylum acquis are effectively addressed. This section contains an overview of ECRE's main concerns and recommendations with regard to Commission proposals in the field of asylum currently under discussion.

2.1. *The Commission Proposal recasting the Dublin Regulation*

The Dublin Regulation continues to create hardship and unfair consequences for asylum seekers and persons in need of international protection.¹ Based on the myth that protection standards are equivalent throughout the EU and the associated states, the Dublin system results in asylum seekers being transferred to states where their basic human rights are violated, access to protection is *de facto* denied or access to specific treatment for asylum seekers with special needs is non-existent. This is increasingly being recognised in the jurisprudence of national courts across Europe as in numerous cases transfers of asylum seekers under the Dublin Regulation have been suspended on the basis that they would result in such human rights violations, including refoulement.²

While it remains ECRE's position that the Dublin system is an obstacle to an efficient, harmonised and humane CEAS, the organisation acknowledges that the Commission proposal recasting the Dublin Regulation introduces a number of significant improvements to the existing system. These amendments would, if adopted, indeed mitigate some of the negative effects that its operation may have on asylum seekers³.

ECRE calls upon the Council and the European Parliament in particular to:

- Ensure that the right to information (recast Article 4) and a personal interview (recast Article 5) is guaranteed in all circumstances before a transfer decision is taken and therefore refrain from introducing exceptions to these rights.
- Ensure that the right to an effective remedy against a Dublin transfer is guaranteed in the recast Regulation. In line with Member States legal obligations, such a remedy must have a suspensive effect.
- Seek consensus on the need for a temporary suspension mechanism as an integral part of the Dublin system in order to allow the EU institutions to intervene effectively whenever asylum seekers may become the victim of dysfunctional asylum systems in the Member States.
- Ensure that detention of asylum seekers within the Dublin system remains a measure of last resort by upholding the principle in recast Article 27 (2) that individuals can only be detained for the purpose of carrying out a transfer after the Dublin decision has been taken and only if there is a *significant* risk of absconding

2.2. *The Commission Proposal recasting the Qualification Directive*

Research conducted by ECRE and UNHCR on the implementation of the Qualification Directive has shown the need for amendments to this core instrument of the CEAS in order to bring it in line with international refugee and human rights law and standards. ECRE considers that the Commission recast proposal, notwithstanding the fact that it leaves a number of important flaws in the directive

untouched, generally constitutes an important step forward in particular in approximating the rights attached to refugee and subsidiary protection status⁴. The approximation of rights is necessary as refugees and beneficiaries of subsidiary protection have similar protection needs and there is no reason why they should not equally benefit from the content of rights granted in the Qualification Directive. Differentiation between both statuses not only is an obstacle in the integration process of beneficiaries of subsidiary protection but also creates additional administrative burdens for the authorities of the host Member States with regard to, for instance, renewal of residence permits.

As far as the eligibility criteria in the Qualification Directive are concerned, ECRE regrets that the Commission has not taken the opportunity to amend provisions relating to exclusion clauses and to the grounds for subsidiary protection in Article 15. In particular Article 15 (c) concerning situations of generalised violence continues to result in divergent practices in the Member States notwithstanding the ruling of the Court of Justice in the Elgafaji case.

ECRE calls on the Council and the European Parliament in particular to:

- Ensure that the content of rights for refugees and beneficiaries of subsidiary protection status are aligned in the Qualification Directive thus resulting in a uniform status for all beneficiaries of international protection across the EU.
- Further amend recast Article 7 of the Commission proposal with regard to actors of protection and international protection alternative to ensure that only State actors can be considered as actors of protection.
- Further amend recast Article 8 on internal protection alternative to insert a strong presumption against the existence of an internal protection alternative when States or actors associated with States are actors of persecution or serious harm.
- Maintain the requirement in recast Article 8 that the applicant can be “reasonably expected to stay” in order to ensure that the person concerned can relocate to the country of origin and lead a relatively normal life there, without undue hardship.
- Maintain the deletion of the possibility to apply the internal protection alternative despite technical obstacles in recast Article 8.
- Adopt the amended Articles 11 and 16 incorporating an exception to cessation of protection in relation to compelling reasons derived from previous persecution.

2.3. *The Commission Proposal recasting the Asylum Procedures Directive*

At the time of its adoption, the Asylum Procedures Directive was heavily criticised by many experts as it establishes a low level of procedural guarantees for asylum seekers and codifies a range of tools that seriously undermines asylum seekers’ access to fair and efficient status determination procedures.⁵ Furthermore, as it allows Member States a wide margin of discretion, the Directive fails to set a common standard and contribute to the approximation of procedural standards across the EU. Recent research by UNHCR in 12 Member States has clearly shown the need for a fundamental revision of EU standards as practices differ widely and sometimes fail to ensure basic procedural standards needed for correct and quality decision making. Also, in some countries accelerated asylum procedures, characterised by decision-making within extremely short time frames which places

asylum seekers in particular disadvantaged positions, have become the rule rather than the exception.

ECRE has generally welcomed the 2009 Commission proposal recasting the Asylum Procedures Directive as it significantly raises EU standards with regard to crucial issues such as the right to a personal interview, training requirements for staff in asylum authorities, the right to legal assistance and representation and the right to an effective remedy⁶. ECRE also supports the general approach of the Commission proposal which is aimed at creating the conditions for robust and quality first instance decision-making in a spirit of frontloading of the asylum procedure.

However, the recast proposal, while strengthening the possibilities for asylum seekers to rebut the presumption of safety and deleting the EU list of safe countries of origin, maintains the various safe country concepts as such. Research has shown that the “European safe third country” is no longer used in practice and that the “safe third country” concept is only being applied in a limited number of Member States and in a limited number of cases. Moreover, among those EU Member States that apply the safe country of origin concept, there is considerable divergence as to which countries are considered to be safe. ECRE seriously questions the use of safe country concepts within the CEAS-framework as it is not only at odds with Member States obligations under international refugee and human rights law but also seems to undermine a harmonised approach.

ECRE calls on the Council and the European Parliament in particular to:

- Ensure that the right to a personal interview in all circumstances is guaranteed with only limited grounds for exceptions such as where a positive decision can be taken without interview or where the asylum seeker is unable or unfit to be interviewed.
- Establish high standards with regard to training and resources requirements for determining authorities encouraging the establishment of specialised first instance asylum authorities as laid down in recast Article 4.
- Ensure that the recast directive includes a clear provision on the right to an effective remedy reflecting the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union.
- Support the amendments aimed at improving the procedural guarantees for particularly vulnerable categories such as unaccompanied minors and asylum seekers who have been subjected to torture or other serious violence.
- Delete the European safe third country concept and the possibility of national lists of safe third countries and safe countries of origin.

2.4. *The Commission Proposal recasting the Reception Conditions Directive*

Current standards for the reception of asylum seekers differ widely across the EU and in-depth research has revealed important shortcomings of reception systems in certain Member States.⁷ ECRE has generally welcomed the Commission recast proposal as an important step towards creating higher standards of treatment of asylum seekers in the Member States which reflects a considerable number of ECRE’s key recommendations. However, ECRE also expressed concern as to the broad definition of the grounds for detention as it potentially opens the door for systematic detention of large categories of asylum seekers. In addition the ability of Member States to set exceptional measures for material reception conditions in case

of detention or at border posts, laid down in the Commission proposal, is a reason for concern.⁸

Nevertheless, ECRE believes that the Commission recast proposal contains a number of important amendments that will, if adopted, raise the standards of reception conditions for asylum seekers. Therefore, the Belgian Presidency should make a serious attempt to unblock the current deadlock and relaunch negotiations in the Council, including with regard to those issues that are currently considered to be 'too controversial'.

In doing so, ECRE calls on the Council and the European Parliament in particular to:

- Promote access to the labour market for asylum seekers no later than 6 months after lodging the asylum application. This will encourage asylum seekers' self-sufficiency and improve their integration prospects.
- Promote the principle that detention of asylum seekers should always be a measure of last resort through maintaining an obligation to provide for alternatives to detention and establishing limited grounds for detention.
- Maintain the prohibition of detention of unaccompanied children as laid down in Article 11 of the Commission recast proposal.

2.5. The Commission Proposal extending the scope of the Long Term Residence Directive to beneficiaries of international protection

The Long Term Residence Directive, adopted already in 2003, grants a long term residence permit to those third country nationals who have resided within a Member State's territory legally and continuously for five years, have stable and regular resources to support themselves and dependent family members and sickness insurance. Member States may additionally require third country nationals who apply for a long-term residence status to comply with integration conditions. Long-term residence status under EU law gives the holder of the permit a right to equal treatment with nationals with regard to a number of social rights and allows them to reside in a Member State other than the one that has granted the permit in order to engage in economic activities, studies, vocational training or other purposes. At the time of adoption of the Directive, refugees and beneficiaries of subsidiary protection were excluded from its scope.

ECRE welcomes the Belgian Presidency's intention to seek political agreement on the adoption of the Commission Proposal for a Council Directive amending the Long Term Residence directive to extend its scope to beneficiaries of international protection. As a consequence of the entry into force of the Lisbon Treaty, the Commission proposal is to be adopted according to the ordinary legislative procedure. ECRE urges the European Parliament and the Council to ensure that refugees and subsidiary protection beneficiaries enjoy the benefits of long term residence status under EU law as it is already the case for other legally staying third country nationals, taking into account the specific situation of beneficiaries of international protection.

ECRE has consistently supported the Commission's proposal to include the duration of the asylum procedure in the calculation of 5 years of legal residence on the territory of a Member State required to obtain long-term residence under the Directive.⁹ In particular with regard to refugees this is justified by the declaratory nature of refugee status. At the same time, ECRE believes that exceptions are needed with regard to the conditions the Directive imposes for acquiring long-term

residence status. Due to legal and practical impediments in Member States it may be particularly difficult for beneficiaries of international protection to fulfil the condition of having stable and regular resources. Practices in Member States vary widely as to whether or not asylum seekers are allowed to work during the asylum procedure leading in some Member States to a situation where asylum seekers *de facto* have no access to the labour market.¹⁰ In those circumstances it is unfair to impose such conditions on beneficiaries of international protection.

Secondly, persons in need of international protection often have difficulty in complying with integration conditions due to their particular vulnerability resulting *inter alia* from the human rights violations they have been subjected to. In certain cases it may be also impossible in practice for these persons to comply with certain integration conditions due to the lack of integration programmes or language courses in Member States. ECRE urges the Council and the European Parliament to amend the Long Term Residence Directive in order to ensure that if compliance with integration conditions is required under national law it should include an individual assessment of whether the beneficiary of international protection can be reasonably expected to meet such requirement. If not, Member States should not be allowed to apply such integration conditions with respect to the granting of long-term residence status to beneficiaries of international protection.

Finally, safeguards are needed to ensure that free movement of beneficiaries of international protection within the EU will not result in the loss of protection status. In situations where a Member State intends to withdraw a beneficiaries' protection status, the individual concerned must have access to a withdrawal procedure in accordance with the Asylum Procedures Directive. ECRE urges the Council and the European Parliament to include solid guarantees in the Directive to ensure that Member States in all circumstances comply with the *non-refoulement* principle in the implementation of the Long Term Residence Directive.

ECRE calls on the Council and the European Parliament in particular to:

- Ensure that the duration of the asylum procedure is fully taken into account for the calculation of the period of five years of residence prior to the granting of long term residence status.
- Ensure that refugees and beneficiaries of subsidiary protection are exempted from the condition of having stable and regular resources to obtain long-term residence status.
- Ensure that compliance with integration conditions to obtain long term residence status in accordance with national law must include an assessment of whether the beneficiary of international protection can reasonably be expected to meet such requirement on the basis of his or her individual circumstances.
- Ensure that the Long Term Residence Directive includes sufficient guarantees to ensure that the *non-refoulement* principle is in all circumstances complied with by Member States, in particular when protection status is being revoked or withdrawn.

3. European Asylum Support Office (EASO)

As the Regulation establishing the European Asylum Support Office has been adopted, the start-up phase of the new EU agency will take place under the Belgian Presidency as well as the appointment of its Director. ECRE has acknowledged the important role that the EASO can play in helping to construct a CEAS that is founded on high standards of protection, on the condition that its activities aim to enhance the quality of asylum systems and in particular decision-making in the Member States and provide a meaningful role for refugee assisting non-governmental organisations, experts and UNHCR.

The organisational framework of the EASO allows for NGO-involvement not only through the Consultative Forum but also in the context of its working parties of experts from competent Member State authorities operating in the field of asylum. NGO's are involved in various aspects of asylum policy at the national and EU level, including as implementing partners of governmental authorities and should therefore be seen as fully-fledged actors in the various activities of the EASO. Existing best practice of constructive cooperation between governmental and non governmental actors should be continued within the framework of the EASO.¹¹

In ECRE's view, in order to be successful the EASO will need to go beyond the immediate logistical needs of Member States in managing their asylum caseloads. For the future of the CEAS it is of crucial importance that the EASO's activities are also developed with the aim of increasing standards of protection across the EU while ensuring that the CEAS remains accessible in practice for those in need of international protection. Several tools will be at the disposal of the EASO with regard to the latter: Asylum Support Teams can be deployed in Member States subject to particular pressures and the EASO may facilitate operational cooperation between Member States and third countries within the framework of the Union's external relations policy. The EASO may also cooperate with authorities in third countries competent in technical aspects of the areas covered by the EASO while synergies shall be created between the EASO and other bodies such as the Fundamental Rights Agency (FRA) and FRONTEX. Such cooperation must be transparent and include concrete mechanisms to ensure access to protection in the EU in line with international refugee and human rights law and the EU Charter of Fundamental Rights which guarantees the right to asylum.

ECRE calls on the Belgian Presidency to

- Actively support a meaningful role for refugee assisting NGO's in the activities of the EASO.

4. Resettlement of Refugees

A key area in which the EU should show concrete solidarity with those countries hosting the majority of the world's refugees and dealing with protracted refugee situations is refugee resettlement. In 2008 UNHCR made submissions of more than 120.000 refugees for resettlement. In 2009, worldwide 84,657 refugees were effectively resettled, of which 8,4% departed to EU Member States.¹² ECRE believes that it is time for the EU to significantly invest in refugee resettlement as one of the durable solutions to refugee situations and as a strategic tool to create additional protection space in those regions most affected by long standing refugee situations. ECRE has welcomed the Commission proposal to set up a European Resettlement

Programme as an important incentive for EU Member States to fully engage in resettlement of refugees.

In this respect the Belgian Presidency should continue to work towards an agreement on the Joint EU Resettlement Programme. Useful amendments to strengthen the Commission proposal have been put forward by the European Parliament with regards to the establishment of a permanent resettlement unit within the EASO in order to better coordinate resettlement activities of Member States as well as with regard to the strengthening of the financial incentives for those Member States willing to pledge for the first time under the European Refugee Fund. ECRE urges the Council and the European Parliament to work together in a constructive manner in order to ensure that the Joint EU Resettlement Programme can be launched as soon as possible.

ECRE calls on the Belgian Presidency

- To continue efforts to finding agreement on the proposed Joint EU Resettlement Programme with a view to effectively launching the programme as soon as possible.

5. Access to protection

Safeguarding access to protection for refugees remains a crucial challenge in the construction of the CEAS. While this was already clearly acknowledged in the European Pact on Immigration and Asylum,¹³ the Stockholm Programme reiterates that the “strengthening of border controls should not prevent access to protection systems by those persons entitled to benefit from them, and especially people and groups that are in vulnerable situations”.¹⁴ Measures need to be taken to ensure that these words are put into action.

As mentioned above, cooperation between the EASO, FRA and FRONTEX provide opportunities to develop mechanisms at EU level to guarantee that border control mechanisms are protection-sensitive in practice. The recently adopted guidelines for joint sea operations coordinated by FRONTEX restate the international human rights framework governing interception at sea and reaffirm the obligation of Member States to ensure that “no person shall be disembarked in, or otherwise handed over to the authorities of a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle.”¹⁵ They also explicitly require that “the person intercepted or rescued shall be informed in an appropriate way so that they can express any reasons for believing that disembarkation in the proposed place would be in breach of the principle of non-refoulement”.¹⁶ Whereas the guidelines merely restate these principles, they need to be implemented in practice.¹⁷ Given that the actual disembarkation of persons intercepted or rescued in the context of FRONTEX operations is dealt with in the non-binding part of the guidelines, it remains to be seen how effective this tool will be in order to ensure effective access to protection.

Recently the Commission proposed the third substantive revision of FRONTEX’ mandate.¹⁸ The Commission proposal unambiguously asserts that relevant EU standards, as well as international human rights and refugee law, are applicable to all border operations carried out by Member States under the auspices of Frontex and to all other activities entrusted to the Agency, which ECRE welcomes.

At the same time, while the intention of the Commission is to further clarify the role and responsibilities of FRONTEX vis-à-vis the Member States, the fundamental ambiguities about accountability for possible human rights violations during border control operations coordinated by FRONTEX are not resolved. ECRE believes that the respective roles and responsibilities of Member States' guest officers, host Member State border officers, observers from third countries and FRONTEX personnel in those operations must be clearly established to avoid "accountability shifting" between the various actors involved. The enhanced role of FRONTEX in coordinating joint operations necessarily adds to FRONTEX' responsibility and therefore further amendments to the Commission proposal are required to reinforce the Agency's accountability.

Moreover, the proposed expansion of the role of FRONTEX in cooperating with third countries in border management, including through the posting of Immigration Liaison Officers, raises a number of concerns from a fundamental rights perspective, in particular regarding the ability of individuals to flee and find protection from persecution. Consequently, ECRE believes that additional safeguards are needed to ensure that FRONTEX activities will indeed not "prevent access to protection systems by persons in need of international protection" as required by the Stockholm Programme.

ECRE calls upon the Council and the European Parliament in particular to:

- Support the proposed amendments to the FRONTEX Regulation reasserting the obligations under EU law and fundamental rights which are incumbent upon Member States when taking part in the Agency's operations.
- Establish mechanisms to reinforce FRONTEX accountability in view of the increasing responsibilities placed on the Agency.
- Introduce the necessary safeguards to ensure that FRONTEX enhanced capacity to cooperate with third countries does not prevent access to protection systems by persons in need of international protection.

¹ This is illustrated in numerous reports. See for instance ECRE, [Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered](#), March 2008 ("Dublin Reconsidered"); NOAS, *A gamble with the right to asylum in Europe – Greek asylum policy and the Dublin II Regulation*, April 2008; ECRE, [The Dublin Regulation: Twenty Voices - Twenty Reasons for Change](#), March 2007; Amnesty International, *The Dublin II Trap. Transfer of asylum-seekers to Greece*, March 2010, AI Index: EUR 25/001/2010.

² For a recent overview of developments in national jurisprudence, see UNHCR, *UNHCR Information Note on National Practice in the Application of Article 3(2) of the Dublin II Regulation in particular in the context of intended transfers to Greece*. Brussels, 16 June 2010.

³ For detailed analysis and recommendations, see ECRE, [Comments on the Commission Proposal recasting the Dublin Regulation](#), April 2009.

⁴ For detailed analysis and recommendations ECRE, [Comments on the Commission Proposal recasting the Qualification Directive](#), March 2010.

⁵ See e.g. ECRE, [Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status](#), October 2006.

⁶ For detailed analysis and recommendations, see ECRE, [Comments on the Commission proposal recasting the Asylum Procedures Directive](#), May 2010.

⁷ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, October 2006; ECRE, [The EC Directive on the Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation?](#), November 2005.

⁸ For further analysis and recommendations, see ECRE, [Comments on the European Commission Proposal to recast the Reception Conditions Directive](#), April 2009.

⁹ ECRE, [*Comments from the European Council on Refugees and Exiles on the Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection*](#), March 2008.

¹⁰ ECRE, [*Proposals for Revision of the EC Directive on the Reception of Asylum Seekers*](#), May 2008.

¹¹ One example is the European Asylum Curriculum (EAC), a training module for decision-makers which is being developed with input from NGO's, UNHCR and the Odysseus network.

¹² See UNHCR, *UNHCR projected Global Resettlement Needs 2011. Including overview of UNHCR resettlement achievements in 2009, operational challenges and strategic directions for 2010-2011*, 16th Annual Tripartite Consultation on Resettlement, Geneva, 8-10 July 2010, available at <http://www.unhcr.org>.

¹³ Council of the European Union, *European Pact on Immigration and Asylum* ("European Pact"), Doc. 13440/08, 24 September 2008.

¹⁴ European Council, *The Stockholm Programme – An open and secure Europe serving and protecting the citizens*, OJ 2010 C 115/2.

¹⁵ Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L11, 4.5.2010, Annex, 1.2.

¹⁶ *Ibid.*

¹⁷ It should be noted that the European Parliament recently decided to challenge the Council decision before the Court of Justice of the European Union. See ECRE, ECRE Weekly Bulletin, 2 July 2010. Available at <http://www.ecre.org>.

¹⁸ European Commission, *Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)*, COM(2010) 61 final, 24.2.2010. For further information, see the comments on the Commission proposal by Amnesty International and ECRE (forthcoming).