



## EU-Pakistan readmission agreement: The European Parliament has to say NO!

### I General elements

-The European Parliament has to make use of its new veto power concerning the conclusion of a readmission agreement. It has to assert itself as a real co-legislator committed to the respect of human rights and therefore must require a detailed analysis of the countries these agreements are signed with.

- No evaluation of the readmission agreements has been done so far: the consequences of readmissions have been neither made public nor communicated to the EP or to the national assemblies. Before the conclusion of new agreements with third countries, an evaluation turns out to be indispensable especially concerning human rights issues (an opinion also shared by the Parliamentary assembly of the Council of Europe<sup>1</sup>). In January 2009, Migreurop had already asked European Commission about it<sup>2</sup>. In a letter sent on 23 March 2009, the Commission answered that it had decided to wait «*the second semester 2009 to proceed to a quantitative and qualitative evaluation* » of these agreements. As far as we know, no evaluation has been made public yet.

### II. EU-Pakistan readmission agreement: trouble spots

#### Situation of Pakistanis and Afghans after the floods

In the beginning of August 2010, strong floods beat down on Pakistan, tossing our more than 15 billions of people. In the aftermath of the floods, the situation is disastrous, especially in the north of the country, on borders with Afghanistan, as emphasized by the Inter Displacement Monitoring Center (IDMC) in a paper of the 6<sup>th</sup> of September 2010<sup>3</sup>. Displaced people already in a vulnerability situation before the floods are even more in precarious conditions today.

IDMC adds that the situation could push some displaced people to go back home even if it is risky. We recall, at first, that the EU Pakistan readmission agreement allows deportation of

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<sup>1</sup> *The readmission agreements : a mechanism for returning irregular migrants*, DOC 12168, 16 March 2010. Committee on Refugees, migration and Population. Rapporteur Ms. Tineke Strik.

<sup>2</sup> Open letter on the readmission agreements., addressed to the Presidency of the Council of the European Union in charge and to the Commission, 20 January 2009. Available on <http://www.migreurop.org/article1348.html>

<sup>3</sup> IDMC, "Pakistan: Flooding worsens situation for people displaced by conflict in north-west", 06/09/2010. Cf: <http://www.internal-displacement.org/8025708F004CE90B/%28httpCountrySummaries%29/1BFA836B6B0ABAC3C12577900040E3C3?OpenDocument&count=10000>

Pakistanis but also of thirds country nationals who transited by this country.

Here, the agreement targets directly Afghans. We recall, secondly, that today, Pakistan receives 1.7 millions of Afghan refugees fleeing the war, 88% of them living<sup>4</sup>, as displaced people from Pakistan, in the north of the country, right where the floods hit most the country. Moreover, Pakistan is in the midst of the « afterwards » floods' management.

So, today, Afghan refugees, as displaced Pakistanis in the north, are in a frightening precariousness. In the eye of the floods situation, people who will be deported to Pakistan will be in the same frightening precariousness, if the European parliament gives its approval to the EU-Pakistan readmission agreement.

As things stands in Pakistan, the geopolitical context has to be reminded. Afghanistan war devastates also Pakistan (See situation of Aghans in Pakistan) and affects Afghans refugees as much as Pakistanis from the north of the country, as several press articles underlined. Therefore, Afghanistan and Pakistan are not countries to deport people without risking their lives<sup>5</sup> and their rights to security<sup>6</sup>, and without constituting *de facto a refoulement* prohibited by international law.

### **Pakistan and international law**

Pakistan signed few international conventions about human rights: neither the 1951 Refugee Convention and its 1967 Protocol, or the 1966 International Covenant on Civil and Political Rights (and its 1966 and 1989 optional protocols), nor the 1966 International Covenant on Economic, Social and Cultural Rights were signed.

In addition, many NGOs expressed their concern as for the country's situation which is far from being safe : bomb attacks (last April, a double bomb attack killed 40 persons and injured around 60 persons in a camp for displaced people, which shows that the State cannot guarantee any good treatment or keep alive people that would be send there), tribal fights, Christian and Ahmadi minorities persecution, no rights for women who are victim of violence, minors detained from the age of seven (whereas Pakistan signed and ratified the 1989 Convention on the Rights of the Child), homosexuality being punished of two years in jail and one hundred lashes of whip, etc. It should be reminded that death penalty is still in effect. Discriminations, communities and local polices' abuses toward Afghans (main nationality from a third country affected by this readmission agreement) are also to be taken into account as they are often forcibly returned on the basis of a fake voluntary, as Amnesty International revealed it<sup>7</sup>.

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<sup>4</sup> Données du HCR, cf: <http://www.unhcr.fr/4c728beac.html>

<sup>5</sup> Article 2 de la Convention Européenne de sauvegarde des Droits de l'Homme.

<sup>6</sup> Article 5 de la Convention Européenne de sauvegarde des Droits de l'Homme.

<sup>7</sup> <http://www.amnesty.be/doc/article15571.html>

The EP has already declared and expressed its concern about human rights respect in Pakistan in a letter on July 10th, 2009. EP's President spoke directly to the President of the Islamic Republic of Pakistan and enquired after four young people who were detained because they belonged to the religious minority Ahmadiyya. EP's President asked also to the Pakistanis President about which measures will be taken to guarantee their fundamentals rights. He also reasserted EP's opposition to those minor's imprisonment and he invited Pakistan to respect the Convention on the Rights of the Child. He finally stated the country should oppose to death penalty.

Moreover, no measure has been taken by the Commission to guarantee the security of the readmitted persons as well as to ensure their rights are respected. The only provision in relation to such issues is part of the "recital", and posits only that the agreement shall be enforced in respect of international conventions, with the party states being the only one to be accountable for it. The Commission is clearly hiding behind this all too vague statement.

In the manner of the draft opinion gave by Mrs. Nicole Kiil-Nielsen, reporter of the Committee of foreign affairs, this point is not persuasive. Indeed, the Commission, by virtue of article 17 EUT, is the guardian of the Treaties and therefore shall ensure the due enforcement and respect of Community law. Yet, international agreements between European Community and third countries play an integral part of this legal block, as well as the respect of fundamental rights guaranteed by article 6 UET.

Moreover, each readmission agreement provides the creation of a mixed readmission committee on which sits a representative of the Commission. This committee undertakes to "control the enforcement of the agreement and to decide the implementation modalities necessary to its uniform execution"<sup>8</sup>. Therefore, through this committee, the Commission is under obligation to ensure the agreement's well implementation, even if it is enforced by a Member State.

Despite the European Commission commitment lodged in the declaration attached to the agreement, to support Pakistan to sign the 1951 Geneva Convention on refugees, in fact, Pakistan has not the will to do it. As evidence, an agreement was signed between Afghanistan, Pakistan and the UNHCR. Refugees are only tolerated up to 2012 because it does not want Afghan refugees to settle on Pakistan territory. We recall that the aid received for Afghans refugees in Pakistan comes from the UNHCR, so with the UN member states goodwill and not only from the Pakistan goodwill.

Lastly, we remind that the working document of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe calls upon the members States to "conclude readmission agreements only with countries that comply with relevant human rights standards and with the 1951 Geneva Convention, that have functioning asylum systems in place and that protect their citizens' right to free movement, neither criminalising unauthorised entry into, nor departure from, the country in question"<sup>9</sup>.

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<sup>8</sup> Article 10 of the EU-Pakistan readmission agreement. *Non official translation*

<sup>9</sup> "Readmission agreements: a mechanism for returning irregular migrants", Working document n°12168, 17 March, 2010. Committee on Migration, Refugees and Population, Rapporteur: Ms Tineke STRIK, Netherlands,

### **Uncertain legal situation of unregistered Afghans refugees in Pakistan**

Pakistan, Afghanistan and the UNCHR signed an agreement in March 2009 allowing Afghan refugees to remain in Pakistan up to 2012. Indeed, a prior agreement became void in the end of 2009; a solution had to be finding for the 1, 7 millions refugees registered in Pakistan.

Nevertheless, despite this agreement, Afghans in Pakistan are not keeping away from a deportation to their country of origin. Indeed, they are regularly victims of arrests, summary deportations during anti-Taliban or anti-Pashtun riots which are increasing in Lahore and Peshawar<sup>10</sup>. So, in fact, Afghans refugees could be deported to Afghanistan, then could be arrested, detained arbitrarily, subjected to targeted murder coming from ethnic and family conflicts existing there, but also, from the Afghan armed conflict, as the UNHCR emphasized in a July 2009 report<sup>11</sup>.

The UNHCR notices that some states, notably European, deport Afghans not directly to their country of origin but to Pakistan or Iran. Concerning deportation to Pakistan, the UNHCR underlines that the agreement between Afghanistan, Pakistan and its office is only for registered Afghans. Therefore, those who would have no entry visa valid, Pakistan could refuse their entry and deport them to Afghanistan. The High Commissioner adds that even some Afghans had the right to stay before their departure to Europe (for example), it does not work when they come back. Indeed, without visa and valid passport, Afghans have no right to stay in Pakistan. As a consequence, Afghans could be detained and then deported to Afghanistan. The UNHCR highlights that several hundred of Afghans are deported by force each month.

Therefore, the deportation of Afghans to Pakistan, in the framework of the readmission agreement, will allow a deportation called by “bounce” from Europe to Afghanistan via Pakistan, and *a fortiori* the European Parliament takes the risk, if voting for the agreement, to expose deported people to torture, inhuman and degrading treatments, even death, in a total ignorance of the EU and its member states’ international commitments.

### **The two parties’ lack of competence to decide the fate of third-country nationals and stateless people**

It is well known that readmission agreements do not provide a legal basis to reject irregular foreigners or to expel them; they can only enable a return after a State has refused a person’s sojourn or entry into its territory. Therefore, any use of such agreement to facilitate someone’s expulsion can only happen once a decision has been made in line with the

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<sup>10</sup> <http://actu.exiles10.org/>

<sup>11</sup> UNHCR, “UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan”, July 2009.

national legislation to reject or expel a foreigner. However, the provisions foreseen by this “readmission” clause are directly linked with acts and operations which the parties are not legally competent to deal with in regards to international law.

In fact, the clause about the readmission of third-country nationals and stateless people raises a real legal problem insofar as neither the EU or Pakistan, nor both of them together, have the authority to dispose of these people’s rights. According to international law, a State is competent to rule over a situation or a relationship\* only if the people are attached to it because of their nationality (in which case the State exercises its «personal» competence) or because of their being on its territory (in which case the State exercises its «territorial» competence).

However, these two links that would justify the EU and Pakistan making arrangements for the situation of third-country nationals and stateless people are missing. In principle, the nationality link is absent. In regards to the territorial link, the issue is somewhat more complex, but has the same answer. In fact, while the host State does have competence to refuse entry or remove a foreigner from its territory who does not fulfill the conditions of entry and residence it has set, in line with/following its territorial competence, the rest of the operation – the «readmission» - does not have such links to it as are recognised in international law and, hence, it has no title to impose a destination upon this person. In effect, from the moment when the person is expelled, the territorial link disappears and, with it, so does the competence of the State that is expelling. Besides, this is the assumption behind these agreements: a European State cannot expel whoever it wishes to wherever it wishes, and hence such an agreement is necessary to have a State as their destination. However, what it cannot do on its own, it cannot do among two parties in a treaty either.

And Pakistan does not have any more authority to manage the situation of these third-country nationals and stateless people, as the only link between them is a possible stay by the latter in the past in Pakistani territory or a simple transit, links that are manifestly insufficient to establish Pakistan’s competence on the day of the expulsion and on the day when this treaty is agreed.

One may call upon another principle of international law to question the competence of the EU and Pakistan to adopt this kind of clause. In effect, international law recognizes the principle of the relative effect of international treaties, a principle according to which a treaty cannot give rise to rights or obligations for a third party without their consent. Now, in this case, two subjects of international law intend to dispose of the fate of individuals without their agreement: they will be readmitted into Pakistan (or into the EU...) and they will most likely be detained there while they await possible removal to another State where there is no guarantee that they will be treated properly.

To imagine how much of an aberration the system is, let us apply the reciprocity clause in order to illustrate the matter, as the treaty is supposedly reciprocal. This system may lead to situations such as the following one: a French, an Italian or a Pole goes to Pakistan and then travels to Australia to seek employment, while Australia has already reached a readmission agreement that is now in force and is identical to the EU/Pakistan agreement. They arrive in Australia with a valid visa. After the visa’s validity expires, they forget or do not have the material possibility, having had an accident, to regularize their situation. Australia decides to return them. As this European national has passed through Pakistan, Australia sends them to

Pakistan, which has not refused them entry in the short time that is available to do so, and this State will do whatever it pleases with them. Most likely, they will be placed in a detention site in which this European citizen will have no way to assert their rights, if they are not mistreated or sent on to another country on the basis of an agreement between Pakistan and this last country in which there is no guarantee that it respects human rights. During all this time, the national State to which the person belongs and the EU should not have anything to say about this. It is evident that the situation is absurd and, even so, it will be the common fate of the men and women who will be the subjects of this clause, as well as the Afghans for whom, as we have seen, this clause appears to have been primarily conceived. In this last hypothesis, the idea is simple: as we cannot refole them to where they come from, we entrust this task to Pakistan without the Afghans concerned or Afghanistan having the possibility of uttering a word...

In reality, Afghanistan in this final hypothesis, like France, Italy or Poland in the previous one, would always have a right to act upon the responsibility of Pakistan or of the other party of a readmission agreement if one of their nationals is not treated in compliance with international law. Returning to this agreement, this means that if its application results in a third party being denied rights that they are recognized by international law, this person's national State will be able to demand that the Union and Pakistan answer in court about the treatment that they have thus afforded a foreigner without their agreement, nor that of their national State. Overall, the logical corollary of the two parties not being qualified to adopt this readmission clause is that they may engage their responsibility on each occasion in which they apply it.

### **The non binding effect of the Human rights declaration attached to the readmission agreement.**

During the LIBE Committee debate in May 2010, the Members of the European Parliament (MEPs) succeed in extracting to the European Commission (EC) a declaration on the respect of *non refoulement* principle, rights of third countries citizens on the EU territory... This declaration will be attached to the agreement.

However, the European Parliament cannot content itself with this declaration because it does not have any legal value and so cannot have the effect expected on the legal aspect but also on the political one, toward Pakistan or EU Member states and European Parliament.

As regards Pakistan, if a joint declaration of consent to be bind by a treaty could have an impact in the framework of a multilateral treaty (as it could precise the impact of the author's commitment), such a mechanism cannot work in the framework of a bilateral agreement as the one the EP is in charge today.

Indeed, in this event, such a declaration would come back to amend what it has been already signed. But, such a change could impact only if the other co contracting party does agree what, by assumption, it did not do previously.



In other words, this joint declaration will have an effect only on the goodwill of Pakistan with the impossibility to impose it. Therefore, inasmuch the EU will entrust respect of Human rights and refugees rights as the discretion of Pakistan, it will not respect its international commitments which order the EU to avoid their violations. The evidence is also that this declaration will not have any political and symbolic impact; The EU will not be able to proclaim with good faith that it made sure the respect of its commitments with this declaration.

Concerning the second paragraph of the declaration on relations between the Commission with Member states and the EP, it is obvious that it could not relieve the Commission responsibility only to Member states. If it would be only a question of assessing the Commission to ensure the respect of the EU international commitments, this declaration bring anything because the Commission is already in charge of it. Therefore, the EP gets nothing with the adoption of this “declaration”.

If the European Parliament cares about the Human rights respect of deported people, as it seems to be in the LIBE Committee, it has to enclose this issue directly in the readmission agreement. The EP can only succeed in denying its approval and asking for new negotiations.

### **Afghanistan**

The first sentence of the agreement states that the conclusion of a readmission agreement with Pakistan counted amongst the recommended measures in the action plan for Afghanistan presented in 1999. It is clear that this agreement aims at sending back Afghan nationals to Pakistan, as it is mentioned that Pakistan will readmit its own nationals as well as third country nationals.

In 2001 for instance, a project on the protection of Afghan refugees in Pakistan has been supported under the former budget line B7-667. In 2002, the budget for Afghanistan focused on the assistance to the return of qualified Afghans and on the support to the Afghan government regarding immigration issues. Has any evaluation report been published on these actions so far?

In the framework of the budget B7-667, amongst the actions for the year 2003, was planned an assistance to the Afghan government in order to manage the returns and the problems related to protection. In 2003, among other actions, the budget B7-667 was partly allocated to support the Afghan government, in order to manage return migration and to deal with protection issues more efficiently. One again, has any evaluation report been issued about this?

Lastly, what evaluation was made by HCR of the European plan for the return of Afghans in their country of origin? The European Commission is in charge of the follow-up of this action plan and should regularly inform the High-Level working group.

Consequently, without any clear and restrictive guarantee, it is impossible to make sure that

the Afghan migrants readmitted in Pakistan will see their rights respected and will not be sent back to Afghanistan.

### **Range of application, meaningless**

The range of application of this agreement raises serious concern while providing with few answers. First, it takes aims at nationals: in 2008, there were 13 348 arrests of Pakistanis being irregular and 4 424 effective returns. The agreement deals equally with third country nationals and stateless persons; One may wonder on the pertinence of such an agreement; indeed, almost all migrants arrive by land whereas the agreements focuses only on irregular migrants who entered a Member stat's territory either by air or by sea.

### **Deadlines**

- A request for answer in regards to the readmission should be addressed within 30 days. If no answer is provided, the readmission is considered as accepted. This does not give enough guarantees as the return may result from a mere delay in the procedure.
- Concerning documents for the return: Pakistani authorities have to issue the necessary travel documents to return "without delay". There is no mention that readmission is legally impossible without these documents. In addition, European authorities increasingly use the "European pass", a travel document that is issued only by the authorities of the State that expels. The resort to this document is extremely worrying, because it could pave the way for many abuses by Member States, as it was the case when France returned some Afghans in December 2009. Usually, the European pass is not used when third country where the migrant is expelled is under international governance or where the State is absent.

### **Enforcement**

Readmission will be processed only if the person entered the territory of a party state after the agreement entered into force. Nonetheless, the burden of proof lies with the part that claims it and that will demonstrate that the person to return has entered before the enforcement of the agreement. But finally, if it's Pakistan which is dealt with, wouldn't it be an excessive burden of proof than that of something that does not happen on its territory? All the more so that the targeted people usually don't have a passport and therefore no certification for their entry.

### **Mixed Readmission Committee**

The EP does not play any role in this committee that is charged to monitor the implementation of the agreement. The Commission states that the presence of the EP would not give any added value. Nevertheless, this would make the implementation of these agreements more transparent and thus the presence of the EP could be a real safeguard against human rights issues at stake with this type of agreements.

There is no juridical argument which prevents a Member of Parliament from having a status of observer within this mixed committee of readmission. Article 16 of this agreement posits



that the committee is composed of representatives of the Community (coming from the Commission and assisted by Member States experts) and of Pakistan. However, it is this same committee which decides on the internal regulation in regards to the status of an EP-designated member who would then be able to follow-up the enforcement of the agreement in full transparency.

### **Transport costs**

The requesting State's authorities may be paid back the sums spent on readmission from the person who must be readmitted or from third persons. Several studies show that migrants who come from Afghanistan or Pakistan borrow considerable sums to reach the European Union; some families have even sold or mortgaged a large part of their property. It would therefore be particularly cynical towards women and men who are in search for a better life that such a procedure is set up. As a reminder, Pakistan's per capita GNP is around forty times lower than that of most European Union countries.

### **Protection of personal data**

There is no provision in the agreement aiming at protecting personal data, only a "loyal" and "lawful" use of this data is required in the text. Data may be forwarded to unspecified "other bodies", without the person's consent being needed.

While the European Parliament has recently expressed its support for a reasonable use of European citizens' personal data in the EU's bilateral relations with third countries, we believe that this should apply to third-country nationals as well [1]. In the case in point, what are the guarantees of protection? What transparency is there? What independent authority will be able to control the use of the data? What are the possibilities of jurisdictional appeals for the people concerned? So many questions that remain unanswered to date.