

Overview of EU policy and the situation of refugees, asylum seekers and undocumented migrants in Europe today: the key issues.

I have chosen to focus on just three issues which I consider to be extremely pressing and urgent.

- The ever increasing focus on immigration control and its impact on protection;
- The ever-increasing use of detention;
- The fact that large numbers of migrants are forced to live in destitution.

I should state at the outset that I am not an expert on EU policy nor do I have first hand knowledge of the situation on the ground in the countries across Europe. My experience is linked to the situation in a very particular corner of the EU, where the reality is extremely different to that in most other countries; this no doubt influences my decision on what constitutes a 'key' or fundamental issue.

But I believe that the issues I have selected are relevant not only to the Mediterranean but to other parts of the EU.

I will start my presentation this morning with something that an asylum seeker from Eritrea, who was detained in one of Malta's centres for irregular migrants, told us.

I have chosen to do this not only because it's a good way to make a point, but also because it is very important to remember that although we are talking about policies, situations and issues, in the ultimate analysis this is all about people and the impact that laws, policies and practices have on their lives.

He said:

"Before we were slaves by force. Now we are coming by ourselves to be slaves."

Anday, an Eritrean asylum seeker in Malta

Chilling words, particularly when you think that this is an asylum seeker's description of his predicament and that of his fellow asylum seekers. Possibly some might feel that his comment is unjustifiably harsh – after all, we do our best, but perhaps it is good to ask why he is claiming that today's migrants are

like the slaves of old, whether it is true that they have totally lost control over their lives and their future.

Access to territory

Anday is just one of the many thousands of migrants, uprooted by war, persecution, poverty, deprivation, lack of opportunity, oppression and human rights violations, who came to Europe in search of security and the chance to live with dignity.

The vast majority of the asylum seekers we meet in Malta – like many of those who arrive in Europe through its Southern borders – have undertaken an extremely dangerous journey, they have traveled thousands of miles through the Sahara desert, possibly one of the most harsh and bleak terrains in the world, and then the sea, often in small or unseaworthy boats.

Not all of them need protection, so they would not be considered ‘genuine’ refugees. Yet, speaking to migrants being held in Malta’s detention centres, it is clear that all without exception believe that they had no choice but to leave.

In the words of one asylum seeker from Congo:

“If you are safe in your country you cannot leave. Those who are safe stay in their country. To cross many countries – to cross the desert, to cross the Mediterranean Sea – is not safe because you can be killed for your money; you can drown in the rough seas. We took these risks only because we are human beings trying to find freedom.”

Francois, an asylum seeker from Congo detained for almost 19 months between 2004 and 2006

And, if we were to be honest, we would acknowledge that, for many asylum seekers, the only way they can reach a place of freedom and security is by travelling and entering illegally. Even if they managed to obtain a passport, no State would issue them with a visa to enter to seek protection.

On the contrary, in recent years the focus of EU immigration policy has shifted increasingly towards immigration control.

States are putting in place ever more stringent border control measures, not only within their own territory but also in third countries, through immigration liaison officers, interception activities and carrier sanctions, intended to prevent

irregular migration and combat international criminal activity and security threats.

It is clear that states have a right to control irregular migration. However, in practice, the lack of legal channels to access protection means that asylum seekers are being increasingly forced to use the same channels as irregular migrants to gain access to a territory where they can seek protection. As a result they are also subject to the same restrictive border controls.

During their journey, migrants are at the mercy of the elements and, possibly more frightening, of the powers that be, whose main concern, it seems, is to keep them out. It matters little that a significant proportion of the migrants trying to enter the EU may need international protection¹, that they will face serious harm if sent back home. Their individual needs are forgotten as states focus on protecting their borders and stemming the flow of uninvited migrants.

All too often, particularly during the summer months, migrants are left stranded, making desperate calls from sinking boats, clinging to tuna pens or crowded on board the vessel that rescued them from certain death, while states wrangle over who should take them in.

At times the crew of merchant vessels who save migrants in distress and bring them to shore, against the will of the state concerned, face criminal proceedings for aiding and abetting illegal immigration, as happened in the case of the Cap Anamur.

In an attempt to coordinate border control more effectively and avoid "humanitarian tragedies", Frontex, the EU border agency, conducted patrols off Malta and Spain last summer. It was reported that during the first phase of the Nautilus II operation off Malta alone, more than a thousand lives² were saved and more than 700 irregular immigrants were intercepted. The Hera III mission off Spain reportedly intercepted a further 1,500 irregular immigrants trying to reach southern Europe³.

These statistics beg the question: what happened to the migrants intercepted? Were any migrants sent back to their point of departure during these operations?

¹ On average since 2002 nearly 48% of applicants received protection.

² Times of Malta, Wednesday September 19, 2007

³ <http://ec.europa.eu/avservices/services/showShotlist.do?out=PDF&lg=En&filmRef=53533>

If so, was any effort made to determine whether they were in need of international protection before they were refused access to EU territory? Were they forced to turn back to a place where they would be able to obtain protection if they needed?

Listening to the testimonies of asylum seekers in Malta's detention centres, one cannot but be concerned about the fate of any migrants who were forced to turn back. Most of them transited through countries bordering the EU, having lived there for months or, at times, years, before deciding to move on in search of protection.

They speak of a life characterised by fear and insecurity, facing discrimination and hostility from the local population and constantly at risk of imprisonment and deportation. A number of them were imprisoned for weeks or months in terrible conditions, because of their irregular migration status, and some were actually deported. Women are particularly subject to exploitation and abuse not only throughout the journey but also during their stay on countries of transit.

They insist that it is impossible to obtain effective protection there, particularly in those countries that have not yet signed the 1951 Convention.

It should be stated, in fairness, that countries bordering the EU must deal with huge numbers of migrants both residing in and transiting through their territory.

This has been acknowledged by the EU, which has pledged support for these countries to combat illegal immigration. Many times, for example, in the case of the bilateral agreement between Italy and Libya, such support has taken the form of building detention centres, providing equipment, setting up joint patrols and financing deportations⁴.

Such solutions are destined to fail as they ignore the reasons why people are moving. As long as people are unable to live with dignity in their country they will move in search of something better. More effective border controls will simply mean that their journey will be harder and more risky, but it is unlikely to stop them from moving.

⁴ EP Delegation to Libya – European Parliament – News – Press Service – 08.12.2005, on bilateral agreement to fight illegal immigration between Italy and Libya

Moreover, they completely ignore the fact that a significant number of people need protection – that they will face harm if sent back home.

Although this is clearly not about migrants, refugees and asylum seekers within EU territory, it is very much about the impact of policies, measures and controls implemented by EU Member States on the quality of protection. It is also very much about some, though clearly not all, of the people who are coming to the EU in search of asylum. About where they are coming from and what they have been through – which inevitably shapes who they are and impacts on their physical, mental and psychological health.

Detention

Those migrants who make it to shore are often forgotten yet, many times, their troubles are far from over.

Although the content and scope of international protection is far from uniform across the EU, Member States apply rules (the Dublin regulations) that severely restrict the asylum seeker's choice about where to seek asylum, although in fact they have every reason to pick and choose given the different standards applicable in different countries.

The application of these rules causes significant difficulties and hardship for asylum seekers in Europe and further limits their ability to make choices about their life and their future. Some believe that it has also contributed to a significant increase in the number of asylum seekers who choose not to apply for asylum.

Migrants who do apply for asylum are faced with a confusing array of laws and regulations, which they often find very hard to understand. This could be due to various reasons – language barriers, lack of proper information, or the fact that they come from countries where structures and procedures are totally inexistent.

Matters are often made worse by the fact that they have a deep seated mistrust in all things official as a result of their experiences in their countries of origin and in countries of transit.

Asylum seekers' stories are subject to extreme scrutiny by officials working within the asylum process, who have the thankless task of trying to assess credibility, often in the lack of any tangible evidence.

Unfortunately many of them fail the test.

“To be rejected is so hard... it makes you think that what you are and what you are saying is just not understood... You are rejected because they didn't believe you.”

Francois, an asylum seeker from Congo detained for almost 19 months between 2004 and 2006

While credibility assessments are more than legitimate, perhaps it would be useful to ask whether the standards we are imposing and the criteria we are using to assess credibility are realistic.

Another major issue is detention, which in many states has become an accepted means of immigration control. At times it seems as if the fundamental right to personal liberty has been turned on its head and there is an almost unquestioned assumption that detention is the only option available.

Migrants often languish in detention for months, awaiting deportation or a final decision on their asylum application. More often than not, migrants are detained in conditions which fail to meet internationally accepted standards, in overcrowded detention centres, which lack the basic necessities and fail to guarantee an acceptable standard of living. At times these put migrants and asylum seekers, at risk of further harm and make them vulnerable to abuse.

Research conducted by JRS and partner organisations from the 10 Member States that acceded to the EU in May 2004 shows that often detainees are extremely isolated and are unable to obtain essential information or access basic services including legal assistance. This inevitably has a negative effect on the asylum procedures.

Often migrants may be detained for very long periods of time (Malta), however the said research indicated that often national legal systems often fail to provide sufficient guarantees of protection from arbitrariness, such as regular review of the decision to detain and, for migrants deprived of their liberty, the courts are often both legally and practically inaccessible.

In addition to being objectionable on human rights grounds, detention is also an issue of major concern because of the hardships it causes to people who, in many cases, have already suffered so much.

Destitution

Even migrants and asylum seekers living in the community often face extreme hardship. The situation is far worse when they have no legal status, however research conducted by JRS Europe in 7 countries indicates that destitution is experienced by a wide variety of migrants with different legal status. These include asylum seekers at appeal stage of the procedures, rejected asylum seekers and irregular migrants.

Often, these migrants either cannot or do not want to return home.

As a rule destitute migrants have little or no access to public goods and services, in terms of healthcare, employment, housing, financial support and material assistance such as food and clothing.

In most cases destitute migrants cannot work legally and they are often wholly dependent on the charity of family members, NGOs, religious organisations and community networks for their survival.

This has a very detrimental effect on both the physical and psychological health of the migrants concerned. Moreover the impossibility of earning a livelihood legally makes people extremely vulnerable to exploitation and abuse.

Conclusion

The fact that Europe is receiving what it perceives as large numbers of migrants, perhaps many more than it wants, cannot justify a lowering of accepted standards of protection, and a failure to respect freely assumed legal obligations in terms of international law.

European and international law obliges us to ensure that people are not, directly or indirectly, sent back to a place where they will face persecution or other serious violations of their human rights. They oblige us to ensure that all those within our effective jurisdiction who need protection are able to obtain it. They also oblige us to receive migrants and asylum seekers in a manner which respects their human dignity.

In the ultimate analysis, the measure of our commitment to human rights must surely be how we treat those among us who are most vulnerable and powerless; those who have no vote and, often, no voice.