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FORGOTTEN AT THE GATES OF EUROPE

Ongoing protection concerns
at the EU's external border





Jesuit Refugee Service (JRS) is an international Catholic organisation with a mission to accompany, serve and advocate for the rights of refugees and others who are forcibly displaced.

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Final report of the project Protection at the External Borders. The report *Forgotten at the gates of Europe: Ongoing protection concerns at the EU's external border* presents the findings of a three year project monitoring human rights violations at the gates of Europe.

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Published

June 2018

Hope is Maybe

The artworks featured in this report come from the art project 'Hope is Maybe', initiated by Jesuit Refugee Service in Munich and Michael Haerteis from Collaborative Creativity. 150 artists were given quotes from refugees to inspire artworks based on their hopes. collaborative-creativity.com/hope-is-maybe/

Permanently Temporary

Special thanks to Denis Bosnic for providing three photos from his photo exhibition 'Permanently Temporary'. denisbosnic.com/permanently-temporary/

Cover photo:

A forced migrant clings to the fence that separates Morocco and the Spanish enclave of Melilla. © Jesús Blasco



Back cover photo:

“My hope was to stay in my home country.”

Exhibition HOPE IS MAYBE
© Shirin Abedinirad (Tehran, Iran),
My Hope Was To Stay In My Home Country,
Photo Land Art, 50 x 70 cm

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Introduction

04

INTRODUCTION

Between 2014 and the beginning of 2016, Europe has been faced with a considerable increase in arrivals of migrants, asylum seekers, and refugees. The European Union (EU) has reacted by initiating a series of policy and legislative changes with the principal aim of stopping more people from coming. Since then, arrivals have considerably decreased and EU policymakers claim their policies have worked. What numbers do not measure, however, is the impact of these policies on people's lives.

Every day, JRS staff and volunteers meet with migrants, asylum seekers, and refugees¹ thanks to our presence in several countries at the EU's borders. Based on these experiences, JRS Europe, together with partners in Spain, Italy, Malta, Greece, Croatia, and Romania,² decided to produce this report to show how people experience Europe's borders. We wanted to understand what people are now up against, and what they must do to search for protection. We wanted to ensure that the voices of migrants and refugees are heard, to make their experiences visible to all of us, to show the link between their situations and EU policies, and to propose solutions for policy changes where needed.

1. Methodology

The findings herein are based on interviews JRS did with 117 people during 2017 using a semi-structured qualitative questionnaire. Interviews were conducted in Spain's enclave of Melilla; Sicily, Italy; Valletta, Malta; Athens, Greece; and at several locations in Romania and Croatia, including the town of Šid, Serbia, located approximately six kilometres from the Croatian

border. We organised questions into several categories to enable us to analyse peoples' journey to Europe, their experience at the border, and in the country where we interviewed them. The findings in this report, as collected from primary source interviews, cannot reflect the full reality of all the different experiences people have arriving to Europe's borders. However, they are analysed in conjunction with the numerous encounters JRS staff and volunteers have had with migrants and refugees in each country in the last three years as we have provided services and accompaniment. Therefore, we are in a position to draw conclusions and propose solutions that are generally applicable to EU policy in the field of asylum and migration.

The average profile of the person we interviewed is: male, single, without children, with a mean age of 28. On the other hand, nearly one-quarter of interviewees were women. The youngest person we encountered was a six-year-old Iraqi boy at the JRS shelter in Athens; the oldest was a 73-year-old Syrian widow also interviewed in Greece. The top three countries of origin were Syria, Iraq, and Afghanistan. A large number of people were from Morocco since these were most of the people interviewed in Melilla. This does not reflect the general picture about the relatively small number of Moroccan asylum seekers in Europe, but reveals a local reality, with specific challenges, as the report will show. People left their country of origin for a variety reasons, chief among them being the state of general instability and violence, reflective of the current situations in Syria, Iraq, and Afghanistan. But people also left because they were being persecuted for their ethnicity and sexual orientation, or because of their political views and religious beliefs. Some

¹ When we use the term "refugees", we mean all beneficiaries of international protection, including people who are beneficiaries of EU subsidiary protection.

² Our partners for this report were JRS country offices in Malta, Greece, Croatia and Romania; *Instituto di formazione politica* Pedro Arrupe in Palermo, Italy, and Jesuit Migrants Service (SJM) in Spain.

people left to reunite with family in Europe, while others left because of violent familial conflicts often involving forced marriages.

The majority of those we interviewed, 79 people, were asylum seekers. Thirty people had an undocumented, or irregular, status. The rest are broken up across more categories but in smaller numbers, from recognised refugees to people with rejected asylum applications. Twenty-six people were interviewed in detention, nearly all of these in Romania — this is a reflection of the way JRS chose people to interview, and is not evidence of a general trend towards detention in Romania.

All the names used in this report are fictitious.

2. The European context

In 2015, over one million asylum seekers came to Europe, more than double that of the previous year. Most of the people who came were fleeing from countries that harbour the world's most dangerous situations and conflicts: Syria, Afghanistan, and Iraq.³ While in 2016, over 1.2 million asylum seekers came to Europe, mostly from the same countries. During that year, 6 in 10 people applied for asylum in Germany,⁴ prompted by Chancellor Angela Merkel's decision to respond to the emergency by opening her country's borders.

The EU's first collective response to the increase in arrivals came in May 2015, when the European Commission proposed the European Agenda on Migration to address the immediate and long-term challenges of managing migration flows. It introduced proposals for four structural reforms: 1) reducing the incentives for irregular migration; 2) saving lives and securing the external borders; 3) implementing a strong EU common

asylum policy; 4) developing a new policy on legal migration. In practice, the EU tripled its capacities to patrol the Central Mediterranean Sea and the Aegean Sea, where many migrants were taking life-threatening journeys from North Africa and Turkey. In October 2015, the European Commission established "hotspots" in Italy and Greece: focal points where experts and staff from the European Asylum Support Office (EASO), the European Border and Coast Guard Agency (Frontex), and the European Union Agency for Law Enforcement Cooperation (Europol) teamed up with national authorities to quickly identify, register, and fingerprint migrant arrivals, expediting refugee screening procedures and coordinating returns. Moreover, EU leaders agreed on a plan to relocate 160,000 asylum seekers – specifically those found to be very likely in need of refugee protection – from Italy and Greece to other EU countries.⁵ In practice, the plan has fallen short of its ambition – as of March 2018, only 33,846 people had been relocated out of the 160,000 originally planned.⁶

In the summer of 2016, the European Commission made proposals to reform the Common European Asylum System (CEAS), the EU legal framework for dealing with asylum seekers. The proposals aimed to simplify asylum procedures, harmonise protection standards and rights for asylum seekers, and provide them with more dignified reception conditions.⁷ Despite these positive aims, it became clear to JRS that the Commission chose to harmonise procedures to reflect the lowest common denominator of asylum provision and to increase the possibilities for EU Member States to accelerate asylum procedures and quickly reject applications without fully examining them. Furthermore, a punitive approach underlines the CEAS reform, allowing for more detention and for the reduction of or the withdrawal of reception conditions for asylum seekers who

³ "Record number of over 1.2 million first time asylum seekers registered in 2015," *Eurostat*, 4 March 2016, ec.europa.eu/eurostat/documents/2995521/7203833-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6. Accessed on 30 Apr. 2018.

⁴ "1.2 million first time asylum seekers registered in 2016," *Eurostat*, 16 March 2017, ec.europa.eu/eurostat/documents/2995521/7921609/3-16032017-BP-EN.pdf/e5fa98bb-5d9d-4297-9168-d07c67d1c9e1. Accessed on 30 Apr. 2018.

⁵ Willermain, Fabien. "The European Agenda on Migration, One Year On. The EU Response to the Crisis Has Produced Some Results, but Will Hardly Pass Another Solidarity Test," *IEMed Mediterranean Yearbook 2016*, www.egmontinstitute.be/content/uploads/2016/10/IEMed_MedYearBook2016_Europe-Migration-Agenda_Fabian_Willermain.pdf

⁶ Annex to the Communication from the Commission to the European Parliament, the European Council and the Council: Progress report on the Implementation of the European Agenda on Migration, COM (2018) 250 final, Annex 4, 14 Mar. 2018, ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_annex-4-progress-report-european-agenda-migration_en.pdf. Accessed on 14 May 2018.

⁷ "Completing reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy," *European Commission*, 13 Jul. 2016, europa.eu/rapid/press-release_IP-16-2433_en.htm. Accessed on 3 May 2018.

do not stay in the EU Member State that is determined as responsible for them.⁸

In any case, little progress has been made since the Commission introduced the proposals. EU Member States are not yet able to agree on how to reform the CEAS, particularly on the proposal to reform the Dublin Regulation (see box on pg. 19). Member States have not reached consensus on the Commission's proposal to redistribute asylum seekers across Europe according to a quota system, which the Commission calls the "solidarity mechanism".

Alongside focusing on the people who have arrived in Europe, the EU has made considerable effort to prevent new arrivals. The most notorious policy response in this regard has been the EU-Turkey statement (see box), signed by EU heads of government in March 2016.

Additionally, in March 2016, European leaders announced the closure of the so-called Balkan route, a pathway through Macedonia, Serbia, and Croatia that thousands of migrants took to travel from Greece to northern European countries. Following these measures, arrivals through the

IN BRIEF

The EU-Turkey Statement

The EU-Turkey statement, adopted by the EU Member States and Turkey on 18 March 2016, is the agreement by which Turkey commits to readmitting all migrants who travelled irregularly from Turkey to the Greek islands. In return, the EU agrees to resettle one Syrian refugee from Turkey for each Syrian person sent back. Also, the EU will pay six billion euros by the end of 2018 to support Turkey to provide for the more than three million Syrian refugees that the country hosts.

This agreement has been heavily criticised by human rights organisations because it implies that the EU regards Turkey as a safe country to send people back to, including refugees from countries such as Syria and Afghanistan. If this was the case, Greece could, according to EU asylum legislation, quickly dismiss asylum applications from people arriving on the islands claiming Turkey will provide them with protection if needed. This is a questionable assumption, as Turkey is not fully party to the Refugee Convention. Turkish law provides a special regime for Syrians, who are granted some form of protection; however, they often live in difficult conditions and without access to formal employment or welfare.⁹

In practice, relatively few people have been sent back to Turkey in the application of the EU-Turkey statement. This is in part due to decisions

of the Greek Asylum Committees and Courts in individual cases stating that Turkey could indeed not be considered as safe. Another factor is that the significant backlog in the examinations of asylum claims in Greece makes asylum procedures very slow. Ultimately, this situation has led to a further problem because Turkey has only agreed to take people back from the Greek islands. Therefore, in order to keep refugees on the islands in case their asylum claim is rejected and deportation becomes necessary, the Greek authorities refuse to move people to the mainland pending their asylum procedure. This has resulted in overcrowded reception centres and inhuman living conditions for asylum seekers on the Greek islands. These poor conditions have led to a ruling on 18 April 2018 by the Council of State, Greece's top administrative court, that migrants landing on Greek islands must not be held there while their asylum applications are being processed.¹⁰

Apart from these issues, the EU-Turkey statement also shows that the EU is not taking moral responsibility towards refugees in a sufficiently serious manner. Considering that Turkey already hosts more than three million Syrian refugees, one would expect the EU to show some solidarity by welcoming those refugees who arrive in the EU from Turkey, rather than trying to send them back.

⁸ "The CEAS reform: the death of asylum by a thousand cuts?" *JRS Europe*, Jan. 2017, jrseurope.org/assets/Regions/EUR/media/files/JRS-Europe-CEASreformWorkingPaper6.pdf. Accessed on 30 Apr. 2018.

⁹ "No safe refuge – asylum seekers and refugees denied effective protection in Turkey," *Amnesty International*, 2016, www.amnesty.org/download/Documents/EUR4438252016ENGLISH.pdf. Accessed on 24 Apr. 2018.

¹⁰ "GCR and Oxfam issue joint press release on CoS ruling," *Greek Council for Refugees and Oxfam*, 24 Apr. 2018. www.gcr.gr/index.php/en/news/press-releases-announcements/item/814-dt-esp-oxfam. Accessed on 9 May 2018.



Rescued forced migrants from the Black Sea approach the Romanian shore, where border guards stand in wait.

© Romanian Border Guard

Eastern Mediterranean route dropped. However, there was a renewed increase in arrivals to Italy through the Central Mediterranean route, which led, in February 2017, to a multi-million euro deal with Libya, providing that Italy trains the Libyan coastguard to divert migrants back to Libya.

These kind of deals may have decreased the number of people arriving to the Greek islands from Turkey, or from Libya to Italy, but people are still coming. During the first four months of 2018, 8,114 more people arrived in the Greek

islands,¹¹ and 9,407 sea arrivals were registered in Italy.¹² Moreover, the cost of these policies on peoples' lives who are no longer able to reach Europe is very high — for example, some migrants have been sold into slavery at slave markets in Libya.¹³ Similarly, while the closure of the Balkan route may have reduced the numbers of people arriving in Germany, it did not make the migrants disappear. Instead, tens of thousands of migrants became stranded, often paying smugglers exorbitant fees to continue their journeys onward by more dangerous routes.¹⁴

¹¹ "Operations Portal, Mediterranean Situation: Greece," *UN Refugee Agency*, last updated on 29 Apr. 2018, data2.unhcr.org/en/situations/mediterranean/location/5179. Accessed on 30 Apr. 2018.

¹² "Operations Portal, Mediterranean Situation: Italy," *UN Refugee Agency*, last updated on 4 May 2018, data2.unhcr.org/en/situations/mediterranean/location/5205. Accessed on 30 Apr. 2018.

¹³ "People for Sale: Where Lives Are Auctioned for \$400," *CNN*, 14 Nov. 2017, edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html. Accessed on 30 Apr. 2018.

¹⁴ "Tens of thousands migrate through Balkans since route declared shut," *The Guardian*, 30 Aug. 2016, www.theguardian.com/world/2016/aug/30/tens-of-thousands-migrate-through-balkans-since-route-declared-shut. Accessed on 30 Apr. 2018.

Faduma's story

"First, I went to Ethiopia, and I stayed there for ten nights. Then I went to Khartoum, and I stayed there around 20 nights. And in Libya I stayed for two months. I entered Libya in September 2016, and went to Malta in December. I came by helicopter."

Faduma left Somalia in May-June 2016 because of war and extreme difficulties, like being beaten and raped. "I was raped in Somalia. The markings I have on my face are from beatings I suffered there." Faduma was forced to marry a man she did not want to, a man who raped and beat her. This is why she left Somalia. "There is no life there," she said.

Faduma's journey was arduous. She had little or no food and water. She couldn't shower; she was beaten. She had fallen ill in the Sahara Desert and had no medications. Smugglers abused and exploited her for everything she had. "They took a lot of money from us. In Khartoum, a lot of people come together to travel, and money was taken away from them. I crossed the Sahara in a car with 20 other people," she recalled. While in Libya, Faduma lived in a small space with hundreds of people crammed together, where they would eat and sleep. She paid for her food with money her family transferred to her from Ethiopia. But the beatings were the toughest part of her journey.

"[The smugglers] used to beat us. They took our money and I didn't have any left. In total, they took \$10,000 [from me] in Khartoum and in Libya. In Libya, girls were raped... if you didn't pay, you didn't get any food. And that's when I was beaten in Libya. There was no one who was free. You were owned by someone. When you give that person money, they find someone who can put you on a boat. There was no freedom."

Faduma left Libya at night. She and the others in the boat – which was just a plastic inflatable – were at sea for around five hours. A radio was on board but it did not work properly. "It was cold, and the water was very rough," she remembered. "And then the boat came. It had an Italian flag. There were officers on the boat. There were many people on that boat; two had left Libya that night. They rescued all of us. In my boat there were 130 people, 30 were Somali. Some of the people were dying."

Faduma had fallen very ill, and had to be airlifted to Malta by helicopter for treatment. She was hospitalised in Malta for two weeks. After her discharge, she was held for ten days at the Initial Reception Centre, where newly arrived migrants are kept for a few days for medical clearance prior to being transferred to an open centre. When JRS Malta interviewed her, she was still awaiting the outcome of her asylum application.

1. Difficult journeys

Over the years, we have observed that most refugees who find themselves at Europe's borders have had to undertake seemingly endless journeys to get there. Journeys are undertaken in several stages, where neither food nor shelter is guaranteed. The "luckiest" migrants and refugees avoid outright physical abuse and exploitation, but their journey is still very difficult. The routes from west and east Africa to Libya are notoriously

dangerous, especially for women, who are often victims of sexual abuse or forced into prostitution to pay for their journeys.¹⁵ Armed groups in Libya, exploit, trade, and sell migrants like disposable commodities.¹⁶ A 29-year-old Algerian man told us in Sicily how he had arrived in Libya through Tunisia: "They took everything from me. I spent two years working for the local mafia. We were all imprisoned." Another Moroccan man in Sicily told us about how smugglers took all his money and his phone, and put him in an empty villa



“Hope gave us the strength, so we could manage to arrive here so far.”

Exhibition Hope is Maybe © Jo Dunn (Leeds, England), *Crossing the Mediterranean I*, Oil on Paper, Giclée Print, 31 x 20 cm

where hundreds of others were kept for months. Along the way, their Libyan captors paid off police officers and treated the migrants very harshly. During an attempt to cross the Mediterranean, he recalled one smuggler telling another at the port, “Whatever happens, I don’t care; you can leave them to die.” A 19-year-old Somalian woman, who was pregnant when she was smuggled into Libya, told us how a smuggler threatened to take her baby when it was born and sell it because she did not have the thousands of dollars he demanded of her to cross the Mediterranean. Eventually, he had forced everyone else in her group to pay for her journey with their own funds, which took months to gather because they had little money themselves.

From the east, people have journeyed to Europe from Afghanistan to Iran, Turkey and then to Greece. For many JRS interviewed, the most harrowing part of the journey was crossing of the land border to the Greek mainland or the sea to a Greek island. Others, many of them Syrians,

went from Turkey to Bulgaria and then Serbia to Hungary, experiencing harsh conditions along the way. JRS met a 50-year-old Syrian woman who walked with two boys for five hours from Turkey to Thessaloniki in northern Greece. A 60-year-old Iraqi woman told JRS in Greece that the journey “was very difficult, very far to be fled on foot. We would only walk during the night.” A 20-year-old Iraqi Kurdish man who applied for asylum in Romania told JRS: “I learned to lie, to survive, to mistrust people – I changed myself entirely. I relied on too many people with ‘good will’, but who turned against me.”

The actual moment of the entry into Europe — the crossing of the sea or a forested land border — is merely one small part of a much longer journey. This is what has been visible to the public: the jumping of the fences in Melilla, the dilapidated boats floating in the Mediterranean, the long marches through the Balkans to Hungary. But these are the tail end of journeys that have already taken months.

¹⁵ “To escape sexual violence at home, female migrants must risk sexual violence on the way to Europe,” *Washington Post*, 6 Jul. 2017, www.washingtonpost.com/news/worldviews/wp/2017/07/06/to-escape-sexual-violence-at-home-female-migrants-must-risk-sexual-violence-on-the-way-to-europe/?utm_term=.5685827dd655, Accessed on 30 Apr. 2018.

¹⁶ “People for sale: Exposing migrant slave auctions in Libya,” *CNN*, edition.cnn.com/specials/africa/libya-slave-auctions. Accessed on 27 Mar. 2018.

Italy

Sea arrivals in Italy have fluctuated in the past years, with peaks in 2014 (170,100) and 2016 (181,436) and with the lowest number registered in 2017 (119,369).¹⁷ In the first quarter of 2018, the figures are even lower with nearly 29,000 fewer people arriving to Italy.¹⁸

The decrease in arrivals in 2017 is certainly connected with the signing, on 2 February 2017, of the Memorandum of Understanding between Italy and Libya, an agreement with the aim of reducing the number of migrants landing on the Italian coasts and of combatting people smuggling. Because of the Memorandum, Libyan coastguard patrolling activities have become more frequent, even beyond Libyan territorial waters, leading to a general reduction in arrivals to Italy. Libyan vessels bring back thousands of migrants, who are then often held in inhumane and degrading detention centres in Libya under the control of armed groups who treat migrants horrifically.

In Italy in 2017, the chief prosecutor of Catania alleged that NGO rescue boats were collaborating with people smugglers. This led to a campaign coordinated by the media and high-level political officials to delegitimise NGOs. A parliamentary inquiry has since found that there was no truth in the accusations made against the NGOs engaged in

search and rescue (SAR) operations in the Central Mediterranean. Despite that, NGOs continue to be attacked by political officials. The Italian Interior Ministry has implemented a code of conduct for NGOs involved in migrant SAR operations in the Mediterranean Sea. Among other things, Italy's new code prohibits NGOs conducting migrant rescues from entering Libyan waters, forbids the transfer of migrants between ships at sea, and requires NGOs to allow police officers on board.

Meanwhile, the NGO rescue boats that are still working in the Central Mediterranean have been targeted in several attacks by the Libyan coast guard and in the courts by Italian public prosecutors. For example, in March 2018, a ship from the Spanish NGO ProActiva Open Arms was seized by local authorities at the port of Pozzallo after having made a difficult rescue operation. One month later, an Italian court ordered that the ship be released back to the NGO's custody but kept the crew members under investigation. In another example from April 2018, Italy's Supreme Court rejected an appeal against the seizure of the *Iuventa*, a ship belonging to German NGO Jugend Rettet, which had been seized in August 2017 by Italian authorities who accused the organisation of colluding with smugglers and conspiring to facilitate irregular immigration.

The actual moment of the entry into Europe — the crossing of the sea or a forested land border — is merely one small part of a much longer journey

¹⁷ “Operational portal, Mediterranean Situation,” *UN Refugee Agency*, last updated on 4 May 2018. data2.unhcr.org/en/situations/mediterranean/location/5205. Accessed on 06 Apr. 2018.

¹⁸ “Italy weekly snapshot: 06 May 2018,” *UN Refugee Agency*, 6 May 2018, data2.unhcr.org/en/documents/download/63501. Accessed on 13 May 2018.

Saving lives at sea was one of the many goals of the European Agenda on Migration in 2015. The EU-Turkey statement wanted to offer “migrants an alternative to putting their lives at risk.”¹⁹ Likewise the memorandum of understanding between Italy and Libya, although explicitly aimed at stopping irregular immigration, was presented as a tool to combat human trafficking and to protect peoples’ lives. Yet despite this declared good intention, it is clear from the stories JRS has heard that these policies have not succeeded in protecting people lives from violence and harm. Fewer people might arrive to Europe’s shores, but there are still people taking dangerous – and often deadly – journeys. Moreover, many more are forced to stay in, or are sent back to, conditions in which their lives and dignity are at risk. Resulting in people feeling that they have no choice but to take even more dangerous routes to reach Europe.

For European policies that actually do save lives, JRS Europe recommends to EU and national policymakers to:

- **Refrain from shifting responsibility for refugee protection outside the EU** by utilising agreements such as the EU-Turkey statement or the Italy-Libya bilateral Memorandum of Understanding. Such agreements are both legally and morally questionable, and they either force people to take greater risk to reach Europe or keep them in situations where their human rights are violated.
- **Ensure access to Europe for people seeking protection by providing safe and legal pathways** that provide alternatives for people who would otherwise embark on life-threatening journeys. In particular, EU Member States should:
 - **Considerably increase resettlement commitments**
Resettlement offers EU Member States a way to ensure protection for refugees who fled to countries that are unable or unwilling to protect them effectively. Refugee protection should be the overall principle guiding Member States and EU institution in the process of establishing a Union Framework on Resettlement in the context of the current CEAS reform. Considerations such as the presumed integration potential of refugees, or whether or not third countries cooperate in reducing irregular migration and taking back irregular migrants, should not be used to condition the choice of eligible refugees or the countries from which refugees will be resettled
 - **Adopt generous family reunification policies**
Naturally, once in Europe, refugees want their families to join them. Effective family reunification procedures are needed so that entire families do not embark on dangerous journeys. The current national family reunification procedures, however, are generally limited to a partner and minor children and do not foresee, for instance, the possibility of people reuniting with their siblings. Moreover, the procedures are often long, heavily bureaucratic and expensive.
 - **Provide a clear legal EU framework on the use of humanitarian visas**
Such visas enable asylum seekers who have a passport and access to a Member State’s embassy to travel safely to Europe and apply for asylum. The current EU legislation on visa – the EU Visa Code and EU Schengen code – allows Member States to issue humanitarian visas, with several of them already doing so. There are, however, no clear criteria to determine who qualifies for such a visa, and the procedures vary greatly from country to country. A European framework would provide more clarity and uniformity.
 - **Facilitate access to other legal pathways**, such as student or workers’ visas, for people seeking protection.

¹⁹ “EU-Turkey statement,” *Council of the European Union*, 18 March 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> . Accessed on 14 May 2018.

STORIES

12

AT EUROPE'S GATES

Karim's story

"In the last three months, I tried crossing into Croatia 20 times. Every time, the Croatian police sent me back to Serbia."

This is how Karim began his interview with JRS workers in Serbia. His journey to Europe was an experience similar to that of so many like him: he travelled to Iran, was pushed back to Afghanistan, travelled again through Iran to Turkey where he stayed for two months, and then spent 20 days in Bulgaria, a few months at JRS's Pedro Arrupe Safe House in Serbia, and then made multiple attempts to pass through Europe's gate into Croatia.

Karim and a friend tried several ways to cross into Croatia. Their first attempts by foot were immediately intercepted by Croatian border guards who promptly pushed them back into Serbia. Next, it was a train. "We saw a slow-moving train, so we jumped on board. It stopped just after it crossed the border, so we jumped out and hid; we jumped back on as soon as it started to move again." Karim and his friend took the train to the stop just before Zagreb, Croatia's capital, where they decided to jump off and proceed on foot, thinking it would reduce their risk of getting caught.

According to Karim, a police car came and brought them back to the Serbian border. He told JRS in Serbia that the officers were wearing black coats, so he couldn't see their uniforms. Karim and his friend said they wanted to apply for asylum in Croatia, but were dismissed.

**"Hope is something I do expect
and what I am waiting for."**

© Johannes Gerard (The Hague, Netherlands),
Where it Goes,
Photography 60 x 24 cm



1. Access to the territory and push-backs

In JRS's experience, as well as in the interviews done for this report, gaining access to EU territory is a major issue for most asylum seekers. A large majority of people do not arrive with the necessary identity and travel documentation. Moreover, there are hardly any legal ways for asylum seekers to enter the EU. It is for these reasons that people take such dangerous journeys as described in the previous chapter. Upon arriving at Europe's gates, people might find themselves faced with fences, as in Hungary or Melilla, or they may be pushed back, as we have observed happens often in Croatia and also in Greece.

Nearly all of the 17 people JRS interviewed in Croatia and Serbia, including the five minors, reported stories either of physical abuse by Croatian border guards, complete disregard of their basic needs at the border, and of immediate push-backs to Serbia without being given a chance to apply for asylum or otherwise explain why they had crossed the border.

A major concern is that most of the people JRS interviewed at the Croatian-Serbian border seemed to have great difficulty accessing Croatia's territory and, consequently, its asylum procedure. Most were from Afghanistan, a country that is still far from safe for many Afghans because of continued instability and violence perpetuated by the Taliban. Others fled violence by the fundamentalists of Al-Shabab in Somalia, and religious persecution in Iran. In the stories heard by JRS, the closure of the Balkan route in March 2016 might have considerably reduced the people arriving to Croatia, but it has not brought arrivals to a complete stop. Instead, it has made their attempts to apply for asylum in Europe more difficult. The process of joining the Schengen area puts considerable

Croatia

During 2015, hundreds of people who arrived in Europe through Greece crossed the Balkan countries to reach northern Europe, with Germany being many people's desired destination. Initially, the Balkan countries – including Croatia – left their borders open, allowing people to pass. With the number of people in transit growing, the pressure on the Balkan countries to stop the flow grew too. As an EU Member State, and as a candidate state to join the Schengen area, Croatia is under particular pressure to control the common EU border. Moreover, as a Member State, Croatia is bound by the Dublin Regulation, which implies that Croatian authorities should register and fingerprints all people irregularly crossing Croatia's borders and accept responsibility for their asylum claims.

In March 2016, the Balkan countries announced the closure of the so-called Balkan route. The route closure resulted in an immediate decrease in arrivals to the EU and an increase in the number of push-backs of migrants from Croatia to Serbia. During 2017 many NGOs documented cases of migrants being forcibly pushed back over the EU's borders – often with injuries, trauma, and humiliation. According to these cases, the police pushed back families, unaccompanied minors, and individuals of all ages from Croatian territory, even though many of these people explicitly sought asylum on several occasions.

In November 2017, UNHCR registered 929 push-backs to Serbia, 366 of these from Croatia.²⁰ Organisations such as Oxfam²¹ and Human Rights Watch²² have shown that many of these were violent push-backs, done without considering people's fundamental right to seek asylum and ignoring the needs of vulnerable migrants. Additionally, in October 2017 Médecins Sans Frontières revealed that many migrant minors under their care had experienced violence by border guards at Europe's eastern borders, particularly the Serbian-Croatian border.²³

²⁰ "Inter-agency operational update: Serbia," *UN Refugee Agency*, Nov 2017, data2.unhcr.org/en/documents/download/61412. Accessed on 30 Apr. 2018.

²¹ "A Dangerous Game," *Oxfam*, 6 Apr. 2017, www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-dangerous-game-pushback-migrants-refugees-060417-en_0.pdf. Accessed on 30 Apr. 2018.

²² "Croatia: Asylum Seekers Forced Back to Serbia," *Human Rights Watch*, 20 Jan. 2017, www.hrw.org/news/2017/01/20/croatia-asylum-seekers-forced-back-serbia. Accessed on 20 Apr. 2018.

²³ "Games of Violence: Unaccompanied children and young people repeatedly abused by EU member state border authorities," *Médecins Sans Frontières*, 3 Oct. 2017, www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf. Accessed on 20 Apr. 2018.

pressure on Croatia. The attempt to prevent itself from becoming a major gateway to Europe has increasingly led Croatia to act repressively at its borders, particularly at its border with Serbia, as JRS learned through interviews with people who told us that the Croatian authorities used violence to push them back to Serbia.

Other EU Member States have also pushed migrants back out of their territory. In March 2018, the EU Fundamental Rights Agency published a statement observing that “push-backs and cases of people being returned to where they risk persecution are just some of the challenges facing migrants when they try to enter or travel through the EU.”²⁴ Greece is among those Member States identified by the media²⁵ and accused by human rights monitors for forcibly pushing migrants back from its borders in the first months of 2018. The Greek Council for Refugees released a statement in February 2018 that “complaints and reports of illegal push-backs of refugee in Evros have been consistent and increasing in numbers,” arguing that push-backs have become an “established procedure on the part of the [Greek] authorities.”²⁶ According to the Greek Council for Refugees, vulnerable

migrants such as pregnant women, large families, and victims of torture have been among those forcibly pushed back after having been arbitrarily detained in police stations in unhygienic conditions, and crammed in overcrowded boats across the Evros river to Turkey.

In Ceuta and Melilla JRS’s partner Servicio Jesuita a Migrantes (SJM) has observed that Spanish security forces have forcibly pushed back migrants into Morocco for many years. For this report, SJM interviewed Mamadou, a 27-year-old man from Burkina Faso, who was pushed back by Spanish security forces while trying to scale the border fence at Melilla on Christmas day in 2017. While he was climbing the last in a series of fences, Mamadou slipped and fell five or six metres to the ground, severely injuring his ankles. He found shelter under a bush on the Spanish side of the fence, waiting several hours to see if he could regain his strength to move again. Soon enough, a surveillance camera detected him and dozens of security force officers surrounded him. Mamadou could not walk, but instead of taking him to a hospital, the Spanish officers took him back to Morocco, where he eventually received medical treatment.

IN BRIEF

Push-backs at the borders: an illegal practice

The term push-back describes the action whereby a state authority, such as the police, border guards, or the coastguard, immediately turn people away when they arrive at a state border without adequate travel documents and send them back to where they were coming from. Push-backs can either happen at sea, where boats containing migrants are intercepted by authorities and the people are returned to the shores they departed from, or at land borders, as mostly described in this report. In both cases, push-backs are illegal because by carrying out a push-back a

state gives no consideration to circumstances people are being sent back to, nor do they give people the opportunity to apply for asylum. This is in clear violation of the international right to seek asylum and of the prohibition for states to return people to a place where they could be subject to inhuman and degrading treatment, such as torture or unlawful detention in inhuman conditions. Push-backs are therefore contrary to both the European Convention on Human Rights and the EU Charter of Fundamental Rights.

²⁴ “Migrant pushbacks a growing concern in some Member States,” *EU Fundamental Rights Agency*, 26 Mar. 2018, fra.europa.eu/en/news/2018/migrant-pushbacks-growing-concern-some-member-states. Accessed on 10 May 2018.

²⁵ “Evros river: ‘Forced pushback’ of refugees at the edge of the EU,” *Al Jazeera*, 28 Jan. 2018, www.aljazeera.com/news/2018/01/evros-river-forced-pushback-refugees-edge-eu-180128105408674.html. Accessed on 10 May 2018.

²⁶ “Reports of systemic pushbacks in the Evros region,” *Greek Council for Refugees*, 20 Feb. 2018, gcr.gr/index.php/en/news/press-releases-announcements/item/790-anafores-gia-systimatikes-epanaproothiseis-ston-evro-epoxypirotyomenous-tou-esp. Accessed on 10 May 2018.

SJM has also spoken to people who claim that they were pushed back by Spanish authorities in the waters just off Melilla. Spanish and Moroccan authorities routinely collaborate with each other to keep people from reaching Melilla's coast, with the Spanish Civil Guard blocking migrant ships from coming ashore, and the Moroccan Royal Gendarmerie towing them back to Moroccan soil. During one of these operations, occurring on 31 August 2017, seven women died when their boat overturned while being towed back by Moroccan authorities, according to people SJM spoke with who were also on the boat but had survived despite being tossed overboard.



An aerial view of the border crossing of Beni Enzar between the Moroccan city of Beni Enzar and the Spanish enclave of Melilla.

© José Palazón

Need to end push-backs and violence at the borders once and for all

RECOMMENDATIONS

The jurisprudence²⁷ of the European Court of Human Rights is clear on the matter: push-backs are illegal. Moreover, absolutely nothing justifies the violence experienced by the people we interviewed. The EU and its Member States must put an end to push-backs, and the violence associated with them, once and for all. In particular:

- When cases of violent push-backs are reported, the Member State concerned must ensure that the cases are **investigated by independent bodies** and that **action is taken against the perpetrators**.
- If the Member State concerned omits to do so, the **European Commission** should take appropriate action and start an **infringement procedure**.

²⁷ See for example “N.D. and N.T. v. Spain,” *ECtHR*, 3 Oct. 2017 concerning specifically push-backs from Melilla to Morocco, and also “Sharifi and others v Italy and Greece,” *ECtHR*, 21 Oct. 2014, and “Hirsi Jamaa and others v Italy,” *ECtHR*, 23 Feb. 2012.





A mother and child rest on the Malta-based NGO Migrant Offshore Aid Station (MOAS) ship Phoenix, a few days after being rescued in the central Mediterranean off the Libyan coast, as the ship makes its way towards the Italian island of Sicily.

© Darrin Zammit Lupi

2. Access to asylum

Most of the people JRS interviewed came to Europe with the intention of applying for international protection. There were many reasons why, with most saying that they could not go back to their country because of persecution they had experienced, or because of war and violence. Among those who had wanted to apply for asylum, most eventually did so. Some people we met encountered no obstacle in accessing the asylum procedure, while others did.

In Greece, for example, JRS has observed that the asylum procedure itself is a major obstacle for people. On the Greek islands, the large number of asylum seekers, and the comparatively smaller number of Asylum Service staff creates severe delays for registration of asylum applications. On the Greek mainland, people who have come from locations other than the islands must have

an appointment through Skype to talk with the Asylum Service. Skype is available for each nationality for just one to three hours weekly with one team of case worker interpreters responding to hundreds of calls. JRS has spoken with people who have been trying to get an appointment for months, fearing to move on in the meantime because, without an appointment, they are not formally registered as asylum seekers. Consequently, they are not allowed to receive any type of support or basic reception conditions.

But there were also several people who, although they intended to apply for asylum, did not, at least not immediately. The reason is often related to the information they had received: some of them were deliberately misled by police or border guards and others felt that they did not have enough or the right information. Finally, others did not want to apply in the country where they had arrived because they feared they would be stuck there.

2.1. MISLED AND MISDIRECTED

We recorded testimonies of border guards and other officials in Croatia and Romania not providing migrants with necessary information or even deliberately providing them with misleading information. People JRS spoke to in Croatia described arriving to the Croatian border and meeting with border guards and being asked several questions — their name, languages they speak, their parents, their origins — and then being told to sign forms in Croatian for which no explanation or translation was offered. In these cases, people were told that they would be taken to a reception centre, but then they were taken back to the Serbian border and expelled with no consideration for their wish to claim asylum.

In Romania, people who had been rescued by the authorities in the Black Sea told JRS how they had been sent straight to detention and not given a chance to apply for asylum and not told why they were being detained, or how they could apply for asylum from the detention centre. Among them, a 16-year-old boy described how he was told to “go to court” to apply for asylum, and while he did have a court hearing eventually, the hearing was about his stay in detention and not about accessing the asylum procedure. It was only after initiating a hunger strike that the authorities finally relented and gave him access to the asylum procedure. What is important about this example is that the person in question is a minor, and despite this he was detained and denied access to the asylum procedure. One of the other men who was detained told JRS that he did not apply for asylum because the authorities discouraged it, telling him that Romania was unable to host more asylum seekers.

SJM also noted that people in Melilla has difficulties in accessing the asylum procedure because of misdirection by the authorities. A Moroccan asylum seeker, who fled because of political reasons, had wanted to apply for asylum but did not do so upon crossing the border because he feared that the Spanish police would turn him over to the Moroccan police. He lived on the street for one week before turning up at the SJM office, where SJM staff took him to the police station to apply for asylum. But the police resisted, insisting that they only take asylum claims at the border. Despite these barriers, his application was eventually submitted with the help of local NGOs.

2.2. LACK OF INFORMATION

Generally, the kind of information people receive about immigration and asylum procedures, and how well-informed they are as a result, is a major factor in their decisions on whether or not to apply for asylum, or on whether to stay in one country or take their chances in another. In JRS’s experience, being denied access to information, or feeling like one does not have enough information, is a crucial factor that increases a person’s level of vulnerability to further hardship, particularly from a system which they do not understand but which controls and restricts their movements.

Most of the people JRS interviewed said that they had received information about asylum and migration procedures, primarily from the national authorities and secondarily from NGOs. But there is more to this: while a lot people said they had received information, most said it was information given to them only orally, and not in written form. Moreover, people tended to be informed only upon arrival — after a long and difficult journey, landing in a completely new country, unaware of what was happening to them and what to do. In JRS’s experience, people in these situations find it difficult to remember what they are told even just one week after arriving. When interviewees were asked if they *felt* well-informed, most said no or that they were unsure. Most of these people were interviewed while detained in Romania. In JRS’s decades-long experience with detention, people who are detained feel much less informed than people who are not. What is concerning is that among those who felt that they were not well-informed or unsure about how much they knew, more than half told JRS that they had received information when they arrived in the country where JRS interviewed them. People in these situations had received their information from a mix of sources: the authorities, UNHCR or IOM, NGOs, friends, lawyers. The commonality is that they received their information only orally, and not on paper. In other words, they may have been given information when they had arrived, but in the heat of everything new they were experiencing, they were not able to remember what they were told. What’s more, the information they received was not necessarily complete, leaving them with the burden of finding out more, even though many people did not know what to ask, nor whom to ask.

Aya, a 23-year-old Libyan woman who has subsidiary protection²⁸ in Malta, exemplifies this situation. She recalled to JRS her first experiences in the country, and how she was given information at the office of the Refugee Commissioner. “It was only talking,” she said, meaning that she did not receive any information in writing. “I remember they told me if you go to your country they will know about that and they would withdraw my ID. They didn’t tell me what you have to do here and what you don’t have to do, such as obligations, rights, duties, things like that. In the first interview, they didn’t tell me anything. In the second interview, they played a YouTube video.” When asked if she felt that she had enough information to understand the process, what was expected of her, and what would happen with her application for protection, she answered no.

People we interviewed in Greece also described feeling uninformed about asylum and migration procedures because they did not have access to the information they felt they needed. This is concerning because many of those who told us this had said that they were given some kind of information by the authorities or by UNHCR or by NGOs. Still, they felt it was insufficient. “They [the authorities] gave me little information,” said one person. Another told us, “I feel I was not well informed. I want to know more about the [asylum] interview.” Having insufficient information was a major reason why some people we interviewed did not apply for asylum even if they wished to, because they did not feel well informed. In Romania, for instance, a small group of Iraqi Kurds told JRS they were confused about the ‘toleration’ status²⁹ that the authorities had given them, and how they thought this prevented them from applying for asylum, which led some to agree to voluntary repatriation back home to northern Iraq even if this still was not safe for them. “We wanted to apply for asylum,” said a 27-year-old Iraqi Kurdish man, “but we were not provided with any explanations.” A few others in Romania, as well as in Croatia, described problems with accessing the asylum procedure, relating again

to a sense that they were not fully informed and did not know how to apply for asylum. In JRS Romania’s experience, access to migrants who are in the Romanian border police’s custody is limited or even restricted, which makes it difficult for NGOs to fill in the information-provision gap left by the authorities.

Another prominent reason for why people felt uninformed was that the information given to them was in a language they did not understand. According to EU law, Member States are required to inform asylum seekers “in a language which they understand or are reasonably supposed to understand” of their rights as asylum seekers and what the procedures are and to provide “the services of an interpreter.”³⁰ Despite these clear provisions, people described situations in which interpreters were not provided, or if they were, then they did not speak the person’s language. This was the case for Aya, the Libyan woman we referred to earlier, who recalled, “There were two Somali interpreters, and I didn’t understand half of what they said. Even when I said something, [the interpreters] kept asking, ‘What?’ They didn’t understand me.”

Language problems were also reported frequently amongst interviewees in Sicily, who described not having access to interpreters or written materials in their own language. An Algerian man said, “No one explained anything to me; moreover, we don’t speak Italian.” Another example is Mostafa, a 24-year-old Egyptian man, who told JRS that days after arriving he was told to go to the police station but was not given any information in his language about what he should do or how he should apply for asylum, nor what kinds of services were available to him. Mostafa had been given an order to leave the country via Rome Fiumicino Airport within seven days, though he did not know why he was given this order or how to challenge it. It was a friend, not the authorities, who connected him to a lawyer who then helped him successfully challenge his expulsion order and apply for asylum.

28 “Subsidiary protection” is a form of protection given to a non-EU national or a stateless person who does not qualify as a refugee, but who still demonstrates substantial grounds that they would face serious harm if returned to their country of origin, or in the case of a stateless person, to his or her country of former habitual residence, and such a person could avail him or herself of protection in that country. For the full definition of subsidiary protection in EU law, see Chapter V, Article 15, of the 2011 EU Qualifications Directive, eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF.

29 ‘Toleration’ status in Romania is given to foreigners who do not have citizenship in Romania or in another EU country, and no longer have the right to stay in Romania, but cannot leave the Romanian territory because of ‘objective’ reasons stated in its national law. See the Romanian General Inspectorate for Immigration, <http://igi.mai.gov.ro/en/content/tolerating>

30 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en. Accessed on 13 May 2018.

2.3 THE DUBLIN REGULATION: PROTECTION INTERRUPTED

A small group of people told JRS that they came to Europe and *did not* want to apply for asylum. Some of these people expressed a desire to return home someday, but others explained that they wanted to travel elsewhere in Europe. These people had heard about the Dublin Regulation (see box), and understood that if

they applied for asylum, they would probably be sent back to the Member State where they had first arrived in the EU. For example, a 30-year-old Pakistani asylum seeker told JRS that he had already applied for asylum in Bulgaria prior to coming to Romania, but he left Bulgaria because he did not want to be detained there. He did not apply for asylum in Romania because he had been informed about the Dublin Regulation: “I was told that once registered as an asylum

IN BRIEF

The Dublin Regulation and its flaws

The Dublin Regulation³¹ is an EU law that establishes rules to determine which EU Member State is responsible for examining an individual’s asylum application. The general rule is that an asylum application can only be examined by one Member State. The presence of family members, or the possession of a visa or residence permit in a Member State, are the first criteria used to determine the responsible Member State. However, in practice, the Member State where the asylum seeker first entered the EU is most often the responsible one.

Asylum seekers are expected to stay in the Member State that is considered responsible for their asylum application. If they move to another Member State, they can be forcibly returned to the responsible Member State. Moreover, if their asylum application is rejected, they are not allowed to apply for asylum in another Member State.

In order to enforce these rules, Member States take fingerprint scans of irregular migrants and asylum seekers and store them in a shared database called EURODAC.³² This allows the movements of irregular migrants and asylum seekers to be tracked.

The Dublin system is flawed on many levels. First, it assumes that every Member State will guarantee asylum seekers the same opportunity to obtain asylum and the same level of reception conditions. This assumption does not hold up to reality. As this

report shows, the level of reception conditions varies widely among EU Member States, with many member states having conditions below an acceptable standard. Moreover, statistics clearly show that asylum seekers of particular nationalities have a better chance of obtaining asylum in some Member States than in others.³³

Secondly, allocating responsibility to the Member State where the asylum seeker first entered the EU places disproportionate pressure on Member States at the EU’s external borders, such as Greece and Italy, which have been struggling to cope with the number of arrivals in recent years.

Finally, the Dublin Regulation does not grant any opportunity for asylum seekers to express a preference on where they would like their application to be examined. As a result, asylum seekers might have to remain in a country where they have no ties nor see a future for themselves. This situation is not limited to the duration of their asylum procedure: even if they ultimately receive asylum, this will only allow them to reside in the Member State that granted them asylum. The Dublin Regulation therefore not only determines the Member State responsible for a person’s asylum application, but also the Member State in which that person will have to remain the rest of his or her life.

³¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast). eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN. Accessed on 6 May 2018.

³² “Identification of applicants (EURODAC),” *European Commission*, last updated on 6 May 2018, ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en. Accessed on 6 May 2018.

³³ Statistics extracted from the Eurostat’s table “First Instance decisions on applications by citizenship, age and sex – Annual aggregated data” show for example that 1805 Afghans out of 1970 (or 98%) obtained a protection status in Italy while only 20 Afghans out of 1390 (or 1%) obtained protection in Bulgaria, appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do. Accessed on 7 May 2018.

seeker in another European country, there is a real risk to be sent back there.” Since he had already applied in Bulgaria, he did not do so in Romania because he did not want to be sent back to a country he already left. Eventually the Romanian authorities found his fingerprints in the EURODAC database which prompted him to apply for asylum anew in Romania in a last, desperate attempt to avoid being transferred back to Bulgaria. However, he did this without knowing whether he could. “They didn’t tell me anything about it,” he told JRS. “They sent me to detention and looked at me as an offender, since I crossed the border illegally. I had no proper interpreter, no lawyer, no information, and no time to understand my situation. Nobody gave me proper information on the possibility and consequences of asylum.”

What is concerning is that some of those who did not intend to apply for asylum, or who did not apply for it even if they had originally intended to, still seemed to have genuine reasons for needing protection. Some had come from Afghanistan and were fleeing Taliban violence; others were fleeing general instability and violence in northern Iraq. In JRS’s experience, people who do not apply for asylum do not always have an absence of protection needs. Rather, they want to maintain as much control over their trajectories and lives as possible. For these people, the rules of the Dublin Regulation are threatening because they radically limit their options – often keeping them in countries where the reception conditions are not adequate, where they do not think they can integrate, or where the asylum procedures are complicated or vague.

3. Different gates, similar obstacles

There are many commonalities JRS observed in people’s experiences at different border points. The first is that most of the people that JRS interviewed encountered border guards; another is that nearly everyone arrived at Europe’s gates with a large group of people, usually strangers. The exception to this was at the Melilla border, where the people interviewed tended to have arrived alone or in small groups – though people also arrive to Melilla and Ceuta in large groups,

but this is usually when there are concerted attempts to scale the fences of the two Spanish enclaves. Moreover, people tended to experience very difficult situations when arriving at Europe’s gates. Many described their boats being pushed back during voyages in the Aegean, Black, and Mediterranean Seas by European border patrol authorities; others described being rescued in those seas by government ships and NGO boats. Many of those who made sea journeys described dangerous experiences due to harsh weather and rough seas.

The way in which the interviewees had been treated by the border guards varied – about a quarter of interviewees described being pushed back or abused by them. This happened most frequently at the border between Serbia and Croatia (as previously described in this report). Again, about a quarter of interviewees described being detained when they reached the border. Others had passed the border guards without incident. Another commonality that JRS observed was that most of the people interviewed described having accepted help from smugglers, with most of these reports coming from people arriving at the Greek, Italian, Maltese, and Romanian borders. Nearly all these experiences were described as transactional, with people paying exorbitant sums of money to be able to sneak into a country across the border and evade detection. People who arrived at Europe’s gates after long journeys through sub-Saharan Africa described paying smugglers at multiple locations along the way. A small number of people described being physically abused in some way by smugglers, although this was usually during journeys across sub-Saharan Africa and not upon arrival at Europe’s borders.

Overwhelmingly, the people JRS spoke with described having arrived at Europe’s borders traumatised and confused. Even if they were not physically abused (as happened in Croatia), they were still overwhelmed by a vast state apparatus, which they struggled to understand. At the borders they were rendered powerless, dependent on information which they may not fully understand, or which may be wrong. In JRS’s experience, such experiences are determinant. The treatment people receive at the border sets them on a potential path to positive experiences or to negative experiences for the rest of their time in the EU.

Need for a Common European Asylum System that lives up to its name

The right to asylum is rooted in international law and is explicitly included among the fundamental rights recognised by the European Union in the EU Charter of Fundamental Rights. A necessary condition to exercise this right, is that there is a clear and effective way for people to be able to access the asylum procedure. Even if the EU succeeds in creating a Common European Asylum System to protect refugees, such a system will remain dormant if asylum seekers are not able to access it, or worse, if they are prevented from accessing it. To work towards a Common European Asylum System that lives up to its name, EU institutions and the Member States must remove all existing obstacles for asylum seekers to swiftly gain access to the asylum procedure, both at the EU's external borders and elsewhere on its territory. In particular:

- **Member States must ensure that all relevant public officials** – such as police officers, border guards, members of the coast guard, and civil servants – who, in the exercise of their duties, are likely to come into contact with asylum seekers, **are adequately trained**. Such public officials should be trained to **provide asylum seekers with correct information** and be able to refer asylum seekers to the appropriate institutions.
- **In reported situations where public officials have intentionally misled** asylum seekers, the competent national administration must **open a transparent investigation** and, when necessary, duly sanction those responsible.
- **Access to correct and objective information** – on the right to seek asylum, on the asylum procedure, on the application of the Dublin Regulation, and on the rights and duties of asylum seekers and irregular migrants – **must be guaranteed** to everyone who is intercepted while irregularly crossing an EU external border. Member State authorities must provide this information both orally and in written form, in a language that the person understands. Relevant governmental organisations, such as UNCHR and NGOs, must be allowed to have access to people who might be in need of further information and counselling, in places such as border crossings, reception centres, and detention centres.
- **Swift formal registration in the asylum procedure must be guaranteed in every EU Member State**. First, this requires an adequate investment in staff and equipment by Member States, supported, when necessary, by EU funding. Next, legislation is needed at the EU level to further improve and harmonise the procedure. The current process of creating an Asylum Procedure Regulation should ensure both further harmonisation between Member States and a simplification of the procedure for starting an asylum application. Asylum seekers must be able to formally register their applications as soon as possible after expressing the wish to do so. Finally, upon registering their applications, asylum seekers must be provided with the documents necessary to prove their status in order to allow them to access services they are entitled to, such as reception.
- **The Dublin Regulation must be radically reformed**, such a reform of the regulation should:
 - **Take the preferences and needs of each asylum seeker into account individually** when determining the Member State responsible for his or her application.
 - **Ensure a fairer distribution of responsibility** among the Member States for the examination of asylum applications.

Salma's story

"Although I thank Spain for the treatment received and the welcome, there is still much to improve. The conditions in which we live, the people who live in the centre, are horrible. It is exasperating to be here."

This quote was from an interview SJM did with Salma, a 34-year-old married woman from Morocco. She left Morocco to be with her Syrian husband who was living in Germany. Melilla was the first step on her journey to be reunited with her husband.

Salma had been in Melilla's temporary stay centre (see box on pg. 23) for one month when we met her. Life in the centre is difficult due to overcrowding and poor infrastructure, as we describe later in this chapter. "Nobody ever tells you anything," Salma said. "They do not even grant you an audience to be able to raise your situation to decent conditions. When the director or assistant director of the centre listens to you, which is not very frequent, sometimes they do it without an interpreter and in the middle of the hall, in front of other people living in the centre." For Salma, as with others, the overcrowding in the centre made it difficult to have any degree of privacy.

Concerningly, Salma told SJM that there were even significant problems to access drinking water, not to mention hot water. Moreover, the "infrastructure is not prepared for winter," she said. "We are going through a lot of cold, and there is not enough warm clothing or bedding." When asked, Salma told us that her biggest challenge, aside from reuniting with her husband in Germany one day, was the poor reception conditions she was experiencing in Melilla's temporary stay centre.

"Sometimes I feel insecure inside the centre," she told us. "The type of people that inhabit the centre is varied, and the administration manages the conflicts very badly."

"By one day, my hope will come true."

Exhibition Hope is Maybe © Anja Struck (Lüneburg, Germany),
Menschlich, Oil on Canvas, 60 x 100 cm



1. Access to dignified reception conditions

Many of the people JRS spoke to described facing difficult experiences in the EU country where they were interviewed. The confusion that people experienced at the border persisted when they were in places of reception and detention. A significant number of the people JRS spoke to had already been in Europe for several months, some up to one year, meaning that the confusion they continued to feel was not merely a consequence of being new to a country. Though they had physically crossed a border into the territory of an EU country, often they still do

not feel that they are in Europe, but rather as if they are in an enlarged border zone. This is due to the frequently poor reception conditions they experience, the long and complex legal procedures they are subject to, and – as a result of the Dublin Regulation – their lack of choice over where in Europe they will settle.

1.1 OVERCROWDING AND POOR INFRASTRUCTURE

The people we interviewed in Melilla were especially concerned about overcrowding and poor conditions in the temporary stay centre. Their concerns reflect the general trend that SJM has observed: the increase in the numbers

COUNTRIES

Spain

Spain receives many migrants who reach Spanish territory from north Africa. Some of the migrants cross the Mediterranean to reach mainland Spain, while others enter Spain through either Ceuta or Melilla – two Spanish enclaves situated on the Moroccan coast. In this report we focus on Melilla.

The number of migrants arriving in mainland Spain increased by 101% between 2016 and 2017 – largely because more Algerians and Moroccans arrived by sea. Arrivals in mainland Spain from Sub-Saharan African countries increased by 67%. On the other hand, almost all Syrians arriving in Spain in 2017 came through Melilla.³⁴

For this report we interviewed several Moroccans who arrived in Melilla. Their situation was uncertain because, while they had easily entered Melilla with their own passport, if they applied for asylum they would not be transferred to the mainland as most other asylum seekers would be. Other people from Maghreb countries – Libya, Algeria, Tunisia, Mauritania, and Western Sahara – are face the same situation.

The large population of Sub-Saharan African migrants – approximately 1,500 people – in Morocco’s Nador province, which neighbours Melilla, live in poor conditions in makeshift camps in the forests that

are away from urban areas and lack access to basic services. Their camps are systematically burned down and attacked by Moroccan auxiliary forces, who beat, arrest, and deport the migrants. Between raids, migrants may attempt to cross into Melilla by boat or by scaling the fences – methods that carry a very small chance of success. The heavy-handed response of the Moroccan forces is part of the joint Spanish-Moroccan enforcement of the border.

Melilla and Ceuta each have a Temporary Stay Centre for Immigrants and Asylum Seekers (CETI in Spanish), which operate outside formal or legal rules. These places of stay are meant to temporarily accommodate asylum seekers before transfer to the Spanish mainland. As such, asylum seekers in Ceuta and Melilla fall outside the official reception system for asylum seekers in Spain. Residents of the centres do not have their rights and obligations clearly established and they are only given a basic leaflet on cohabitation rules without any legal ground. This raises problems for the people who stay there because it grants considerable discretion to the authorities running the reception centre on how to treat people, whether to grant them access to the asylum procedure, and how to sanction those whom they judge to be breaking the rules of the centres.³⁵

³⁴ “Desperate Journeys,” *UN Refugee Agency*: January 2017-March 2018, data2.unhcr.org/en/documents/download/63039. Accessed on 8 May 2018.

³⁵ “No protection at the border: Human rights at the southern frontier between Nador and Melilla,” *Comillas University and Jesuit Migration Service*, Feb. 2018, sjme.org/wp-content/uploads/2018/02/no-protection-at-the-border_sjm.pdf. Accessed on 3 May 2018.



of land and sea arrivals to Melilla has filled the capacity of the temporary stay centre, which has led to a deterioration in living conditions.³⁶ SJM interviewed people who said that the centre was not properly set up for the winter, with hardly enough warm clothing and bedding for its residents, and a lack of regularly available hot water. Other people we spoke to in Melilla were fearful for their personal safety in overcrowded living units.

Overcrowding in the Melilla temporary stay centre has been a real problem. In October 2017, for example, it was hosting 1,186 persons, far above what it was equipped to accommodate.³⁷ At the start of 2018, SJM staff in Melilla observed that the high number of arrivals continued to push the limits of the centre, forcing the local authorities to install tents and to increase the number and frequency of transfers to the Spanish mainland, which, according to our experience, many people understandably prefer.

Overcrowding has likewise been a problem in the reception centres in Sicily. As of October 2017, we observed that reception centres were so severely overcrowded that many migrants and asylum seekers were forced to sleep on the streets. Civil society organisations have worked hard to accommodate people, especially during the winter, and municipalities like the city of Palermo have pledged to open more accommodation spaces. But in general, asylum seekers have undergone very difficult conditions in Sicily's reception centres.³⁸ Aside from the physical infrastructure of the reception centres, many of the people we spoke with in Sicily described experiencing the negative effects of the reception system after having been rescued at sea. People spoke about feeling extremely

isolated from the surrounding society. This was magnified by a sense of deep boredom in the reception centre, with hardly any activities, no language courses, and few places to get reliable information. A Senegalese man told us, "It's not like I expected. I'm living in a reception centre, doing nothing all day. I don't have friends, and I don't know anyone." Another Guinean man felt similarly: "I am here, and I don't know what to do with my life. I arrived three months ago, and since then I have been living in a reception centre, doing nothing all day. This is not what I expected coming here."

In Greece, many of the people JRS interviewed described having experienced very difficult living conditions on the islands, and even in Athens, because of overcrowding. One Pakistani man described how he had to seek help from a pastor at a church because he could not find shelter, but was not allowed to sleep in the church because the pastor said he and his family were "illegal", reflecting the pressure that even churches were facing from the authorities to not shelter undocumented migrants. A Cameroonian man told JRS that he was living in a tent in Moria camp on the island of Lesbos with 12 other people, that he was not getting treatment for his asthma, and that the constant rain made it hard for him to find a dry place to sleep. "I am anxious all the time; there are too many fights in the camp," he said. Other interviewees described difficulties in finding food, shelter, and legal advice to know how to proceed with their cases. An Afghani man told us that he had been in an outdoor camp in Athens where "the conditions are terrible," with no access to showers or toilets. An Iraqi man told JRS that in a camp in Veria in northern Greece, the conditions were so bad that snakes and scorpions could be found inside the tents.

Though they cross into EU territory, asylum seekers feel they are in an enlarged border zone

³⁶ Ibid.

³⁷ "Conditions in Reception Facilities: Spain," *Asylum Information Database*, www.asylumineurope.org/reports/country/spain/conditions-reception-facilities. Accessed on 24 Mar. 2018.

³⁸ Cara di Mineo, in Sicily, is Europe's largest asylum reception centre, and where people regularly experience crime, violence, and very poor conditions. See, "Living on Mafia leftovers: Life in Italy's Biggest Refugee Camp," *Refugees Deeply*, 19 Feb. 2018, www.newsdeeply.com/refugees/articles/2018/02/19/living-on-mafia-leftovers-life-in-italys-biggest-refugee-camp. Accessed on 30 Apr. 2018.



A group of forced migrants including children near the reception centre of Melilla. A golf course surrounded by netting is seen in the background.

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1.2 LACK OF INFORMATION, INTERPRETERS, AND LEGAL ASSISTANCE

A 37-year-old Algerian asylum seeker described to us situations that SJM staff in Melilla have long known about the temporary stay centre's conditions. "For me, it is as if I had not yet arrived in Spain," she said. "Here I thought I could start my life again, from scratch, and fulfil my dreams. But it's not like that. There is no prospect of a future, no horizon at all. I am swimming between so much uncertainty." She told SJM staff that she did receive information from UNHCR while at the temporary stay centre – neither when she had crossed the border, nor when she applied for asylum in the temporary stay centre. "The information is always verbal," she said. Her main problem was that she was not informed about when she would be transferred from Melilla to mainland Spain, nor what would happen when

she got there. Her experience reflects that of many other people JRS and its partners spoke to: situations in which people felt uninformed about the conditions they were entitled to because they lacked information or did not receive it in the right language, or they did not know which legal procedures were available to them to make formal complaints to the authorities about the lack of adequate reception conditions.

The lack of proper legal assistance can also be problematic for asylum seekers and migrants. For example, interviewees in Sicily informed us that neither the authorities nor lawyers were able to satisfy the demand for legal assistance. The government case workers responsible for interviewing newly arrived migrants and asylum seekers were under constant pressure, with inadequate training. In some cases, the poor quality of initial interviews with asylum seekers





Mubashir, a refugee from Pakistan, has survived physical abuse from Bulgarian police, kidnaping and torture by Kurdish smugglers in Istanbul. His father and two brothers are now reunited with him in Rome and all of them have been recognised as refugees.

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have meant that the asylum seekers have needed to be called back years later to provide additional information for their files.³⁹

Another problem faced by some of the people JRS spoke to, was the lack of opportunity to talk with someone who spoke their language. For example, an Iranian Kurdish man in Romania told JRS that when he and others arrived via the Black Sea, the authorities rushed through their interviews with just an Arabic interpreter, even though he is Iranian. He said he did not feel well informed about anything in Romania, saying, "Nobody has spoken to me in my mother tongue yet." An Iraqi Kurdish man in Romania had similar problems, saying he felt uninformed because he only received information in Romanian and Arabic.

Similar problems were recorded in interviews with people in Sicily, who told us that no one in the centres where they were staying could speak their language.

1.3 ARBITRARY WITHDRAWAL OF RECEPTION CONDITIONS

SJM encountered several people who had been living on the street in Melilla for weeks before arriving at their office seeking help, not knowing what they should do next, or how to apply for asylum. Mostly they came because they were not able to find a bed in the overcrowded temporary stay centre, but, in some cases, people were excluded from the centre because they committed an infraction of the rules of the

³⁹ "On the Shores of Safety: Migration Management in Sicily," *Clingendael Institute*, 14 Feb. 2018, www.clingendael.org/publication/shores-safety-migration-management-sicily. Accessed on 3 May 2018.

centre. The amount of time they are excluded from the centre depends on the seriousness of their infraction, and this is always judged at the discretion of the centre's director. While it is legitimate to sanction infractions in the centre, it must be done in a proportionate way that guarantees a dignified standard of living for the persons concerned. The situation is problematic in Melilla, precisely because the sanctions procedure is discretionary and people end up living on the streets.⁴⁰

The withdrawal of reception conditions is also a problematic issue in Italy. Keeping people from accessing reception conditions should be an exceptional measure, as laid out in the EU Reception Conditions Directive. But the high degree of discretion given to local Italian authorities has led to the excessive use of the measure.⁴¹ Italian think-tank Altraeconomia has estimated that at least 22,000 migrants in 2016 and 2017 were expelled from the Italy's reception system.⁴²

A sign made by refugees to welcome new arrivals at the entrance of Moria camp, on the Greek island of Lesbos.

© JRS Greece



⁴⁰ "No protection at the border: Human rights at the southern frontier between Nador and Melilla," *Comillas University and Jesuit Migration Service*, Feb. 2018, [sjme.org/wp-content/uploads/2018/02/no-protection-at-the-border_sjm.pdf](https://www.sjme.org/wp-content/uploads/2018/02/no-protection-at-the-border_sjm.pdf). Accessed on 3 May 2018.

⁴¹ Many asylum seekers who are temporarily or permanently excluded from the reception system live in informal settlements. See, "Visit to the camp at Pian del Lago," *migrantsicily*, 2 Feb. 2018, migrantsicily.blogspot.be/2017/02/visit-to-camp-at-pian-del-lago.html. Accessed on 13 May 2018.

⁴² "Richiedenti asilo: i numeri record delle revoche dell'accoglienza," *Altraeconomia*, altraeconomia.it/revoche-accoglienza/. Accessed on 15 May 2018.

Greece

Many migrants heading towards Europe find their way to Greece, especially the Greek islands. The Greek government implements what is known as the “containment policy,” under which migrants who land on the islands’ shores are not allowed to move to mainland Greece. This policy is connected with the EU-Turkey deal — Turkey has agreed to take back migrants who reach the Greek islands from Turkey (see box on pg. 6).

As a result of the containment policy, as of May 2018 around 50,000 people were stranded on Greek islands, unable to journey further within Europe.⁴³ The number of arrivals rose especially during the second half of 2017, with an average of 3,000 people arriving per month on the islands. The long waiting time to be transferred to the mainland is caused by multiple factors: the lack of staff at the Greek Asylum Service to process registrations and asylum applications, the lack of medical personnel to assess people’s vulnerabilities, the lack of available accommodation on the mainland, and, for some, that all asylum procedures take place in detention centres where they have limited access to lawyers and medical support.

When the relocation program ended in September 2017, only asylum seekers awaiting family reunification were eligible to legally continue their journey to other parts of Europe. Even then, family reunification procedures are very long, with some waiting for over a year to be reunited with their families.

Within the camps on the Greek islands, living conditions are frequently below acceptable standards, particularly in winter. For example, in the Moria camp on Lesbos, many people are sheltered in tents. Since the administration of services has

transitioned from NGOs to the Greek authorities, there is hardly any medical care, especially for mental health issues, and toilets are virtually non-existent in some parts of the camp. In the Vathi camp on Samos, only some parts of the camp have electricity, and there is no hot water for most of the day. Suicide attempts, police violence and clashes among asylum seekers are common occurrences. The renewed rise of the far-right movement in Greece, led by the neo-fascist Golden Dawn party, has led to violent incidents against asylum seekers and to frustration among the local population who feel completely unprotected.

In April 2018 a Greek court declared the containment policy unlawful. However, instead of abiding by the judgment, the Greek government immediately issued an administrative decision reinstating the policy, while also proposing a draft law that would create a legal basis for the policy. As of May 2018, the draft law is under discussion by the Greek parliament.

On the Greek mainland, many people have been moved from camps to apartments with assistance from the European Commission through UNHCR and NGOs. All registered asylum seekers are entitled to a monthly cash card with a specific amount to cover their personal costs. Despite these improved conditions on the mainland, many people are still paying smugglers to take them to other countries in Europe. Many international NGOs who established a presence in Greece at the height of the so-called refugee crisis are gradually closing their operations in the country, as European Commission funding is no longer available, and the Greek government is left solely responsible for providing services to asylum seekers. This is leaving large gaps in services and programmes that were once provided.⁴⁴

⁴³ “Fact Sheet: Greece,” *UN Refugee Agency*, Dec. 2017, data2.unhcr.org/en/documents/download/61705. Accessed on 3 May 2018.

⁴⁴ “Transitioning to a government-run refugee and migrant response in Greece: A joint NGO roadmap for more fair and humane policies,” *Joint agency briefing paper (multiple authors)*, Dec. 2017, jrseurope.org/assets/Regions/EUR/media/files/joint-NGO-roadmap-12.12.2017.pdf. Accessed on 13 May 2018.

2. Detention

In some situations, migrants and asylum seekers are detained upon arrival. Being in detention compounds the confusion that so many migrants already experience even if they are in open reception centres. Derav, a 37-year-old Iraqi Kurdish man we spoke with, had a very difficult time adjusting to being detained in Romania. “Everything is totally new, with strict rules and procedures,” he said. “We, as human beings, cannot act on our free will. Everything we want to do is limited. I made a mistake [referring to his irregular boat arrival to Romania], but detention is too harsh. We were not asked what we intend to do in Romania, but only where we wanted to go.”

Derav’s last statement about being asked only where he wanted to go reflects the pressure that Romania, as a candidate country to join the Schengen area – similarly to Croatia, as noted earlier – faces to protect their external EU border. Boat arrivals from the Black Sea are particularly worrisome for the Romanian authorities because they do not want to see a repeated increase in arrivals as they experienced in recent years, and the onward journeys – or ‘secondary movements’ as the EU refers to them – that have resulted. Detaining people on arrival from the Black Sea is Romania’s way of dealing with the pressure faced from other EU Member States to stop secondary movements into the Schengen area, which would enable migrants and refugees to move to other EU states without being controlled at the internal EU borders.

Romania

In 2017, Romania recorded 4,815 asylum applications,⁴⁵ the most it has registered since 1991, largely due to an increase in arrivals from Serbia and from the Black Sea. The main countries of origin of asylum applicants were Iraq, Syria, Pakistan, Iran, and Afghanistan. The authorities responded by strengthening border controls, and by engaging with neighbouring governments to reduce the movement of asylum seekers.

Detention of asylum seekers has also been on the rise, with detention often used to penalise irregular entries. One factor has been that more migrants have refused to submit asylum applications to the border police, which has then led to their detention when they submitted their claims.

Children are frequently detained with their parents. There are no special procedures for how the border police should deal with children. Moreover, there are no clear rules on how family links are assessed, as well as the age and legal representation or guardianship of the children.

Romania is actively deterring asylum seekers from arriving, with the authorities implementing readmission agreements with all neighbouring countries. The detention of asylum seekers is used to discourage others from arriving. JRS has received unverified reports of the authorities denying to register asylum applications at the border.

One of the consequences of detention is that people feel much less informed about what will happen to them, what options are available, and the consequences of what will happen

⁴⁵ “Asylum and first time asylum applications by citizenship, age and sex: annual aggregated data (rounded),” Eurostat, last updated on 30 Mar. 2018, appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en. Accessed on 14 May 2018.



Most of the detained people among those we spoke with were interviewed in Romania. There, the common practice has been immediately to detain people who arrive in Romania via the Black Sea. The detention takes place at a police station, and can last anywhere from 24 and 72 hours.⁴⁶ During this period, the police interrogate each migrant about such matters as who piloted their boat, how much they paid, and what their intended final destination is. The police then divert the migrants to different types of accommodation: reception centres or hotels for minors and for families with children; detention centres for single people and for families without children. Most of the people interviewed in Romania did not understand why they were detained, in large part because they felt justified for crossing the border irregularly because they were fleeing dangerous situations back home and had no other option than to arrive in Romania by boat.

People are detained in similar circumstance also in other EU member states. For example, in Greece, JRS has observed that the new rise in arrivals at the northern border of Evros has led to the more frequent detainment of families and small children. People are automatically detained because Evros is not under the EU-Turkey deal, and in detention they wait for a space to open at the one reception centres in Evros. Due to overcrowding in the reception centres, families with small children are often detained for months in police cells until they are moved to a reception centre for official registration.

As mentioned earlier, from JRS's experience, one of the consequences of detention is that people feel much less informed about what will happen to them, what options are available to them, and the consequences of what will happen to them. Being confined in a detention centre limits a person's ability to obtain reliable information through networks of friends, lawyers, and NGOs. Instead they become reliant on the state authorities who may offer information but only in small doses, and the authorities are often not able to give people the attention they feel they need to navigate the bureaucracy of applying for

asylum, challenging their detainment, or even challenging an expulsion order.

Derav was deeply worried that he had asked for asylum at the wrong time, and he was worried that not applying for asylum in the correct way was what landed him in detention. "Turning back time, I might reconsider the decisions I took after arriving in Romania," he said. "If asylum means freedom, I want it." Derav had applied for asylum but was rejected, ultimately because he applied in the detention centre and not as soon as he arrived ashore. "I had no idea if this was possible at the borders," he said. Derav said he had had discussions with the police about asylum when he came ashore, but that they did not provide him with further information. He relied "on the advice of friends." Worst still, personally, Derav was deeply upset by the pain he may have caused his children. "I do not know what to do, mainly for my children," he said. "They pay the cost of my wrong decision, being detained." Here, Derav describes a feeling he has in common with others JRS has spoken with: feeling guilty for fleeing and ending up in a bad situation, even though he did not have a choice in the first place.

3. Secondary movements

Several people JRS spoke with had already experienced different parts of Europe's borders by the time they sat down to talk with us.

Sayid is a Syrian who had been in Malta for over a year when we interviewed him. He fled the Syrian conflict looking for protection in Europe. Sayid had first arrived in Greece but left because of the terrible reception conditions, leaving for Germany instead and applying for asylum there. After about six months in Germany, he left for Malta, because he thought it would be easier for him there – to get a job, to speak the language – and because he had a personal network there. Malta, however, rejected his asylum application because he had already had refugee status in Germany. Sayid had left Germany before this positive decision came through. Malta's decision was based on an application of the Dublin Regulation.

⁴⁶ "Country report: Romania," *Asylum Information Database*, 31 Dec. 2017, pg. 93, www.asylumineurope.org/sites/default/files/report-download/aida_ro.pdf. Accessed on 30 Apr. 2018.

Saami, from Afghanistan, looks through his documents – a life reduced to paperwork, but incredibly important for all forced migrants. Saami got a 5 year protection status from Italy and was about to re-unite with his wife and daughter in Germany.

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Malta

Prior to 2014, large numbers of boat arrivals were once common in Malta but have since remained relatively low.⁴⁷ As of May 2018, all the boat arrivals to Malta have been persons in need of medical care from boats rescued in distress. But the numbers of people who arrive by airplane have remained high, with 1,700 applying for asylum in 2016 and 1,500 in 2017.

In 2017, there were a significant number of asylum seekers who chose to come to Malta from other EU member states, such as Italy and Greece. Malta remained a desirable destination for these people because of the possibility of finding employment, a higher refugee recognition rate for certain nationalities, and a relatively short processing time for asylum applications. The Malta Refugee Commissioner estimated that in 2017, one third of people who had applied for asylum in Malta had been fingerprinted elsewhere in the EU. As a result, the Maltese authorities lodged a relatively high number of requests to other EU Member States to take asylum seekers back, as stipulated in the Dublin Regulation.

Jawan, an Afghan asylum seeker who had been in Malta for just under one year when we interviewed him, was not able to be where he wanted to be because of the Dublin Regulation. From Kabul he travelled Pakistan, then Dubai, and then a flight to Malta, where he stayed for two days before taking a flight to Austria. He had paid smugglers thousands of dollars to be taken to Austria because there he has distant family. It was during his second interview with the Austrian authorities where they told him that he would be sent back to Malta because that is where he first entered Europe. He had not had his fingerprints taken when he arrived in Malta, but the entry stamp on his passport gave him away.

An Eritrean woman, Faven, had come to Malta from Italy although she already had protection in Italy. After an arduous journey through Libya, she had taken a boat across the Mediterranean, and been rescued by the Italian authorities. She had then been brought to Sicily, and lived there for a year with subsidiary protection. Eventually she had left for Rome. There, she had no home, resorting to living at the Termini train station, where she was eventually thrown out by the police. Faven told JRS that she had come to Malta to work and have a “proper life,” hearing that Malta was a good place. She would rather stay in Malta, but her future was unclear at the time of her interview because it was Italy where she already had protection and where she had to be according to the Dublin Regulation.

While most of the people we interviewed did not have these experiences, it was still sufficiently common to catch our attention. It has long been known that despite EU policies aimed at keeping each migrant in a single EU Member State, migrants have found ways to keep moving, not in an effort to abuse or cheat the system, but rather as a strategy to obtain the best protection for themselves and their families.⁴⁸ As we have seen, people’s encounters with Europe at its borders and inside EU border countries are overwhelmingly complex, with insufficient information, inflexible rules, and prolonged uncertainty. The fact that asylum and migration practices differ between EU Member States is not a secret to many people who come here. People who arrive in EU countries that do not provide adequate access to protection and dignified reception conditions naturally want to try their chances elsewhere, even if they know that in doing so they risk running afoul of EU laws and being returned to the country in which they first entered. The secondary routes that people take show that the effect of the Dublin Regulation is to push people into irregularity.

⁴⁷ The reason boat arrivals to Malta have been low is due to an informal agreement between Italy and Malta in 2014 in which all persons rescued by the Armed Forces of Malta, and those rescued in Maltese territorial waters or its Search-And-Rescue zone, are disembarked in Italy. See, “Country report: Malta (2017 update),” *Asylum Information Database (AIDA)*, pg. 16, last updated on 8 Mar. 2018, www.asylumineurope.org/reports/country/malta. Accessed on 13 May 2018.

⁴⁸ “Protection Interrupted,” *Jesuit Refugee Service Europe*, 2017, www.jrs.net/assets/publications/file/protection-interrupted_jrs-europe.pdf. Accessed on 30 Apr. 2018.

Need for a Europe that welcomes and protects

The goal of the EU Reception Conditions Directive is to lay down standards for the reception of asylum seekers that guarantee them dignified standards of living and comparable living conditions in all Member States. This is an important element of the CEAS. Unfortunately, as we have seen, Europe is still far from achieving this goal. Regrettably, the CEAS reform still under discussion as of May 2018 may worsen the situation and further deprive asylum seekers of dignified reception conditions. This because the European Commission has proposed to adopt a punitive approach to secondary movements. So, for example, asylum seekers who move from the Member State identified as being responsible for their application according to the Dublin Regulation, would be excluded from reception in another Member State. This is regardless of the fact that asylum seekers might have legitimate reasons to move, for example: because they are forced to live in overcrowded reception centres, they fear being detained with their children, or they have extended family or other relevant ties in another Member State.

At JRS we believe in a Europe that is true to its values of human dignity, freedom, equality, and solidarity, and that consequently welcomes and protects refugees. In order to do this, the EU institutions and Member States must:

- **Do not detain asylum seekers.**

If, however, Member States do decide to use detention, this should always be done as a last resort, after alternatives to detention have been tried. The use of detention should be based on a clear legal framework, and detention decisions should be subjected to regular judicial review. Asylum seekers in detention must be provided with the necessary information and legal assistance as regards both the asylum procedure and the possibility of challenging the detention decision.

- **Prohibit the detention of migrant and asylum-seeking children.**

Administrative detention can never be in the best interest of the child. In the current discussions on the recast of the EU Reception Conditions Directive, the Council of the EU should align its position to that of the European Parliament and agree on a ban on the detention of children.

- **Adopt policies that ensure that asylum seekers have no reason to engage in secondary movements.**

Secondary movements are undesirable, both for asylum seekers, as they further extend their already long journeys to protection, and for Member States, as they lead to double work and inefficiency. However, the EU's current punitive policy approach to the issue is inhumane, as well as being unsuccessful even in its own terms. The only way to prevent secondary movements is to address the circumstances that push asylum seekers to move between Member States. First, dignified reception conditions and swift and fair asylum procedures must be guaranteed everywhere the EU. Next, each asylum seeker's preferences must be taken into consideration individually when deciding which Member State is responsible for his or her application. We acknowledge that it might not always be possible to reconcile asylum seekers' preferences and the goal of a fair distribution of applicants across the Member States. For this reason, conditions should be elaborated to allow free movement within the EU for people once they have obtained a protection status in a Member State. If all these conditions are in place, asylum seekers may be more motivated to stay in the Member States assigned to them, even if not every asylum seeker is given their first choice.

Conclusion

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This report shows that there continues to be a human rights emergency at the gates of Europe.

The absence of legal pathways into Europe for people in need of protection forces them to take incredibly dangerous and expensive journeys. People are forced to rely on a network of smugglers to ferry them across long distances, paying exorbitant sums of money all the way. These journeys take them through deserts and mountains, across rivers and forests, in countries with societies hostile to people on the move, and in places where armed militias exploit them as goods to be bought and traded. EU and national attempts to close the most dangerous routes, such as the EU-Turkey statement or the Memorandum of Understanding between Italy and Libya, are often presented by policymakers as measures that will save lives. But in fact, people's lives are not saved; all that happens is that their misery is pushed further away from our consciousness. People still come, because there are plenty of reasons why people are still in need of Europe's protection.

When people do survive their journeys and arrive at Europe's gates, they are pushed into spaces that often lie outside of Europe's zone of legality. People are violently pushed back at Europe's south-eastern borders, without being given the chance to apply for asylum or otherwise explain why they have taken the long journey to Europe. This has happened not only in Croatia, but also in Hungary and Bulgaria too over recent years. Push-backs immediately deprive people of any chance to engage legally with EU Member State authorities, because they cannot start a legal procedure or formally state why they have arrived; neither can they legally challenge their push-back. And as we have seen, people keep trying to arrive even if they are pushed back multiple times at the same border. If people are not violently pushed away from Europe's borders, then they may be misled and misinformed by the authorities about their rights and obligations, and where and how they can apply for protection. People arrive and

they are confused, they do not know what they can and cannot do, and they are exposed to conflicting pieces of information that come from the authorities, smugglers, and other migrants. Time and again, as we have seen in this report but also in JRS's experience of the years, the lack of reliable information, simply and continuously provided in different ways to people at various stages of their entry to Europe, is a key reason why people may not apply for protection and are thus pushed into irregularity.

If people survive their journeys and pass through Europe's gates, they often find themselves geographically inside EU territory but not having truly "arrived". They may have passed an external border, but they now face several kinds of invisible borders that extend deeper into Europe. This shows in the poor and undignified reception conditions many of the people we spoke to experience after entry into an EU Member State. The overcrowded reception centres on the Greek islands force people into informal camps and even into homelessness. There are similarly poor reception conditions in Melilla and Sicily — a situation that forces some people to look elsewhere for dignified conditions that meet their basic needs, whether at train stations or on the streets. Other people face detention, which JRS has long known significantly decreases people's chances of successfully claiming asylum, as they are cut off from reliable information and legal help. And just like at Europe's gates, we find that even once inside an EU Member State, people who do not get access to good information about their rights and what services are available to them are pushed into society's margins.

The Dublin Regulation, more than any other EU policy, pushes people outside of the law. Poor reception conditions and hindered access to protection motivates people to seek protection elsewhere in Europe. It is a natural calculation: if they cannot find the protection they need in one place, they will go elsewhere. But the Dublin

Regulation keeps people from doing this, forcing them to stay in EU countries where possibilities for protection are limited, or where reception conditions are undignified, or where they remain separated from their families.

There must be a fundamental shift in the EU's policies to address the human rights emergency at its borders. In this report, we have made several recommendations that, if taken up, can help transform the EU's approach towards migrants, asylum seekers, and refugees into one that is more dignified, humane, and protective. People must have an opportunity to safely and legally travel to Europe to seek protection without further jeopardising their lives. At the borders, people should experience standardised entry procedures that are the same at any border, with clearly understandable ways to apply for international protection, or the ability to inform the authorities why they have otherwise arrived. In Europe, procedures must change so that families are more easily reunited with each other. People must be offered decent and standard reception conditions that meet their basic needs; they must be informed about what asylum and immigration procedures they will experience, and how they can get legal and social help to navigate those procedures and exercise their rights. Detention should only be used as a truly last resort and only after alternative measures are exhausted. Asylum

seekers should not be detained, and neither should migrant children and their families. The Dublin Regulation must be radically reformed so that people's preferences and protection needs are considered first. There must be a better way for EU Member States to share responsibility for offering protection to people.

Despite all of the difficulties, indignities, and abuses that asylum seekers, migrants, and refugees experience at Europe's borders, what is remarkable is that people still come, and many would still do so even if they were hypothetically given a second chance to decide. In our interviews, people expressed a strong sense of hope for the future that buoys them even in the most difficult circumstances. Many others also told us they would have no other option than to risk their lives to seek protection in Europe. Most of our interviewees told us that they simply want to have normal lives: "to lead a quiet life somewhere where my rights are respected," "to live in peace," "to live a life like you." When the EU's policies push people into the margins, as they so often do, then it becomes easier for EU citizens and leaders to see them as some kind of 'other.' But that is simply not so. These are people like us. And it is their hopes for the future that have led so many of them to tell us that yes, they would come to Europe again, even knowing all that they do about the hardships of the journey, the difficulties at the border, and life in Europe.

"It is too early for wishes."

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Black Chair - White Cup,
Photography, 60 x 40 cm



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