Permanent Peoples' Tribunal (PPT) Session on the violations with impunity of the human rights of migrants and refugee peoples

BARCELONA 7th & 8th JULY 2017

- INDICTMENT -

Per tu retorno d'un exili vell
com si tornés d'enlloc. I alhora et sé
terra natal, antiga claror meva,
i l'indret on la culpa es feia carn.

Retorno en tu, per tu, a l'espai cec
d'on vaig fugir sense poder oblidar;
desig sense remei, ferida arrel
arrapada, clavada cos endins.

Per tu retorno d'un exili vell,
refugi contra tu, des d'on trair
la primera abraçada i on triar,
des de l'enyor, l'escanyall d'unes mans.

Retorno en tu, per tu, al vell jutjat
sense horari ni nom, fosa en la pell
dels teus camins que em coneixen la pell,
closa en els ulls que ja gosen fitar
el teu esguard, com si tornés d'enlloc.

Maria Mercè Marçal

INDEX:

Foreword by the convening organisations.

1. The causes of forced displacement.

Rapporteur:

Juan Hernández Zubizarreta

LECTURER AT THE UNIVERSITY OF THE BASQUE COUNTRY AND RESEARCHER AT THE OBSERVATORY OF MULTINATIONALS IN LATIN AMERICA (OMAL).

2. Building war from the countries of origin to the gates of Europe.

Rapporteur:

Helena Maleno Garzon

RESEARCHER SPECIALISING IN MIGRATIONS AND TRAFFICKING IN HUMAN BEINGS, JOURNALIST AND ACTIVIST IN THE GROUP CAMINANDO FRONTERAS (WALKING BORDERS).

3. A contemporary reading of the border system in Europe: an inhumane cost.

Rapporteur:

Iker Barbero González

LECTURER AT THE UNIVERSITY OF THE BASQUE COUNTRY AND MAIN RESEARCHHER OF THE IUSFUNDIE.EU (EHU-US 20/15) PROJECT.

4. European Union Policy on Asylum and Immigration. The construction of an excluding Europe.

Rapporteur:

Patricia Bárcena García

LAWYER.

5. The danger of telling one story only. Gender mainstreaming and sexual diversity.

Rapporteur:

Beatriz Plaza Escrivà

SOCIAL RESEARCHER SPECIALISING IN INTERNATIONALISM - FEMINISM, AND ACTIVIST ON THE PLATFORM ONGI ETORRI ERREFUXIATUAK/WELCOME TO MIGRANTS AND REFUGEES.

FOREWORD BY THE CONVENING ORGANIZATIONS

Since last December, the Transnational Migrant Platform Europe (TMP-E), Centro Filipino, the Associació Catalana per la integració d'homosexuals, bisexuals i transexuals inmigrants (ACATHII) and the Transnational Institute have been busy with the process to convene the **PERMANENT PEOPLES' TRIBUNAL** (hereafter the PPT) to give clear visibility to the people of migrant persons as an inviolable subject of rights; to identify and judge the "chain" of co-responsibility along the migratory route leading to the violation of migrant people's human rights; and to urgently provide and foster adequate measures for access to justice.

In this context, the Tribunal will:

- Receive and document rigorously the proposals coming from the communities of migrant and refugee peoples;
- Listen to and make visible the cases of violations of the rights of migrants and refugees;
- Analyse jointly the root causes of forced displacement of migrants and refugees (including trade and investment agreements, global extractivism, as well as the global production chain).
- Determine the responsibilities of governments, including the European Union and other official European bodies.
- Focus on the role of transnational corporations in the global supply chain, as well as in the border regimes.

This is a process we want to build from the bottom, with the people most involve and affected. That is why we call on organizations of migrant and refugee peoples to join this process, as well as networks and platforms supporting the work to denounce the violation of human rights and the rights of peoples happening today in the many borders and daily struggles led by migrants and refugees. The launch of the PPT session will take place in Barcelona on 7th and 8th July 2017. The first hearing is due in December 2017, with the prospect of organising a second hearing in 2018. We hope to bring onboard as many sectors present not only in Spain but also in other parts of Europe, as well as in the countries of origin, transit and destination.

With this background, the sections that follow constitute the general framework – drafted by the members of the prosecution and the convening organisations– for this first hearing, made up of a set of ideas that have been gathered in different reports and addressed to the PPT to hold hearings so as to develop the central lines of the indictment in a more exhaustive way. In this bottom-up construction process, the Mediterranean constitutes a first geographical framework of analysis, which successive hearings add other territorial spaces to, based on the testimonials, reports and evidence submitted by each of the organisations, refugees and migrants.

1. THE CAUSES OF FORCED DISPLACEMENT

Rapporteur: Juan Hernández Zubizarreta

Lecturer at the University of the Basque Country and researcher at the Observatory of Multinationals in Latin America (OMAL)

A terminological clarification

The concept of refugee and the legal framework set out in the Convention Relating to the Status of Refugees (1951) and its 1967 Protocol have obvious shortcomings.

Economic migration is assumed to be voluntary; however, this casts a veil over forced displacement. Moreover, millions of individuals and peoples who emigrate due to the climate or the heteropatriarchal and capitalist development projects and model are faced with a political, social, legal and human vacuum.

According to Raquel Celis and Xabier Aierdi:

"Forced displacement would consist of an involuntary change of a place of residence of a person or group of persons who are compelled to escape, to move away from their home, in order to protect their lives or integrity, whether or not this implies crossing the national state border. This may be due to: gross, sustained or systematic violation of human rights (including civil, political, economic, social and cultural rights); a massive violation of human rights; widespread violence; armed conflict; natural disasters or those caused by humans; and implementation of large-scale development projects."

"Forced displacement shall also refer to that suffered by persons who have migrated for any other reason but would be at risk from becoming victims of torture, or inhumane or degrading treatment if they are returned to their countries of origin or third countries."

Accordingly, it is necessary to look beyond the liberal approach to human rights, which restricts them to the civil and political spheres, and instead understand them as being universal, indivisible and interdependent. In other words, it is necessary to protect persons and peoples who are escaping and become forced migrants.

Looking beyond the statistics: pain and solidarity

It is estimated that there are some 1 billion migrants worldwide. Most involve domestic migration from the countryside to the cities. International migration entails in the region of 244 million persons, i.e., 3% of the world's population.

In 2016 it was calculated that the number of forced migrants around the globe had reached almost 65.6 million. This equates, on average, to one person becoming a forced migrant every three seconds according to UNHCR's Global Trends Report.

60% of migration in the world takes place between poor countries or between rich countries; however, North-South migration accounts for only one third of the total. Turkey, Pakistan and Lebanon continue to host the largest number of refugees in the world.

52% of all displaced persons on the planet are currently within their own borders due to violent conflict, persecution, practices of transnational corporations, natural disasters –

flooding, heavy rains, etc.– and other environmental reasons. Colombia, Syria and Iraq are the biggest sources of internally displaced people.

Indeed, particularly noteworthy in this regard is the data from the Environmental Justice Atlas revealing that more than 2,100 active socio-environmental conflicts have been identified since 2012 all around the world. In addition, 260 cases have been identified in which environmental activists have been killed.

The largest proportion of refugees comes from Syria, Afghanistan and South Sudan. Substantial numbers also come from Somalia, Sudan, The Democratic Republic of the Congo, The Central African Republic, Myanmar and Eritrea.

During the first quarter of 2017, 1,200 migrants lost their lives, 664 of them in the Mediterranean in the period to 9 April. 90% of them died after attempting crossings in precarious dinghies. In 2016, five thousand people lost their lives in the Mediterranean: 2% on the southern border; 50% crossing the central Mediterranean route (to Sicily); and the remaining 48% crossing the eastern route (along the Greek coastline and the eastern coast of Italy).

More than 1.2 million asylum applications were made in the EU in 2016, 60% of them by women and children.

In this regard, Spain has only three months left to honour its pledge to take in 17,000 refugees and it has merely reached 7% of that target. Moreover, it ordered the deportation of 12,770 foreigners in 2016 and 2,252 in the first four months of 2017, indicative of the misalignment of the horror.

The Mediterranean Sea remains one of the deadliest routes having claimed over 14,000 victims since 2014. This data should not allow us to overlook the number of disappeared and dead persons on other routes, such as those that cross Mexico, for instance, in the Rio Bravo region, the Municipality of Esquipulas in Guatemala, the Sahara desert –it is nigh on impossible to determine the number of fatalities in the Sahara on account of its vast size and the difficulties entailed by tracking large areas in search of persons who are making the crossing–, the route crossing the capital of Eritrea and many others that turn the planet into routes plagued with stories of horror.

The many causes contained in the classification of forced displacement make it difficult to determine each and every one of the violated rights. It would not be over the top to state that the complete, absolute destruction of human dignity takes us back to ancient times when human rights did not form part of the everyday worldview. Violations of the right to life, the right to asylum, non-assistance of persons in danger, violations in child protection, failure to identify and protect victims of trafficking, slavery, starvation, deportation, climate change, war, systematic violence, torture, inhumane treatment, rape and harassment, etc.[1] Moreover, the suffering of those who have lost their loved ones –with no record of those who have disappeared and no opportunity to honour them in a dignified manner– is not effectively protected by the law courts.

Nevertheless, these statistics should not allow us to lose sight of the emotional pain and destruction to millions of people's lives when their only fault is trying to stay alive. How can so much suffering be measured? When we lose a loved one –just one person– we feel like time and space have taken on a new dimension; hence, under no circumstances do we want these statistics and analyses to cloud the true scale of what

[1] Maleno, H. (2017): 'Tras la frontera'. Caminando Fronteras.
Link: https://caminandofronteras.files.wordpress.com/2017/05/ccf-itlf-arte-final-web.pdf

this indictment seeks to put before the PPT. It should be paramount to put a face and voice to these situations in this process; therefore, the testimonies of the refugees and migrants constitute the focal point of this indictment.

The Universal Declaration on the Rights of Peoples adopted in Algiers –a fundamental source of the PPT– stipulates that every people has a right to existence, and to respect of its national and cultural identity. Every people has the right to retain peaceful possession of its territory and to return to it if it is expelled. It also states that none shall be subjected, because of his national or cultural identity, to massacre, torture, persecution, deportation, expulsion or living conditions such as may compromise the identity or integrity of the people to which he belongs.

In times when millions of migrants move from one place to another worldwide, in the spirit of Algiers, why not put it to the PPT that they be deemed as subjects with full rights, as if they were a "new people" with transnational heterogeneous identities, a people that must be protected and endowed with rights and obligations regardless of where they live?

The reflection to which the issue raised leads us reveals a circumstance that must be taken into consideration in the PPT; namely, the fact that the Declaration of Algiers should be reinterpreted and realigned to fit in with the new transnational circumstances; and in no case should it leave forcibly displaced persons, who are ultimately the biggest losers in this neoliberal capitalist system.

Applicable law

1. This indictment deems that the alternative use of the law is designed for all individuals who live in poverty in a world of wealth, human beings living in intolerance and discrimination, who are not considered citizens of a country, who live in an undignified manner in conditions of exploitation, extortion and abuse. It is also addressed to women and individuals in the LGTBIQ community who face the hardships of heteropatriarchal rules, male violence, work gender division, etc., boys and girls condemned and compelled to work, personas, elderly adults in circumstances involving social exclusion and precariousness, and millions of people who are unable to freely express themselves, move, eat, drink and, in short, live a dignified life. These are subjects without rights, holders of the "non-right".

All these individuals, who are excluded from the hegemonic neoliberal project, need an alternative concept of law that overcomes hierarchies and borders, and is shaped within the general framework of trends supported by counter-hegemonic law or law from below.

2. In its decision-making and in ruling in its judgments, the Tribunal bases itself on "international principles of the *jus cogens* as an expression of universal legal conscience" (Permanent Peoples' Tribunal, 1979). There is thus recognition of the absolute precedence of international human rights law that is built through the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocols thereto. This is in addition to all the declarations, conventions from the International Labour Organization, conventions, guidelines, observations and principles of international human rights law.

This indictment specifically seeks to highlight the Universal Declaration of Human Rights (1948), the Convention Relating to the Status of Refugees (1951), the Bangkok Principles of 1966, the Protocol Relating to the Status of Refugees (1967), the

Convention by the Organisation of African Unity (OAU) of 1969, the Cartagena Declaration of 1984, the Guiding Principles on Internal Displacement of 1998, the Kampala Convention of 2009, the EU Charter of Fundamental Rights (2000) and the various EC directives. It is also important to underline the Convention on the Prevention and Punishment of the Crime of Genocide, the two conventions on slavery, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Protocol to Punish Trafficking in Persons, especially Women and Children, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

3. In any event, international human rights law sets out a host of principles that are solely rejected by corporate interests and re-construed to the benefit of transnational companies:

a) Human rights, and the host of rules for the implementation thereof, are universal, indivisible and interdependent.
b) International human rights law is underpinned by the Universal Declaration of Human Rights, along with the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and its Optional Protocols –that are part of the International Charter on Human Rights– as well as the declarations, guidelines, observations and principles adopted internationally.
c) The system of sources of international law is set out in article 38 of the Statute of the International Court of Justice and is formed by general or specific international conventions, international custom, the general principles of law enshrined in the legal systems all over the globe as primary and founding sources of legal rules, and in the legal decisions and doctrine of the highest qualified jurists as ancillary sources and means for interpreting existing rules.
d) In international law, custom carries the same legal weight as international treaties; indeed, customary international law is in force and is mandatory. The International Charter on Human Rights is part of it and constitutes a genuine imperative rule or *jus cogens* that enshrines and protects the vital interests of the international community. Moreover, according to article 53 of the Vienna Convention on the Law of Treaties, said charter stipulates that a peremptory norm is one from which no derogation is permitted and which can be modified only by a subsequent norm having the same character.

The causes

The forced displacement crisis is neither spontaneous nor circumstantial. It is linked to several structural causes that underpin the prevailing social and economic model; therefore, these causes need to be addressed at their core, otherwise the human tragedies that cause forced displacement will not be identified.

<u>These causes are capitalism, heteropatriarchy and neocolonialism</u>

We wish to briefly mention neocolonialism as an updated form of domination by rich countries over countries in the Global South. For the purposes of this indictment, it is pertinent to consider the fact that the prejudice faced by refugees and migrants, which –to a certain extent– forms the basis of xenophobia and racism, is founded on false statements, such as: “they take our jobs”, “they’re criminals and terrorists”, “they

exploit our benefits systems", "we're being invaded", etc. Among other issues, these statements fail to take into consideration current forms of neocolonialism.

The Global Financial Integrity (GFI)[2] has calculated that if we look at all the financial resources transferred between rich countries and poor countries every year –including development cooperation funds, foreign investment, trade flows, non-financial transfers such as debt cancellation, unilateral transfers such as remittances by individuals in employment and undeclared capital outflow– they reveal an unquestionable equation: the flow of money from rich countries to poor countries is infinitely lower than that which takes place in the opposite direction. In other words, poor countries hand money over to rich countries: according to data from 2012, countries in the Global South sent 2 billion dollars more to the rest of the world than the amount they received. The GFI has calculated that between 1980 and 2012 poor countries lost a total of 13.4 billion dollars owing to capital outflow. In 2015, the 48 countries in Sub-Saharan Africa received 161.6 billion dollars from abroad and they sent 203 billion beyond their borders through repatriation of the profit of transnational companies or illegal money evasion beyond the continent[3].

Forced displacement has a direct association with the statistics mentioned. Can the highly patent, explicit economic asymmetry be answered by borders that divide civilisation and barbarism? Which one is which? Who owes who?

Moreover, capitalism is structurally more violent and seeks to grab "huge sums" in a very "short space of time". Also, a very small number of people have built up astonishing wealth while poverty has spread among a large sector of the population. This is the driving force that "justifies" forced displacement.

The neoliberal capitalist model encounters huge difficulty in maintaining the expansion and reproduction of capital and embarking on a new stage of growth and this situation leads to a vicious circle of productivity, yield, investment, employment and consumption, wherein it is highly complicated to reproduce the enormous influx of surplus generated by a financialised system. In addition, as a result of the environmental crisis caused by global warming we are faced with an ecological meltdown of epic proportions. According to Tanuro, it is a *silent disaster* caused by climate change and the fact that the three types of fossil fuels on which the pattern of development has been based since World War II –namely, oil, gas and coal– are running out. As a result, we are faced with a diminishing material foundation on which to operate our global society and, accordingly, a major transformation of our hegemonic systems of production, consumption and social organisation.

Likewise, violence and the crisis of democracy are intrinsic to capitalism and heteropatriarchy; therefore, the power of transnational companies destroys people's sovereignty and entraps countries and regions as if they were part of the internal organisational structure of the major corporations.

Transnational companies strive to run new forums of power and to privatise or co-opt democratic institutions. Although during the 1990s neoliberalism sought to reduce the size of the State and give markets free rein, now it champions powerful States that guarantee the profits of the transnational firms. The State is essential when

---

[2] Roberts, M. (2017): "La paradoja global". Sin Permiso.
Link:http://www.sinpermiso.info/textos/la-paradoja-global-del-capitalismo

[3] Curtis, M. and Jones, T. (2019): "El mundo se beneficia de la riqueza de África". CTXT.
Link: http://ctxt.es/es/20170621/Politica/13372/Africa-expolio-riqueza-ayuda-occidente.htm

accumulating capital wealth and in directing and reforming society to work for the benefit of the major corporations.

Although there are challenges in ensuring the "cake" continues to rise, and capital still wants to hold on to its avaricious rate of return, it will need to exhaust the systems for appropriating individual and collective assets.

In this context, the mechanisms used by capital to grab capital gains and maintain its profit rates escalate, extending to **exploitation, expulsion by dispossession and necropolitics.**

Exploitation

The traditional capital mechanism used to grab capital gains is still exploitation of the workforce, which takes place on both the formal and the informal markets, maintaining and heightening work gender division, global care chains and reproductive work performed by women free of charge and which –currently to a large extent in countries in the Global North– are incumbent on immigrant women. Unemployment, diminishing purchasing power from salaries, from pensions, etc., are permanent effects of the neoliberal model that places precariousness at the heart of labour relations. Similarly, this exploitation is coupled with emerging phenomena, such as job insecurity, in terms of both workers' rights and salaries, an occurrence that is commonplace in Latin America and Africa, although to date has been less widely observed in Europe.

The global rights index of the International Trade Union Confederation of 2016[4] confirms the abysmal circumstances in terms of workers' rights. Let us examine some statistics: in terms of fundamental rights at work, the Middle East region and North Africa still rank the worst in the world. In Gulf countries, most workers, and specifically migrants, are excluded from the basic protections afforded by labour laws according to the report.

According to the index, workers are excluded from the right to freedom of association in 58% of countries and they are unable to exercise their right to strike in 68% of them. One simple example is that 3000 workers were fired in Indonesia a number of weeks ago by the US company Freeport-McMoRan at Grasberg copper and gold mine in West Papua. The reason put forward by the company was that they had exercised their right to strike.

In the European Union (EU), more than 119 million people are at risk of poverty and internal migration between member countries of the EU rests on labour and social dumping. In other words, poor employment conditions are established as an essential element to competitiveness between companies and countries in the EU. This practice is widespread in sectors such as construction, transportation, the meat industry, social care and domestic work. This is at least backed up by the community directive on the posting of female workers on the context of service provision, which legalises exploitation of internal migration among workers in the EU.

Another example to illustrate our point is the multinational company IKEA. It subcontracts transportation companies to distribute its products throughout Europe and, in most cases, these companies are located in eastern countries which, in turn, hire the services of female workers from Romania, Moldova, Bulgaria, etc. While they are performing their duties, these individuals eat, sleep and live in the lorries for salaries in

[4] Andrade, M. (2016): "Estos son los diez peores países del mundo para los trabajadores".
Link: https://news.vice.com/es/article/los-10-peores-paises-mundo-para-trabajadores

the region of 150 euros a month. 21st century slavery also becomes institutionalised in internal migration and is embedded within the EU.

Refugees and migrants serve a useful function for the capitalist system, as they become one of its guiding principles. They serve as a formal or informal, cheap workforce accepting insecure conditions, whose careers are formalised on a downward path with regard to workers' rights. In addition, this workforce constitutes a symbol expressive of and heightening the war between poor people.

Expulsion by dispossession

Capitalism uses expulsion as a means of maintaining the profit rate on capital. It is what Harvey refers to as *dispossession* or *accumulation by dispossession*. Transnational companies seize natural resources and land as a business and commodification asset. It provides another way of generating capital gains and maintaining the build-up of capital. Peoples and persons are expelled from their homes and their lands in order to generate profits in agribusiness, mining, oil companies, electricity firms, etc. The large-scale acquisition of land by transnational corporations ruins local economies, destroys the region and redefines huge swathes of land as places for mining and business, leading to denationalised zones where the inhabitants are ultimately expelled.

This situation does not affect men and women to the same extent. As most women do not have legal ownership of the land –despite being the ones who work on it– they are typically excluded from decision-making forums and financial compensation which, if applicable, is paid through settlements received for being expelled from their lands. Moreover, expulsion triggers a severance from their ways of life and displacement dashes wisdom about the land and the region.

The colonial root of European policies fosters extractivism and the build-up of lands and –in European territory– it encourages commodification of life leading to expulsion from the job market, poverty and social exclusion, evictions and energy poverty. Expulsion by dispossession also rears its head in Europe. It is a global corporate logic that is spreading across the globe at varying paces and with differing effects.

People flee, move and travel within their borders and between states and continents because corporate logic and commodification of life demands displacement and expulsion. This creates new forms of slavery (for instance, on monoculture plantations in Central America and Mexico), child labour in value chains, people trafficking for sexual or labour exploitation, and many more profiles without rights.

People move because they have no other choice and some make it to our countries to find a place to live. If only migration truly involved free movement; however, the reality is that only a small number of people are able to travel freely. In addition, the impairment of the environment is triggering forced displacement due to a lack of farmland, a shortage of drinking water, flooding, bare and dead ground with no air or water, etc., caused by climate change.

Necropolitics

This is the third decisive direction chosen by the capitalist economic system which not only involves exploitation and expulsion; it also leaves people to die. In the Mediterranean Sea people are being left to perish offshore, and in the Sahara and Sonoran deserts they are left until they die of dehydration or starvation. These are routes where there is a systematic violation of the right to protection. We cannot believe that the military and border security systems are unable to spot boats drifting secretly. This

is called *necropolitics*: leaving someone to die due to lack of care for people who are malnourished or failing to rescue those drowning in the sea. We have sufficient arguments to corroborate that in these "non-right" areas, true crimes are being committed against humanity. People fleeing war are being left to die in supposedly peaceful regions, such as the Mediterranean Sea, which is close to a new classification of what we may refer to as "peace crimes". The alleged lack of coordination between the Italian and Maltese coast guards led to the deaths of 268 people including 60 children; this is necropolitics, and the blocking off of immigrants offshore by the Spanish coast guard, sending them back to Morocco, led to a high number of deaths and missing people: 388 (122 children between September 2015 and December 2016); this is also necropolitics[5].

It is also necropolitics that a total of 44 migrants died from dehydration in the middle of the Sahara desert when they were being taken from Niger to Libya[6], not to mention the murders on Tarajal beach on the southern border. The deaths and disappearances of refugees and migrants in the Mediterranean Sea and the Sahara desert are well into the thousands; bodies of migrants torn apart by necropolitics. In addition, security protocols rather than victim protocols are applied to those who survive the crossings and capsized vessels; as such, they are treated as criminals instead of being granted the protection they need and deserve.

What is more, genuine international crimes are taking place due to a horrific alliance between the criminal economy and the legal economy; between the mafia economy that launders its money on the legal economy. The leaders of environmental, feminist, LGTBIQ, farmers and indigenous movements are murdered for heading up responses in defence of their lands against the big megaprojects, but people are also being wiped out solely because they are individuals that are surplus to the requirements of the capitalist economic system. Persons who are unable to consume or produce are a nuisance to the capitalist system and become human waste, as indeed Z. Bauman maintains.

Migration and the human rights crisis

The fact that the capitalist system no longer needs so many people does not mean that it is not going to continue to rely on a migrant workforce. However, this is a workforce whose rights will not be regulated on the grounds of justice, equity and equality. In certain sectors, such as construction, hospitality, domestic work and care work, migrants –cheap labour with insecure conditions– will still be relied upon in order to drive down wages and working conditions. This will unfold in a capital-induced process at the behest of governments to cause confrontation between the exploited people and poor people; between poor nationals and poor foreigners. It is a "conflict" that favours capitalism and feeds racism and xenophobia.

Furthermore, the system will keep people located in regions of "non-rights", as is the case for instance with peddling, mule women on the southern border or prostitution. In Europe rights-free arenas having been gaining traction, such as the immigration detention centres –which entail interment of individuals who have not committed any

---

[5] Maleno, H. (2017): "La frialdad de la Guardia Costera italiana no queda lejos de las fronteras españolas". Eldiario.es.
Link: http://www.eldiario.es/desalambre/Pongamos-nombre-verdugos-fronteras_0_643235801.html

[6] Univisión (2017): "Mueren de sed más de 40 migrantes en medio del desierto del Sahara".
Link: http://www.univision.com/noticias/tragedias/mueren-de-sed-mas-de-40-migrantes-en-medio-del-desierto-del-sahara

crime–, racist raids, deportation flights, expulsions, fences and borders of horror, extra-territorial borders, people with expulsion orders, refugee camps, children abandoned in the streets, etc. These are situations of legal limbo that can involve both European nationals –in domestic exclusion processes– and individuals from other places. Prisons are a prime example of this: in the Spanish State, 120 companies employ thousands of people in circumstances of confinement with barely any workers' rights. Another example can be found in Spanish women who are victims of male violence who often lack pertinent institutional protection, thereby making them "internal refugees" who wander their own countries fleeing violence without any rights whatsoever and left at the hands of a patently heteropatriarchal legal system, as María Naredo maintains.

European governments and EC institutions are not only doing away with and suspending rights, they are also re-shaping the profiles of those who are subjects of those rights and those who fall outside the category of human beings. This is triggering a new era in the deregulation of the international human rights system.

Miguel Urbán and Gonzalo Donaire opine that in the EU two concepts of identity are being constructed: "…identity understood in an essentialist manner, as an ethno-cultural trait divorced from history associated with a people; or identity as a civil and political characteristic which is nevertheless deemed an original, exclusive upshot of European and national tradition." This gives rise to clear restrictions when it comes to who belongs to the European community, leading to exclusions from rights for individuals considered "non-European nationals" and it paves the way for legal exclusion, laying the programmatic foundations of xenophobia.

Lastly, we should not overlook the refugee camps, which are centres for the purposes of identification, control and expulsion. Women suffer sexual assault, rape or sexual violence at the hands of their partners, relatives, neighbours, employees of NGOs for development, and the government and security forces. These camps are arenas that are held up on the border as a worldview of war. Borders form the line separating order from barbarism, good from evil, the border that renders things invisible so that European citizens' minds are not aware of what is happening with other human beings, with our peers.

Heteropatriarchy

The patriarchy is developing this trend. The welfare state has reduced the highly precarious public policies of support for reproductive work and for care work. This collapse once again impacts on women. In addition, as Silvia Federicci points out, the capitalist patriarchy offers women's bodies to men as a substitute for the dispossession and loss of power the model creates. According to the author, during the period of primitive accumulation of capital, capitalism offered women to men as a valuable consideration for giving up land. The femicides in Juárez, Mexico City… follow this rationale.

Likewise, it is paramount to condemn the sexual violence suffered by women and children at the hands of the men they encounter on their journeys: travel companions, police officers, mafia members, etc., as well as forced marriage, genital mutilation, forced prostitution and persecution owing to sexual identity or orientation.

The architecture of impunity that strengthens the hand of major transnational corporations and the world's rich

We are faced with a context where deals, and investment and trade agreements, are being negotiated in order to shore up the business of multinational corporations while money and items of value are confiscated from people seeking asylum and migrants who reach Europe in order to escape war, starvation and precariousness. The international human rights system and the European system for protecting it are re-construed and misrepresented, stripping them of all effectiveness in the face of the immediate, full effectiveness of investment and trade agreements and rules. Far greater protection is granted to the rights of major companies than the rights of refugees and migrants. This is the true European Union.

Equality within the framework of corporate rules: regulatory asymmetry

The *lex mercatoria* rests on a highly unusual interpretation of the principle of equality: transnational corporations should be treated on an equal footing to national companies; all benefits granted to domestic investors should also be extended to foreign investors. In other words, national investors cannot receive any support from the State as this would constitute quashing the principle of national treatment that has already been incorporated into most investment and "free trade" agreements and deals. However, in many cases **that is essentially discriminatory and means that asymmetrical relations of power are placed at the heart of legal techniques**. Indeed, an interpretation founded on equity entails treating peers equally and treating unequal parties in an unequal fashion: a major multinational company cannot be treated in the same fashion as a cooperative from a solidarity-based economy. In actual fact, clauses for positive action that favour these small enterprises are the ones that are best aligned to the principle of equality.

The same is true of displaced persons: instead of complying with EC and international regulations, a host of repressive actions and measures of containment are applied to them, preventing any kind of positive action being extended to the most disadvantaged people. This is the prevailing view of the standing that human rights should have in the world market: utmost protection for European transnational companies no matter what they do and wherever they operate –relations with dictatorships, sales of arms, plundering of energy resources and raw materials, etc.– coupled with maximum control, powerful repression and expulsion of refugees and migrants, even if they are fleeing war, starvation or environmental disasters. This is asymmetry of regulations in its purest form.

To name one example, European multinationals conducting their operations in Bolivia must be treated in the same way as Bolivian companies. This ensures that the major corporations cannot be "discriminated against". However, refugees and migrants that come to Europe are left to die, expelled, rejected or despised. Why is it not possible for the same principle that applies to European companies to apply to them and for them to be treated in the same way as Europeans? **Transnational companies unquestionably benefit from countless more rights than refugees and migrants**.

Corporate legal protection and legal protection for forcibly displaced persons

On the context of the *lex mercatoria*, the notion of "legal security" has at its core the protection of contracts and the defence of the commercial interests of multinationals. It is a conception in which reference is made solely to global corporate law, specifically defined in the thousands of bilateral, multilateral and regional treaties, agreements and rules that have been enacted in recent decades by EC institutions and agencies, such as the World Bank, the International Monetary Fund and the World Trade Organization. Even so, legal security is an international principle that is not solely tied in with

economic appraisals: genuine legal security is that which places international human rights law above global corporate law. What is happening with legal security for migrants and refugees?

Instead of complying with the Universal Declaration of Human Rights (1948), the Convention Relating to the Status of Refugees (1951), the Protocol Relating to the Status of Refugees (1967), the EU Charter of Fundamental Rights (2000) and the various EC directives, the authorities of the European Union and of the Member States discuss the fact that there is a "humanitarian crisis" and they fail to meet their international obligations. In actual fact, they are repeatedly breaking the law and engaging in practices that could be classified as international crimes.

Corporate justice for rich and poor

Trade deals and investment protection agreements offer protection for transnational companies from potentially being "expelled" from a country. This is justice for the rich which we were able to witness when, for instance, the renationalisation of the Argentinean subsidiary of Repsol began in 2012. When the Government of Argentina ordered the nationalisation of YPF, the oil company immediately engaged in a campaign of impunity: it brought legal actions to the national courts, it lodged a lawsuit against the Argentine Republic to a court in New York, it lodged another case in Madrid, it appealed to the International Centre for Settlement of Investment Disputes (ICSID) –an arbitration institution that is part of the World Bank– and, what is more, it benefitted from pressure exerted on all levels by Spain and the European Union. **On the other hand, in what court can the violations of the rights of refugees and migrants be challenged?** How effective would such complaints be? Why does the international human rights system afford them such weak protection? And, in Spain, what is happening in immigration detention centres? This is what justice for the poor looks like.

Transnational companies and forced displacement

Major European companies benefit from diplomatic, economic, political, legal and media support. In the Spanish case mentioned, they even managed to come up with their own *Spain brand*. Migrants, refugees and asylum seekers, however, meet a response from EC administration and the authorities of the Member States whereby they are stopped by fences, walls and wire; their houses are painted red and they are required to wear red wristbands if they want to be fed; they are confined in "concentration camps"; they are expelled and deported; their belongings are taken away; the assistance provided by certain solidarity organisations and people is criminalised; and there is a failure to protect children fleeing from war, starvation and climate change, a failure to protect LGTBIQ people, and a failure to protect women prisoners from all manner of sexual violence. This is a legal asymmetry of horror.

Global corporate law fuses deregulation of the obligations imposed on transnational companies with the re-regulation of their own rights. That is to say, **while the rights of social majorities are deregulated when it comes to all material that is likely to be purchased or sold, the rights of transnational firms are protected with the utmost efficiency**. In the case of refugees and migrants, EU administrations and the authorities of Member States "deregulate" their rights and also confine them to refugee camps and immigration detention centres, they are left to die in treacherous crossings and the international human rights system only resorts to mere soundbites calling for a solution to the "humanitarian crisis". States are weak when controlling the abuses of transnational companies and imposing penalties upon them, but they toughen up when it comes to men, women and children who are fleeing from war and starvation.

Nowadays, in the European Union the rule of law has been replaced by the rule of capital, and the rights and lives of refugees and migrants are worth far less than the *Spain brand*.

Likewise, the responsibility of transnational companies is inseparable from that of the governing State, that of the host State and the rules imposed by financial economic institutions.

Transnational corporations capitalise on a system of impunity, of inequality, of asymmetry between rights. Transnational firms protect their rights by means of an entire chain of impunity that operates on a global scale: investment and trade agreements and deals; provisions, plans and rules from the International Monetary Fund, the World Bank and the World Trade Organization; operating contracts; and arbitration institutions. In other words, they have a highly complex system that shores up the rights of transnational firms lending them immunity. The questions we ask ourselves are the following: Where are the obligations of transnational firms? Who controls them? What does the Spanish government propose doing to tackle the violation of rights by companies on the IBEX 35? Are they not at all liable for the Rana Plaza collapse in Bangladesh where 1,200 people died? And what liability do the textile sector firms Mango and El Corte Inglés have? It is clear that there are alliances between governments and transnational firms; hence, international human rights law cannot compete with trade and investment law. We only have to look at the example of the immense pressure that was exerted on the Greek government to meet its debt repayment targets, completely ignoring the will of the people expressed in a referendum and compare that to the permissive stance adopted in response to the Hungarian government and the country's referendum decision to slam the door on the tiny share of refugees assigned to the country.

The system of impunity is a direct cause of the forced displacement of people and it subordinates human rights to the rights of transnational corporations.

A number of specific references to corporate practices with regard to displaced persons in the context of the Mediterranean Sea

Military conflicts and wars: who wins and who loses?

The fight to control natural resources is essential to ensure the continued build-up of capital. The appropriation of oil, of the various ranges of minerals, gas, land, water, the construction of pipelines, etc., are significant causes in gaining an acquaintance of the reasons why millions of people flee conflict. Indeed, it is necessary to add other reasons, such as geostrategic, religious, social and economic causes, the interests of major powers, struggles against local dictatorships, etc., and it is important to bear in mind that depending on the conflict some causes carry greater weight than others.

The EU and the governments of Member States should be held accountable for the wars they have caused and assess why they intervened militarily, who benefitted from the war and who their allies are, etc.

This indictment has established two clear issues: the first is that human rights, and the rights of peoples, have not benefitted from conflict and those affected by these wars are the Kurdish people, the Palestinians, the Syrians, the Afghans, the Iraqis, the Yemenis, the Libyans, the Sudanese, etc., who are the actual losers of so much indiscriminate violence. Moreover, the cruelty with which they are received in EU countries closes the vicious circle of structural violence.

The other issue we wish to highlight is this: what do we know about military companies and the banks that fund them? The companies that are involved in the deadly bombings in Syria, Afghanistan, South Sudan, Yemen, Libya, etc., are the same companies that are capitalising on business at the borders and the fences, and who are taking part in the reconstruction of the countries they themselves have destroyed. This is a trade of horror and destruction. Many of these are European capital companies and according to the report Externalización de Fronteras (externalisation of borders) it emerges that 13 European companies are involved[7]. It is also essential to shed light on collusion from the financial sector with the arms business in the form of shareholding, funding for exports, the issue of bonds and notes, investment funds and the granting of credit and loans to arms dealers.

Moreover, governments engage in alliances with the aforementioned companies; indeed, the Spanish government exports arms to Iraq, Saudi Arabia, Israel, Turkey, Bahrain, and so on, nurturing the war business. In addition, world military expenditure rose by 0.4% compared to last year and it accounts for 2.2% of world GDP.

The USA is still the world's biggest spender on the military according to a report published by Stockholm International Peace Research Institute, and President Donald Trump has announced a 9.27% increase in the USA's military budget for 2018, an injection of **54 billion dollars**, the biggest increase since the 9/11 attacks 15 years ago[8].

The war industry has virtually limitless power: the Near East and Africa, the arms races in Asia –the region is home to six of the ten biggest arms importers–, support from the EU –particularly from France, the UK, Germany–, Russia, Saudi Arabia, etc., and the shrinking of legal and political hurdles that formerly restricted the sale of arms to enemy countries[9] are the reasons behind the business triumph of such a destructive industry. On 7 June 2017 the Commission approved the European Defence Fund through which it expects to allocate 500 million euros to research and development of the military industry, which by 2021 will rise by 1.5 billion euros per year.

The conclusion is twofold: firstly, we demand that the international agreements be adhered to and for people fleeing war, such as refugees, to be welcomed; secondly, we demand that accountability be sought for intervening in military conflict and that controls be exerted on the business of the military industry in all dimensions.

Climate change, the extraction-based agri-food model, development cooperation and forced displacement

UNHCR deems that within 50 years, between 250 million and 1 billion people will need to leave their lands and homes owing to displacement triggered by climate change. The International Committee of the Red Cross points out that there are currently more than 200 million people directly or indirectly impacted by environmental damage. Both institutions affirm that climate change is leading to barren lands, flooding, lack of farmland and drinking water, drought, shrinking of lakes –Lake Chad has already lost 90% of its area–, shrinking of physical areas to live, etc.

---

[7] Namely: Airbus, Signalis, Finmeccanica/Leonardo, Thales, Indra, Safran/Morpho, Bae Systems, Saab, Siemens, Atos, Inisys, Defendec and Thermoteknix.

[8] Instituto de Estrategia (2017): "Los diez países que más aumentan su presupuesto militar cada año", Link: http://www.institutodeestrategia.com/articulo/internacional/crece-gasto-militar-mundo/20170427113852000790.html

[9] 'La Industria bélica, un negocio seguro'. La Marea, 2016.
Link: http://www.lamarea.com/2016/02/24/el-floreciente-negocio-de-la-guerra/

The report from the Spanish Ministry of the Environment warns that 80% of the country is at risk from becoming desert this century owing to climate change. The third report on climate change in Catalonia released in late 2016 and prepared by forty scientists paints an alarming snapshot looking ahead to 2040: "everyone born this century is at risk." "Temperatures will rise by at least 2ºC owing to a build-up of greenhouse gases. There will be 20% less water available. Droughts will be longer and more regular. There will be huge fires, although the 'Great Fire' will be in the Pre-Pyrenees. The sea level will rise. The Ter, Llobregat and Ebro deltas are under threat. Biodiversity will shrink. Pollution in major cities will become an epidemic problem. New diseases will emerge.[10]"

The International Organization for Migration reports that in the past thirty years, instances of flooding and droughts worldwide have increased threefold, causing more displaced people than all armed conflicts combined. Norman Myers, a professor at the University of Oxford, predicts that "When global warming takes hold, there could be as many as 200 million people [displaced] overtaken by sea-level rise and coastal flooding, by disruptions of monsoon systems and other rainfall regimes, and by droughts of unprecedented severity and duration." Of the 50 countries most affected by climate change, 36 are in Africa.

The capitalist economic model is causing millions of people to need to flee their homes and lands due to it being physically impossible to survive. They are poor and they have nowhere to go. Climate change affects women especially because in general they are the ones farming the land. According to data from the UN (2008) women and children are 14 times more likely to die during an emergency or disaster than men.

In other words, there are peoples and persons who suffer forced displacement that is sometimes temporary and caused by storms, flooding, hurricanes, etc; while others emigrate because environmental destruction ruins their way of life; and in some cases people are displaced owing to the complete destruction of their "traditional habitat" due to the gradual decline in natural resources.

Nevertheless, with regard to persons displaced owing to causes linked to climate change, there is a risk of diluting responsibility for these causes: "they are problems associated with the climate"; as a result, it is advisable to plainly realise that it is highly difficult to separate the various causes –war, climate change, extraction-based agro-industrial model, practices by transnational companies at the behest of governments, land grabs, food speculation, etc.– which cause environmental displacement. Changes to the climate are not unrelated to a capitalism that exerts pressure on ecosystems, water and land, and appropriates natural resources, energy, minerals, etc., causing irreparable damage to people. Two clear facts emerge from the complexity of what is described: firstly, international human rights law establishes and formally regulates protection of outsiders; secondly, the social and economic model encompasses stakeholders who are accountable for the events described and such accountability falls within the structure of impunity addressed in section three.

Extraction-based agri-food model

Climate change is not unrelated to extraction-based, pollutant and agro-industrial projects that directly expel thousands of people, forcing them to emigrate and, in many

[10] Caballol, J. and Baiges, S. (2017): "Alerta climatica: quins perills afronta la Catalunya de l'any 2040". Link: http://www.elcritic.cat/investigacio/alerta-climatica-quins-perills-afronta-la-catalunya-de-any-2040-15852 - .WUZNvWhzTYU.facebook

cases, leading to their deaths. In the opposite direction, as ecologist Yayo Herrero maintains, if countries in the Global South closed their borders to EU countries blocking the inflow of natural resources and the outflow of waste, European citizens would very shortly be immersed in a civil breakdown.

The UN warns of mass deaths caused by famine in the Horn of Africa, Nigeria and Yemen, the Sahel crisis, etc., that are a response to the rationale of a distant industrial civilisation unrelated to the people who live there. Food speculation, marginalisation of rural and indigenous farming in the region, grabbing of the best land by foreign capitalists, the imposition of crops for export, etc., are just some of the highly specific causes for so much forced displacement. Over the past decade, between 60 and 80 million hectares of fertile land has found itself in the hands of very few individuals, transnational companies, oligarchies, investment funds, pension funds, etc. This grabbing of land entails grabbing of water, preventing thousands of farmers from having access to it as the corporate projects are located at the sources or at strategic points on the river flows.

As Gustavo Duch maintains, seeds for intensive production, land for intensive production, water for intensive irrigation is in the hands of a few investment funds and, we shall add, transnational companies in order to intensively build-up capital and cause intensive poverty, desperation and displacement of people.

Living conditions for many African peoples are worsened, far beyond a number of violent conflicts and wars brought about by the economic powers and by the aggressive nature of agro-industrial policies promoted by African governments, foreign stakeholders and transnational companies.

The report "Honest Accounts 2017: How the world profits from Africa's wealth" sets out the fact that the natural resources of the continent are under the control of private foreign companies that transfer most of the profits obtained out of the continent, and that those who control tax havens are allowing this theft of Africa's wealth[11].

All in all, much forced displacement is directly linked to climate change and the system of impunity that protects the practices of transnational companies and both issues are embedded in the patriarchal and capitalist model.

Development cooperation

Development cooperation should be geared to fighting poverty and inequality. At present, its exploitation for the purposes of externalisation of borders, containment of refugees and migrants, and strengthening of military systems is an evident example of malpractice that has a bearing on the very essence of cooperation policies[12]. The EU Emergency Trust Fund for Africa approved by the European Commission at the Valetta Summit in November 2015 is a prime example of the siphoning of development cooperation: it consists of a host of actions where institutional development, economic cooperation, management of migratory flows and the diplomatic offensive on all levels meet with the primary aim of controlling the movement of people. Moreover, **certain**

[11] Caballero, C. (2917): "El expolio de África". *El País*.
Link: http://elpais.com/elpais/2017/05/25/africa_no_es_un_pais/1495706053_437760.html
[12] Agudo, A. (2017: "Así paga Europa la crisis de refugiados". *El País*.
Link:http://internacional.elpais.com/internacional/2017/06/05/actualidad/1496691606_043417.html?id_externo_rsoc=TW_CC

donors cut back their development programmes because they use their Official Development Assistance (ODA) budgets to cover expenditure on refugees.[13]

This indictment deems that forced displacement cannot be approached by overlooking investment and trade policies, development cooperation policies and the military policies of the EU and the governments of the Member States, as well as the practices of European transnational companies, investment funds, etc.

The separation between forced migration and voluntary migration lost essence some time ago

Under this heading, we do not seek to claim that the causes that lead to either of the above legal categories are similar; however, the solution cannot seek to create such diverse categories that serve to open or close borders in such a random fashion. This is especially the case if the interpretations made by governments and EC institutions opt to do the opposite, i.e., if there is a *de facto* effort to do away with the rules protecting refugees, and migration is generalised as displacement falling outside the scope of the Geneva Convention.

Economic migration is assumed to be voluntary; however, this casts a veil over forced displacement. It is as if the current patriarchal and capitalist development model caused no "fleeing" effect, and what is highly patent is that "persecution", as shaped from the standpoint of the EU and the governments of the Member States, is tied to a highly formal, static construal of norms and regulations, which does not make it possible to protect, or even offer an explanation for, the suffering of millions of people.

Despite acknowledging that it is a complex issue, we understand that the PPT very effectively handles the forums and timeframes for intervention; as a result, we have made a clear determination on the petition for proposals in the short-term, which address the immediate day-to-day practical needs of refugees and migrants, as well as the strategic needs, putting forward amendments to regulation systems.

From the standpoint of the legal response, changes should be demanded in the European system and in member countries in relation to the refugee, and it is necessary to call for the system to be aligned stringently to international human rights law, with the approval and incorporation into the Geneva Convention of a specific protocol on environmental refugees. Developments must be made in defining environmental refugees[14] and the agent of persecution –State of origin, transnational companies, financial/economic institutions and governing States– that triggers people to flee owing to environmental reasons. Sweden and Finland have already recognised the figure of environmental migrants. In terms of persecution owing to gender, it is essential to re-conceptualise international refugee law, as Carmen Miguel Juan states. The five reasons envisaged in the Geneva Convention should be interpreted from the standpoint of gender.

---

[13] Camp, S. (2017): "Los efectos que la acogida de refugiados provoca en la economía de los países que los reciben". *El País*.
Link: http://elpais.com/elpais/2017/06/06/planeta_futuro/1496726188_301754.html

[14] Environmental refugee shall refer to persons and peoples compelled to migrate to other places owing to the destruction of the environment in their lands of origin. The causes may be due to natural reasons or human action, and have undermined their support systems.

Furthermore, rules concerning national and EC migration, such as the Spanish Immigration Act, should be radically overhauled and suited to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is a UN treaty that seeks to protect the rights of migrant workers. As it happens, it is a convention that has not been ratified by any European country or the USA, to mention a few.

However, the most significant challenge stems from how to seek an alternative conception of law that allows all persons excluded from the neoliberal model to be fully fledged subjects in law irrespective of borders and hierarchies. This calls for a new legal instrument that would take into consideration international rules on refuge, on migration, on climate change and on control over transnational companies, entailing major amendments to the current regulatory system.

What is unacceptable is that there is still a classification of refugees into the first and second categories stated with regard to the fact that those who are persecuted owing to ethnic origin, religion, nationality, etc., deserve greater protection –at least formally– than those who are fleeing starvation, the practices of transnational companies, food speculation, the effects of investment and trade agreements and deals, extraction-based agro-industry projects, land grabbing, the policies of economic/financial institutions, etc., as they are causes that are not divorced from forced displacement. This is one of the central matters that the PPT should address.

We also call on the PPT to act on the causes that trigger forced displacement

- It is essential to modernise an international agreement in relation to which issues form part of competitive advantages among companies and which do not. Human, labour and environmental rights should not be intertwined with competitiveness, and the build-up of capital should not be at the expense of human rights.
- The alleged fragmentation of international law into separate, supposedly independent spheres enables transnational companies and corporate powers to impose the economic and political rules observed by big business on social majorities. Accordingly, the international rules are re-construed to the benefit of the dominant sectors. It is a pressing issue that we should turn the international legal pyramid on its head and we need a new code of regulations that clearly stipulates that international human rights law –including international labour law and international environmental law– is hierarchically superior to the national and international rules governing trade and investment on account of its imperative nature and as obligations *erga omnes*, i.e., of and for the entire international community.

We therefore demand the following:

- For the military industry to be gradually phased out, and for it to be stringently aligned to human rights.
- For the EU and Member States to control and require transnational companies, investment funds and other speculative corporations to submit their activity to stringent compliance with international human rights law.
- For investment and trade agreements and deals to adhere to international human rights law, international labour law and international environmental law, the sovereignty of peoples and the rights of farmers.
- For development cooperation policies to be aligned to international human rights law and not the “security of the States”.

- For the policies of the EU and member countries to establish as their top priority endeavouring to control climate change on a local, national, regional and global scale.

Criminalisation of international solidarity

Council Directive 2002/90/EC, of 28 November 2002, defining the facilitation of unauthorised entry, transit and residence grants Member States scope to define various crimes. This indictment does not consider that a context where people from civil society can be prosecuted for assisting refugees and migrants throughout the European continent is in fact in the spirit of international human rights law. What is more, we consider that providing assistance to those who need it, regardless of their administrative circumstances, is perfectly aligned with the philosophy of international human rights law. Helping migrants to cross borders in the current climate of repeated failure on the part of institutions and an absence of policies promoting human rights is entirely legitimate, above and beyond the legality of European and corporate powers. The Princess of Asturias Award of Concord 2017 granted to the European Union is legal and, is it legitimate?

As Emmeline Pankhurst stated in 1908 to the jury presiding over her case: “We are here, not because we are law-breakers; we are here in our efforts to become law-makers.”

BIBLIOGRAPHY

Bauman, Z. (2014): *¿La riqueza de unos pocos nos benéfica a todos?*, Paidos, Barcelona.

Bauman, Z. (2005): *Vidas desperdiciadas. La modernidad y sus parias*, Paidós Ibérica, Barcelona.

Castañar, J. (2013): *Teoría e Historia de la Revolución no violenta*, virus, Bilbao.

Celis, R. and Aierdi, X. (2015): *¿Migración o desplazamiento forzado? Las causas de los movimientos de población a debate*, Cuadernos Deusto de Derechos Humanos, issue 81, Bilbao.

De Lucas, B. (2016): "Transnacionales en el origen del desplazamiento forzado", El Salmón Contracorriente, website.

Duch, G. (2014): *No vamos a tragar. Soberanía alimentaria una alternativa frente a la agroindustria*, Los Libros del Lince, Barcelona.

Fernández, G. (2017): "La que se avecina: un capitalismo (aún) más salvaje", in *Economistas sin Fronteras* (Repensando un modelo de sociedad y de economía), dossier issue 26, Madrid.

Harvey, D. (2004): *El nuevo "Imperialismo" acumulación por desposesión,* Biblioteca Clacso, http://biblioteca.clacso.edu.ar/clacso/se/20130702120830/harvey.pdf.

Herrero, Y. (2012): Con los ojos abiertos. Una mirada para cambiar de disco, Rebelión, http://www.rebelion.org/noticia.php?id=152512.

Hernández, J. (2015): "¿Y la seguridad jurídica de las personas refugiadas?", América Latina en Movimiento, Quito.

Hernández, J. and Ramiro, P. (2015): *Contra la Lex Mercatoria. Propuestas y alternativas para desmantelar el poder de las empresas transnacionales*, Icaria, Barcelona.

Hernández, J. (2009): *Las empresas transnacionales frente a los derechos humanos. Historia de una asimetría normativa*, Hegoa and OMAL, Bilbao.

Report by En Europa Podemos (2017): *Externalización de fronteras. Impunidad y excepción en la diplomacia del euro*, European United Left, Brussels.

Miguel, C. (20016): *Refugiadas. Una mirada feminista al Derecho Internacional*, Catarata, Madrid.

Sassen, S. (2015): *Expulsiones, brutalidad y complejidad de la economía global*, Katz, Madrid.

Tornay, M. C. (2016): Entrevista a Silvia Federici: "La muerte de las mujeres en las maquilas recuerda a la fase de acumulación originaria", Revista Pueblos, Madrid.

Urbán, M. and Donaire, G. (2016): *Disparen a los refugiados. La construcción de la Europa fortaleza*, Icaria, Barcelona.

Zizek, S. (2016): *La nueva lucha de clases. Los refugiados y el terror*, Anagrma, Barcelona.

2. BUILDING WAR FROM THE COUNTRIES OF ORIGIN TO THE GATES OF EUROPE.

Speaker: Helena Maleno Garzón

Researcher specialising in migrations and trafficking in human beings, journalist and activist in the group Caminando Fronteras (Walking Borders).

The "non-law" spaces that are built on European borders allow, among other actions, people who ask for help in a small boat to be drowned, people badly wounded in barriers not to be assisted, and human beings in the desert to be abandoned. All this justified by the primacy of the territorial sovereignty of Europe.

At the beginning of the 21st century, European policy towards territory control is leading to the development of the concept of border as an entity beyond the boundaries between states. We are moving towards the construction of a space categorised by its own rules; borders as legal and political spaces separated from the laws of the rest of the territory.

These are areas where Europe can implement policies that are separate and far removed from human rights. They are "non-law" contexts where legal primacy is exercised by immigration control and bilateral agreements with third countries.

Due to the implementation of these control policies, the power of border security industry, increasingly managed by armaments and war industry companies, has increased. Safran, Finmeccanica, Thales, Indra and Airbus, have become the new business lobbies that influence the construction of non-law spaces, forming what we can call "border wars[15]".

European policies on borders have been accompanied by a discourse aimed at the public that has turned towards building an imaginary scenario around movements of people being directly related to the issue of security.

In the process of filling the border space with warlike meaning, politicians, through the use of the media, have directed discourses aimed at creating a climate of "invasion" around movements of people and outlining a reality of uncontrolled masses that want to enter like an avalanche into the European territories where there is no more space for anyone.

Europe has normalised violence and disseminated messages in which the borders are places of exception, and that what happens in these contexts is due to an extraordinary situation linked to the security of the territory.

Borders as spaces of war, but also as places where the new slavery of the 21st century is constructed.

The absence of the right to free movement has formed a breeding ground for other businesses linked to transnational criminal groups, related to trafficking but, above all, to the trafficking in human beings. These have benefited from the militarisation of immigration control.

In a Europe in economic crisis with a decline in the rights of working people, people in movement are not only cheap labour, but form part of a new slavery with different purposes demanded by the European markets.

---

[15] Border Wars The arms dealers profiting from Europe´s refugee tragedy, Mark Akerman.
Link: https://www.tni.org/files/publication-downloads/border-wars-report-web1207.pdf

The blocking of the right to movement has been so beneficial to business lobbies linked to the war industry and to criminal groups that these movement control strategy policies are no longer only applicable in destination and transit countries, but also in the countries of origin. Since 2015 it has a new strategy in its control policy, which is to sign agreements with the countries of origin[16], criminalising people who leave their territories[17] and allowing deportations from Europe.

Military strategies in non-law areas (borders).

Surveillance techniques in the service of facilitating selective expulsions from non-law spaces. Push-back.

Surveillance techniques, such as the SIVE system, or FRONTEX operations, are used to obtain expulsions back to the third countries from which the crossing to Europe begins. One of the star elements of these policies has been the push-back[18], which has mainly operated on the Spanish border with Morocco and has inspired, inter alia, the EU agreement with Turkey.

It consists of returning them to third countries through various practices that place the right to life at risk for the people who are moved. The expulsions are made without individualised administrative procedures, indiscriminately, and to countries that do not guarantee respect for fundamental human rights[19].

Selective and indiscriminate detentions in the accesses.

Europe demonstrates to the citizens that all the policies developed in the non-law areas are designed for fighting against the mafias. In order to make this struggle effective, it systematically and selectively stops people crossing the border in various ways. On many occasions, these people have no relation with the crimes imputed to them, since criminal networks do not expose themselves in non-law spaces.

In many cases innocent people that are being used as bait by the networks are detained.

Invisibilisation of victims of border violence.

---

[16] La UE forja pactos con cinco países africanos para frenar la inmigración *[The EU forges pacts with five African countries to curb immigration]*. Lucía Abellan. El País. Link: http://internacional.elpais.com/internacional/2016/10/18/actualidad/1476811503_017250.html

[17] Le débat sur l'accord entre le Mali et l'UE sur la réadmission et réintégration se corse: *[The debate on the agreement between Mali and the EU on readmission and reintegration is getting worse]*: Abdoulaye Diop s'est plané, les maliens de l'extérieur sceptiques, l'opposition dépose une motion de censure *[Abdoulaye Diop has failed, the Malians from the outside sceptical, the opposition tables a motion of censure]*. L´humanité. Link: http://malijet.com/a_la_une_du_mali/173466-le-débat-sur-l-accord-entre-le-mali-et-l-ue-sur-la-réadmission-e.html

[18] "Expulsiones en caliente. Cuando el Estado actúa al margen de la ley" *[Push-back. When the State acts at the margin of the law"]*. Legal Report. IUS Migrante, 2014.

Link:http://eprints.ucm.es/25993/1/INFO No establece Europa una búsqueda de la identidad de personas muertas en las distintas fronteras *[Europe does not set up search operations to find the identity of people dead at the different borders]*.

There are no processes of recovery of truth, reparation and justice for these victims and their families. RME_EXPULSIONES EN CALIENTE. 27_6_2014 %281%29.pdf

[19] Informe relativo al acuerdo union europea-turquia adoptado el 18 de marzo de 2016 y las consecuecias de su aplicación en los derechos de las personas migrantes y refugiadas**.** *[Report on the European Union-Turkey agreement adopted on 18 March 2016 and the provisions of its application on the rights of migrants and refugees]*. CEAR. Link: https://www.cear.es/wp-content/uploads/2016/05/INFORME-COMISARIO-EUROPEO-DDHH.pdf

Europe has not set up a proactive search operation for missing persons, and there is no official access to information for the relatives of tragedies.

Control processing of victims/survivors of borders.

The right to reparation and justice for surviving victims of violence in non-law areas is not protected. Control and foreigner procedures are applied to victims of tragedies, not protocols of assistance.

Military strategies in transit states and the origin of people in movement.

European states have been consolidating a border strategy based on outsourcing[20] to the belt states.

The outsourcing of borders allows the violence of European security to occur as a result of our policies, but outside the territory of European "democracies".

The belt states of European militarisation, also transit spaces, make the migratory issue, the people in movement, into an element of political and economic pressure. Control of the movement does not therefore conform to the logic of International Laws but to the situation of bilateral relations, framed within a glossary of economic and geostrategic interests.

Europe promotes the development of immigration laws in countries of migratory transit.

European policies have promoted, within the transit countries of people who move, the application of foreign laws based on the criminalisation of the right to movement, from irregular entry into the country up to departure from the same[21][22].

Utilización de la Cooperación al Desarrollo como instrumento de negociación para implementar en origen y tránsito políticas de control del derecho al movimiento[23]. [Use of Development Cooperation as an instrument of negotiation to implement policies of control of the right to movement at origin and in transit[24]].

Estrategias militares de control de las personas que se mueven en los países de tránsito *[Military control strategies for people in movement in transit countries]*[25].

---

[20] Les étapes du processus de contrôle de contrôle de frontières in Afrique, du Sommet de la Valette à aujourd'hui Document d'analyze de l'ARCI - juin 2016. *[The stages of the border control process in Africa, from the Valletta Summit to today. Analytical Document of ARCI - June 2016]*.
Link: http://www.migreurop.org/article2712.html?lang=fr

[21] Law 02-03 on the entry and stay of foreigners in Morocco.
Link: https://www.unodc.org/res/cld/document/mar/loi-entree-sejour-etrangers-maroc-2003-fr_html/Loi_Entree_Sejour_Etrangers_Maroc_2003-FR.PDF

[22] Organic Law No. 2004-6 February 2004.
Link: http://www.jurisitetunisie.com/tunisie/codes/passeport/passeport2000.htm

[23] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL: First progress report on the Partnership Framework with third countries in the context of the European Migration Agenda. COM (2016). Link: http://ec.europa.eu/transparency/regdoc/rep/1/2016/ES/COM-2016-700-F1-ES-MAIN.PDF

[25] Le rapport alternatif élaboré sous la coordination du GADEM par un collectif d'associations *[The alternative report prepared under the coordination of GADEM for a group of associations]*. GADEM 2013. Link: http://www.gadem-asso.org/IMG/pdf/201308285_-_Rapport_CMW_a_imprimer.pdf

Implementation of indiscriminate military raids on the settlements of migrants, in forest areas but also in cities.

Removal of the populations in movement from the border areas, which causes the application of differentiated rights for migrants in various areas of the transit countries.

Collective expulsions without guarantees to other border countries, with the aim of moving them away from European borders.

Forced collective displacement without guarantees within the countries of transit.

Construction of Detention Centres financed by the European Union and where there is no guarantee of respect for fundamental rights. In those located in Libya there are even kidnappings, for which releases must be paid for by the families in the countries of origin[26].

These are not people who are transiting through the "non-law" spaces.

The impact that these policies have on the violation of the rights of the people who move has increased in the last decade, and has had a significant impact on the right to life.

The construction of non-law spaces has been accompanied by the victimisation, criminalisation and reification of people on the move, which has formed part of the process of stripping them of their status as people.

That is why neither they nor their families have recognised rights and the European states are thus exempt from responsibility for the violence that they exert against the victims and the survivors of the border war.

Criminalisation has allowed European policies to justify the violation of fundamental rights as a strategy for combating the mafias. Notwithstanding, during these years of militarisation there has been an exponential increase in criminal networks that coexist and feed off the control industry. Above all, the increase in trafficking networks that take advantage of the opportunity of control to postulate themselves as a "migration strategy", and which exist due to the demand made by the European slave market for various purposes[27].

The networks therefore have a high capacity for adapting to the economic permeability of the borders and respond to a demand for slavery in European markets that is highly feminised.

Understanding people as goods managed by the networks and demanded by the market has encouraged "reification". It affects women and girls, who travel through non-law areas, and who are seen as goods demanded in European markets, especially for the sex market, but also for domestic service, drug couriers and organ trafficking.

Victimisation is also part of the framework of border violence. European policies mainly use this approach when talking about women and migrant children, putting the focus on the mafias as the sole perpetrators of rights violations. But the most serious thing is that Europe does not have the instruments in place for women and children in movement to have access to a comprehensive recovery of their violated rights. In this

---

[26] Traficantes de personas *[People traffickers]*. El negocio de los secuestros y la crisis de los refugiados *[The kidnapping business and the refugee crisis]*. Loretta Napoleoni. Editorial Paidos.

[27]The trafficking of Nigerian women and girls: slavery between borders and prejudices. Women´s Link Worldwide. 2014. Link:
http://www2.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&dc=72

sense, these groups, which are instrumented by European policies to maintain militarisation, do not offer real alternatives for their protection.

In this way, it invisibilises the institutional violence exercised in migration control over people who have already suffered violations of their rights. Women, girls and adolescents refer to the sexual violence to which they are subjected by a patriarchal construction that is also reproduced in the populations in movement, and in the construction of border control. Non-law areas permit sexual violence against women and children in movement, which is also perpetrated by representatives of the security forces in charge of the control.

It is especially the victims/survivors of Human Trafficking, mostly women and children, that have been victims of economic, psychological, physical and sexual violence in the social spaces outside the control of networks. Trafficking networks in many cases become spaces of violence that mitigate the other spaces, being considered a "refuge and a survival strategy" in some spaces where rights are very limited.

People who move, but especially women, children[28] and LGTBIQ+ people, differentiate between violence in private spaces, which is related to positions of power, patriarchy, and the trafficking networks. But they also refer to violence in public spaces, generated by the strategies of border control, and which is exercised by state agents and directly related to the violence of private spaces.

Violence in public spaces is such that the victims/survivors do not have the tools to denounce the violence in private spaces.

How to empower constructions of resistance to border wars?

Communities in movement have themselves become accustomed to assuming institutional violence as an "inherent part of movement." People in movement survive through building processes of citizenship, even if these are temporary.

Communities know that control policies directly affect their right to life. That is why they establish systems of protection based on information and the search for differentiated strategies so as not to die in transit countries or in non-law spaces. Even to minimise the impact that European policies have on their rights.

They build networks to alert people who are missing or dead at the borders. They are given names, and families are alerted so that they can perform a mourning even though there are no official data from the European authorities.

The people in movement also denounce the use of the term economic migrant as a tool of repression, since poverty is also a violence of the system. Women, children, and LGTBIQ+ people wield a search for rights in their decision to move.

These groups understand that their bodies become spaces of violence, especially sexual, and are also an instrument of power and exchange within the borders and the movement.

After passing through these places they also understand that they await the transit of exploitation in European territory, but they understand that it will be provisional and that this exploitation will allow them in the long term to exercise rights for themselves and their daughters and sons.

---

[28] Estudio exploratorio Niñez Migrante Marruecos *[Exploratory study Migrant Childhood Morocco]*. Alianza por la Solidaridad. 2015. Link: http://www.alianzaporlasolidaridad.org/wp-content/uploads/Informe-Niñez-Migrante-201507013-V1.pdf

Women and adolescents who are victims of border violence are aware that their survival depends on strategies linked to gender and that at the border they are just another commodity passing through. Many are especially concerned about their daughters growing up in those spaces where the bodies of women are a commodity.

But the traces of violence are present in these groups through feelings of guilt, fear, submission, low self-esteem, somatised, in most cases, through body aches and nightmares.

Most of the resilience and reparation processes are built individually or within communities on the move, since Europe is unable to build processes of truth, redress and justice for people whose rights have been violated in border areas.

Legal denunciations of border violence are not effective. The relevant courts in each area have closed court proceedings, even where sufficient documentary evidence has been provided. This normalisation of violence has not only affected the citizenry, the reparation processes, but also the judiciary, which has understood that it should not intervene in "border wars".

Obtaining justice in non-law areas is practically impossible, and that possibility is non-existent when we speak of European responsibility for violation of rights in third countries.

In a perverse use of the judicial system some of the violence has even been "legalised". A clear example is "push-back" on the Spanish and Moroccan border.

Victims/survivors are afraid of retaliation even from host countries. They also say they will not be heard or believed by the authorities, or have a presence at legal proceedings.

In the process, the people in movement are not sufficiently supported and protected to be able to launch judicial denunciations. The procedures last for long periods of time, and the person does not yet have the stability to assume facing up to the revictimization of being exposed to recounting the situations of violence suffered.

Even when we speak of people in situations of slavery in Europe, such as victims of trafficking, the procedures for redress, protection and reporting are weak. They continue to be visibilised during exploitation in European territory as "migrants", "whores", "black", "poor", which significantly affects the reintegration of all their rights.

Border violence has an impact beyond the victims/survivors. The deaths and disappearances of people who move have a psycho-social impact on families, but also on the communities of origin.

Families can also suffer social, legal and economic problems, making them victims of border policies, which are directly caused by the disappearance of their loved ones.

The mass disappearances of people in multiple tragedies at border areas have also affected the communities of origin. Entire villages have lost relatives and have not entered processes of truth, reparation and justice.

This whole denial of reparation process has also meant torture and ill-treatment for family members.

Families are not in the position to demand justice, since we are speaking here about populations in movement, with administrative situations that do not allow access to rights. They have difficulty accessing official information, and being recognised as victims of border violence.

In relation to all the above, it is important to:

- Support truth-seeking, reparation and justice processes, initiated by the victims/survivors of border warfare, families and communities of origin.
- Generate spaces where the victims/survivors, relatives, and communities of origin of the border war are protagonists.
- Reflect on the concepts of truth, reparation and justice, and what the instruments are that are helping take steps to achieve these.
- Put on the media agenda the border wars, the business lobbies behind borders policies, and their connivance and feedback with the networks that generate slavery.

3. A CONTEMPORARY READING OF THE BORDER SYSTEM IN EUROPE: AN INHUMANE COST.

Rapporteur: Iker Barbero González[29]

Lecturer at the University of the Basque Country and the main researcher of the IUSFUNDIE.EU (EHU-US 20/15) Project.

A Bleak (border) Panorama.

An entry in the blog "Fortress Europe", written by the Italian activist Gabriele Del Grande, is entitled "A Cemetery called the Mediterranean" [30]; and this is no exaggeration. Although the figures for the number of people who have died in the attempt to reach Europe are lower than in reality (as it is impossible to know precisely the exact total, due to the extremely high number of disappearances and deaths that will never be counted), the approximate figures that one source or another publishes already amount to a drama in themselves. According to Del Grande, from 1988 to February 2016, 27,382 people have died, of whom 3,507 correspond to 2014 and 4,273 to 2015. However this figure increases to over 5,000 in 2016, as the deadliest year. And according to the IOM project *Missing Migrants*[31], in June 2017, 1,985 have already died (from a total of 2,700 on borders worldwide). The Mediterranean Sea, a channel for maritime communication and trade for centuries, as the final 'natural' frontier with Africa and the Middle East, has become an immense mass grave.

These people, who risk their lives in boats, on roads or in deserts, are escaping from wars, famine, persecution or ecological disasters. These are people whose life process has been broken and their only option is to migrate to areas that are either safer or where there are higher expectations of progress. And those who are the most affected are young people who do have aspirations. This is why it is necessary to add to this situation, the plight of many children who are defenceless, the victims of sex traffickers, and those who are alone, either because they left their homes unaccompanied or because they became orphans along the way. One in every four children seeking asylum in Europe, whether fleeing from wars or catastrophes is alone, according to Eurostat. The figure has risen sharply and dramatically and it quadrupled in 2015 alone. Over 25,800 unaccompanied children reached the Italian coast after crossing the Mediterranean in 2016, according to UNICEF. Many others remained trapped in the Balkans and in Greece, according to the international organisation Save the Children, highlighting "the terrible situation and the degrading conditions" suffered by the children. Several hundred die every year by seeking to cross the Mediterranean with their families or alone. In short, a total violation of the rights of children.

And the European institutional response to the thousands of migrants and refugees who have to risk their lives crossing seas, rivers, mountains or deserts is "Do not come". This was the statement made in 2016 by the President of the European Council, Donald Tusk who commented on Twitter, stating "Don't come to Europe. Don't believe smugglers.

---

[29] Iker Barbero is a lecturer at the Department of Administrative and Constitutional Law and the Philosophy of Law, and the main researcher in the IUSFUNDIE project. He is an expert in fundamental rights, and contemporary forms of detention, internment and the expulsion of foreign people in an irregular situation (US 20/15). Iker.barbero@ehu.eus

[30] Link: http://fortresseurope.blogspot.com.es/2012/04/ragazzi-di-tunisi-dispersi-al-largo-di.html

[31] Link: https://missingmigrants.iom.int/latest-global-figures

No European country will be a country of transit”[32] The EU, far from its values empathy, freedom and justice, is immersed in a policy of border closure, security and selfishness. The rise of extremism and xenophobic discourse, has led to European leaders flying the flag of the "hard hand" against immigration, lowering the accepted levels of what is politically and ethically tolerable (these are the responsibility of opinion and electoral polls).

Giving a total figure of 28,000 or 29,000 deaths has no other purpose than to state that the current system of borders in the European Union is inhumane. It is no longer a question of political debates about which border model is the most appropriate for an acceptable economic or welfare system, it is rather a debate on the ethical and legal responsibilities with respect to the causes of these atrocities. The answer is simple: the EU border system and its consequences.

In order to focus on the EU border system, it is necessary to go back to the Constitutive Treaty of Rome (1957) and to the "compensatory measures" demanded by the Member States following the creation of the common area of freedom of movement for goods, capital and services, And the consequent (supposed) eradication of internal borders. I am referring here to the creation of the TREVI Group (the acronym for Terrorism, Radicalism, Extremism and International Violence) in 1976, as well as to the ad hoc committee on immigration in 1986, which was tasked with updating the external border posts system, coordinating visa policies and combating counterfeiting, and to the Schengen Border Code of 1985 and 1990, to Frontex and its operations Mos Maiorum, Indalo, Minerva, Sophia, et ., to the Eurosur Border Surveillance System, to Return Directive 115/2008; To the SIS I and II databases, Eurodac, and to endless devices for the control of human mobility both to and within the EU.

Although it should also be noted that on these border areas, not only do the institutional agents of the renewed European Border and Coast Guard Agency Frontex or the police forces of the Member States operate, but also that the number of actors has multiplied, with respect to police officers from third states, who are entrusted with exit control and rescue operations, in addition to private business actors who are responsible for providing technology, devices and knowledge in exchange for large amounts of money, not to mention, people-smugglers, and opportunists who stalk migrants and profit by offering an endless list of services such as false papers, life jackets or a seat on a boat or a refrigerated truck.

Due to all of the above, in this text, without the desire to make a comprehensive compilation of rules, facts and data, although with a willingness to offer arguments on the violation of rights across multiple borders, I will refer to this control system from a kaleidoscopic perspective on the concept of what constitutes a border, in the steps of Etienne Balibar, in *Violencias, Identidades y Civilidad (Violence, Identities and Civility)* (2005). To this author, the border possesses a heterogeneous character: "Under no circumstances should certain frontiers have been located at the borders in the geographic-political-administrative sense of the term, but should reside elsewhere, wherever selective controls are undertaken."

In order to manage or rather control and combat irregular immigration destined for the countries of the North, selective administrative, instrumental and personal mechanisms

[32] An appeal to potential illegal economic migrants: “Don't come to Europe. Don't believe smugglers. No European country will be a transit country”— Donald Tusk (@eucopresident) 3 March 2016

are established, which are located at different points on the migratory path. On the one hand, the border of a nation state, and in the case at hand, *the external borders* of the supranational European entity, represent the most paradigmatic example of border control. In addition, the strategy that has been most rigorously configured is that of transferring control wherever the migratory process begins, or at least anticipate intervention before it arrives at the external border. This is what has been termed the *externalization of borders*. Thirdly, and following Balibar's logic of locating the border wherever a control point has been established, one must also consider the *internal borders*. Despite the process of elimination of internal controls proposed and implemented by Schengen, the reality is that different internal mechanisms are established to detect, retain and expel those who have not been admitted or who have exceeded the time authorized to them. While the first two examples possess the function of selective containment, internal borders, as we will see below, serve a dual function, largely that of locating irregular persons and expelling them, but they also have another mission that is, as Terray says, "to keep illegal persons in terror of being arrested, to force them to hide, to walk hugging the walls, and not to make noise ".

When immigrants and refugees come knocking at the door: damaging external borders.

According to the European Council[33], the EU has some 7,400 km of external land borders and 57,800 km of external maritime borders and coasts, in addition to the hundreds of airports that receive international flights (from outside the EU/Schengen area), which constitute the external air borders. In 2015, according to the Eurostat report published in June 2016[34], approximately 298,000 non-EU citizens were rejected at one of the external borders. More than two-thirds of these denials were enumerated by Spain (168,345), and took place mainly in Ceuta and Melilla, while the other main countries which denied entry were Poland (30,245), Hungary (11,385), Croatia (6,680) and Greece (5,790). Taking into account that the external borders are diverse in nature, 81% of refusals occurred at land borders, 16% at air borders and 3% at sea borders. In this respect, the United Kingdom and Italy reported the largest number of denials at sea borders (3,215 and 2,760, respectively) for 2015. The main nationalities to see their access at external borders denied were Morocco (164,885), Ukraine (24,485), Albania (16,910), Russia (10,715) and Serbia (7,775). Moroccans were refused entry mainly at the land border with Spain, Russians and Ukrainians at the land border with Poland, and the Serbs at the land borders of Hungary and Croatia. Albanians were mainly denied entry at the Greek, Hungarian, Croatian and Slovenian borders, as well as at Italian maritime and air borders.

For its part, Frontex counted 104,060 irregular crossings in 2010 and 282,933 in 2014. In 2016, the figure rose to 511,371. Despite the fact that in the latter part of 2016 (Q4 Repport Frontex) these crossings have fallen by 93% as a result of the closure of the Balkan corridor and the implementation of the EU-Turkey Agreement. However increased attempts at crossing are being made in the Central (Italy) and Western (Spain) Mediterranean. The data on the illegal crossing of borders offered by this agency, which is published every four months, reveals that the attempt to close routes leads directly to alternative routes being sought.

---

[33] Page. 7, http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2018666%202011%20ADD%201

[34] Link: http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation

This land border perimeter is being fortified as far as it extends. Perhaps the most paradigmatic example of this hyper-fortification process is that of the Spanish postcolonial enclaves of Ceuta and Melilla. The fences (with a length of 8.2 km and 12 km respectively) that form these external border devices were first constructed in the 1990s, with the entry of Spain into Schengen Territory. In 1999, 2.5 meters of wire fence were replaced by galvanized steel, which was reinforced with hawthorn wire to a height of 3.10 meters and at a cost of 5,680 million pesetas. During the intense attempts to cross, in 2005 (in which 13 people died as a result of the police response), the device consisted of parallel fences of 3 to 6 meters in height with sharp wire, and designed to provide motor vehicle transit along the border perimeter, in addition to helicopter landing facilities, watchtowers, one hundred surveillance cameras, microphones and 24-hour volumetric motion sensors, high intensity searchlights. All of is this managed by almost 2,000 police and civil guards who were hired for the surveillance of Melilla and Ceuta (European Commission, 2005). Its cost was almost 50 million euros, and it was largely financed by the European Union as part of the border "Europeanization" policy. Since 2006, and under the auspices of Frontex, the fences were elevated to a height of 6 meters along their entire length, although without cutting elements but with more effective means to hinder crossing, with the construction of a third fence. This fence, or "three-dimensional wire", whose cost came to 20 million euros, is aimed at preventing climbing or the use of ladders, by leaning the fence about ten degrees towards the Moroccan side. The cost of installation and maintenance between 2005 and 2013, both inclusive, according to a government reply to a parliamentary question on September 8, 2014, was 47,927,961.76 euros in the case of Melilla and 24,669,835.90 euros in that of Ceuta.

The case of Abdoulaye Mara, a 22-year-old Malian man, is especially striking. On 11 March 2015, he perched on top of the last barbed wire in the Melilla fence complex, he shouted "I asylum, I asylum ". Once he descended to Spanish soil, and while still requesting asylum, he was handcuffed by members of the Civil Guard and handed over to Moroccan auxiliary forces through one of the gates in the fence. This practice of rejection at the border, or "hot returns", despite being made legal by Final Disposition 1 of the Organic Law for the Protection of Public Safety that amends Additional Provision 10 of the Organic Law on Aliens, has been considered to be a violation of international human rights laws and of European and state law themselves.

Morocco has also been a major beneficiary of public budgets for the development of border control. In October 2005, European Commission Vice-President Franco Frattini announced that the EU would develop policies to help Morocco combat irregular immigration. This aid was to consist of 45 million Euros, in addition to the deployment of Frontex troops to train Moroccan officers in border control strategies at the borders of Ceuta and Melilla. Morocco has now built a border structure consisting of a moat and a palisade, as well as a fence several meters high, using knife wire. This cutting wire is of the type that was installed on the Spanish fences but which was later removed due to the atrocious wounds it causes and which, however is now being installed on the fences of Hungary, Greece, Serbia, Macedonia, Poland, Romania and Turkey, by European Security Fencing, a company from the Spanish group Mora Salazar. This company invoiced 700,000 euros for the installation of the Melilla fence and 405,000 euros for the Ceuta[35] fence. Hungary and Lithuania are literally building walls several meters high with Russia, Belarus and Serbia, and Croatia respectively, under the justification of the "fight against illegal immigration". The EU has not been so divided by fences since

[35]Link: https://www.diagonalperiodico.net/global/31039-gran-negocio-la-seguridad-fronteriza.html

the fall of the Berlin Wall. The fortification of the borders, and their hyper-securitization is in fact becoming a very lucrative business, as evidenced in the Nuremberg trade fair for the manufacturers of fences, alarms and other security systems.

The main clients are both EU and third states, however financing comes largely from the various funds available to the Union for immigration, security and police and judicial cooperation matters. One clear example of this is the External Borders Fund, which was implemented between 2007 and 2013 and financed with 1,820 million euros. The purpose of this fund was to strengthen cooperation between states in border control, whether by improving facilities and operating systems and identity control systems, or by the harmonization and development of Community legislation both within the states and in the consular offices. This fund was followed by the Internal Security Fund, which was created for the 2014-2020 period, with a total of € 3,800 million for this seven-year period; an increase of slightly more than twice the previous budget. The aim of the fund is to implement the Internal Security Strategy, cooperation on the application of Community rules on visas, police cooperation and the management of the Union's external borders. All these funds would be part of the Solidarity and Management of Migration Flows Programme, which would also include, to a lesser extent, funds for integration or asylum, but for which, Spanish governments between 2007 and 2013 have purchased military hardware for the "fight against illegal immigration" to the tune of 155.87 million euros. According to the journalistic research project "The Migrant Files", in recent years the Union has spent 13 million euros, of which 11.3 million have been used to carry out expulsions, 1.6 million has been spent on border control and 6.700 on FRONTEX (1,095 million between 2005 and 2016, with an increase of 6.388% in the last 11 years).

One booming sector is the research and development of programs and patents with applications designed to control human mobility. The ABC4EU (Automated Border Control for the European Union) R&D project, which is aimed at improving automation systems for the border control of passengers at airports announced a funding of 16.8 million euros in 2014. The consortium, led by Indra, consists of 15 partners from European countries. This is essentially what Claire Rodier, the French lawyer of the GISTI (the Information and Support Group for Immigrants) and co-founder of the European network Migreurop, has called "the security economy", in reference to those companies and organizations that profit from increasingly sophisticated devices used to close borders. This author cites the French company Thalès, Italy's Finmeccanica, Spain's Indra, Germany's Siemens, the French-German EADS and Sweden's Eriksson, in stiff competition with America’s Boeing and several Israeli companies. At the end of 2010, the OPARUS project was launched, bringing together Sagem, BAE Systems, Thalès, EADS, Dassault Aviation and several others in the development of a common strategy for the use of drones (remote control aircraft) for the surveillance of land and sea borders. However, the most important thing, as Rodier stated in an interview in *Diagonal* on July 9, 2013, is that "by investing in the market for migratory security, these companies enjoy an ideological climate that has been infiltrated since the beginning of the century in the discourses pronounced by most of the governments in the EU, and by European institutions, and which consists of making immigrants a threat against which it is important to protect ourselves". The criminalization of migrants has been a fundamental step in the business of industrialised migration control.

For some time now, the hyper-securitization of the EU’s borders has led its institutions, with the European Commission at its head, to develop the idea of ‘smart borders’. In

2008, this institution launched an initiative that included the implementation of automated border gate identification controls, increased pre-assessment measures and new databases. This proposal was supplemented by a second, which consisted of a road map for the development of the European Border Surveillance System: "EUROSUR". This system (an heir to the Integrated Surveillance System SIVE, which has been used to control the south-western border of Andalusia and the Canary Islands) adds the use of state-of-the-art radars, satellite tracking systems, drones and autonomous systems for the detection of small boats sailing into EU waters.

However, as the study *Borderline, the EU's New Border Surveillance Initiatives Assessing the Costs and Fundamental Rights Implications of EUROSUR and the "Smart Borders"* (2012) strongly raises, it is not clear that this system has saving lives as its ultimate goal. The Commission has repeatedly stressed the future role of EUROSUR in the protection and rescue of the lives of migrants, but Borderline states that "nowhere in the proposed regulation, nor in numerous R&D evaluations, studies and projects is there a definition of exactly how this might be done, Nor are there procedures established for what should be done with those rescued. The current circumstances of humanitarian crisis in the Mediterranean are more likely to lead to the use of this system to prevent ships laden with people from arriving at European coasts and if they do arrive, return them; than act in cases of boats adrift, shipwrecked sailors or maritime rescue (as would be required by international maritime law) .The limited assistance provided comes from NGDOs, activists and some maritime rescue services that invest their time, money and efforts in rescuing survivors, and already lifeless bodies. And this work is sometimes criticized, (lifeguards, doctors, firefighters, etc.) who have been detained and prosecuted in various parts of the Mediterranean, after being accused of trafficking in persons or "promoting illegal immigration."

This deliberately insufficient aid on the high seas is aggravated when it involves certain political bodies abandoning their duty to provide aid. An example of this occurred on 13 October 2013 when, in the wake of a distress call by a Syrian doctor aboard a drifting, leaking boat, Malta and Italy avoided taking responsibility for organising a rescue for five hours, until the boat sank and 268 Syrian migrants died. However, this was not the last case. Following the tragic accident of a fishing vessel on 18 April 2015, in which more than 800 people died off the coast of Libya, an extraordinary session on migration was convened by the EU Council for Foreign Affairs, in which it was decided to tackle the issue of boats in the Mediterranean through military action: Operation Sophia, which is also known as EUNAVFOR MED. Its purpose has been to implement "measures to identify, find and capture vessels and other elements that are used or are suspected of being used by people traffickers." In other words, instead of focusing their efforts on the rescue of refugees in boats, in order to prevent further deaths, military means have been used to end alleged illegal immigration networks.

This military intervention has not been (nor is it) an isolated fact. Several leading politicians have resorted to the use of different military bodies for the purposes of border control. Spain was a pioneer, when in late September 2005 it deployed some 480 legionnaires and regular soldiers along the border fences of Ceuta and Melilla, in order to stop the various attempts made to cross the frontier barriers. For several months these detachments patrolled the border perimeters, armed with weapons of war. However, it should be remembered that normally the body responsible for border surveillance, on the Spanish side, is the Civil Guard, a police body but of a military character, and on the other side Moroccan auxiliary forces, which are also of a military nature. More recently, and as a result of the arrival of mainly Syrian refugees, many EU countries have used

their armies to monitor, guard and reinforce borders. Thus, as detailed in *Guerras de frontera. Los fabricantes y vendedores de armas que se benefician de la tragedia de los refugiados en Europa* (*The Border Wars Report. Manufacturers and Arms Dealers who benefit from the Tragedy of Refugees in Europe)*, published in 2016 by the Transnational Institute, Stop Wapenhandel and the Delàs Center for Peace Studies, in May 2015, Bulgaria militarized its border with Macedonia. Hungary has passed a law allowing its army to use rubber bullets, tear gas and guns with nets against migrants on its borders; Slovenia, in addition to mobilizing the army, has contracted private security firms to support the border police on its border with Croatia. The Macedonian armed forces used tear gas and stun grenades to arrest migrants and refugees who were seeking to enter the country from Greece. Between 2015 and 2016, Austria deployed five hundred soldiers both on its borders with Slovenia and with Italy, after the closure of the Balkan route. In short, the balance between the reception of migrants and refugees and border control has now taken the latter option, while using one of the greatest expressions of coercive force of the state, the army, as if the issue was one of a military invasion.

"Dirty" control in the hands of others.

In recent years, European policy on border control and the prevention of irregular immigration has opened up a new front, or rather, one that already existed; it has moved the matter beyond the external border: to the countries of origin and to the transit countries that lie outside the walls of Fortress Europe. This is what has been called transnationalization, relocation, or more specifically, the outsourcing of migration control. The aim of this outsourcing of control is threefold. Firstly, it involves curbing irregular immigration by creating a 'pre-brake' zone at external borders. Secondly, given the constant uncertainty generated by the "threats" of globalization, the European Union has set itself the task of creating a security perimeter in its adjoining territories in order to prepare itself in terms of reaction and defence. The third aim is to acquire a presence in strategic locations, either for geopolitical issues or for economic interests.

Although at the beginning of the 1990s several pronouncements were made that linked the European policy of controlling irregular immigration with countries of origin or transit countries, the policy of outsourcing border control began to take shape with the controversial *Strategic Document on Migration and Asylum Policy*. This text, which was drafted in 1998 by the Austrian Presidency of the European Council, sought to transfer in an almost forced manner, a large part of control work to countries of origin. As the text itself states, in order to achieve an integrated approach, "financial assistance should be linked, for example, with visa issues, the attenuation of border controls with readmission guarantees, air links with control regulations at borders, the availability of economic cooperation with effective measures in order to reduce factors of attraction" (1998: 112). Another element of European policy related to the policies of rings, and which places it in the context of the "enemy at the door" is the European Neighbourhood Policy[36]. Launched in 2003 and developed in 2004, the ENP is the instrument through which the EU establishes relations with neighbouring states to

[36] The States that comprise this perimeter are: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Occupied Palestinian Territory, Syria, Tunisia and Ukraine. In 2004, the South Caucasus States sharing maritime or terrestrial borders with countries that were candidates such as Bulgaria or Romania, or eligible to be candidates, such as Turkey and its marine or terrestrial borders, among others, Armenia, Azerbaijan, Georgia and Russia.

"promote economic and social development in transboundary areas; working together to tackle common problems in areas such as the environment, public health and the fight against organized crime; keeping borders efficient and secure; promoting local actions, "from town to town". The Commission Communication of March 2003 on "A Broader Europe: Relations with Neighbouring Countries: a New Framework for Relations with our Eastern and Southern Neighbours". The EU offers its neighbours a privileged relationship in exchange for cooperation, especially in matters such as immigration and asylum. As the Migreurop group denounced, neighbouring states receive financial incentives when progress is made in accordance with Community provisions, if not these funds are recouped or eliminated (2009: 37).

As early as February 2000, the readmission clause (Article 13.5.c.ii) was introduced in the Cotonou Agreement 2000-2005 (former Lomé Convention[37]) at the request of one party (the Netherlands) as a requirement for the renewal of the cooperation agreement. Subsequently, in the preparatory sessions of the European Council in Seville in 2002, the Spanish and British representatives suggested suspending cooperation agreements with the countries of origin and transit and even sanctioning those who did not take an active role in the control of their populations. However, due to opposition to this measure by France, Sweden and Finland, the conclusions of the Seville summit did not expressly include the possibility of sanctions, although the final draft did contain the threat that "insufficient collaboration on the part of a country could hinder the intensification of that country's relations with the Union" (Seville Council of Europe 2002: 11).

A paradigmatic example of development aid that is linked to (or rather conditioned by) immigration management is the first Africa Plan, which was approved by the Spanish Government in May 2006, after the arrival of immigrant rafts on the shores of the Canary Islands from Senegal and Mauritania and the second Africa Plan, for the periods 2009 and 2012. Although these plans were presented with the aim of providing a "global, ambitious and at the same time realistic and determined policy for the sub-Saharan issue" (2006: 6), immigration control is their cornerstone. Prior to 2005, Mauritania and Senegal received less than € 500,000 each in terms of development aid. Although initially this involved material means, such as patrol boats or police agents in cooperation and training missions, from 2006 economic aid began to increase exponentially. This was true especially from 2009, when the Mauritanian authorities received between 10 and 15 million euros per year and the Senegalese government, between 5 and 10 million euros. According to the response of the Spanish Government to a parliamentary question posed by Senator Jon Inarritu of the EH Bildu party. Mauritania has received a total of 108.45 million euros, of which 88.6 million have been earmarked for border control and 19.8 for development aid. In the case of Senegal, Spanish assistance (59.7 million euros in total) has been divided between border control (34.9 million) and development cooperation (24.8 million).

Readmission agreements are one of the counterparts of these development aids (for border control). Two Council recommendations (of 30 November 1994 and 24 July 1995) were the initial rules on which the EU began work on the establishment of a common procedure concerning the guidelines to be followed in the drawing up of protocols on the implementation of readmission agreements. Subsequently, the Laeken

[37] This is a convention on trade and cooperation between the European Union and the countries of the ACP (Africa, the Caribbean and the Pacific). Among the latter are the world's most impoverished countries.

Council Conclusions of 2001, and the informal meeting of the Ministers of Justice and Home Affairs of 2002 in Santiago de Compostela the drafting of common procedural rules in the negotiations of readmission agreements was given continued encouragement.

The aim of this type of agreement is not only the repatriation of irregular migrants to their countries of origin, but also to force the countries with which the agreement is signed to also admit third-country nationals who are considered to have entered Community territory through their own. Thus, in both the bilateral agreements and in the return directive itself, migrants are expected to return, not only to their country of origin, but also to a country of transit or to another third country, enabling these countries to then do the same at a later date. The main consequence of this type of provisions is that it is difficult to monitor the fulfilment of guarantees in the implementation processes used in the application of these measures.

Although there are many examples of bilateral readmission agreements signed between Member States and countries of origin or transit, perhaps the most paradigmatic is the agreement signed on 18 March 2016 between the EU and Turkey. Basically, this agreement consists of "accepting the rapid return of all migrants who do not need international protection and who have passed from Turkey to Greece, and to accept all irregular migrants intercepted in Turkish waters" in exchange for "visa liberalization and accession negotiations "and at least 3,000 million euros of the mechanism for refugees in Turkey". However, both the means, the objectives and the manner in which such an agreement has been developed and materialized cast serious doubts on its legality or compatibility with Community Law. Since its implementation, a number of human rights organizations have documented the conditions under which expulsions or readmissions occur, as well as the lack of procedural guarantees that violate basic rights. What are the criteria that allow some refugees to remain in Greece while others are expelled to Turkey? What are the examination procedures being implemented? What information is being offered to refugees about their rights? What are the effective possibilities for requesting asylum and denial? These were some of the questions posed by the French organization GISTI in its report on the mission to the Greek *hotspots* in 2016 entitled "The Turkey Agreement. EU: the Great Sham.[38]"

In November 2016, various lawyers and human rights organizations backed the presentation of an appeal to the European Court of Justice (ECJ) against the agreement, based on the violation of fundamental rights, as established in the Charter of Nice, the Community and international right to asylum, the principles and values of the EU, such as life, dignity and freedom of movement, in addition to the regulations of Community treaties on the creation and signing of agreements with third countries. This is not the moment for an in-depth analysis, but what can be appreciated, although briefly, is the violation of various international treaties such as the Geneva Convention, with respect to the return of persons to an unsafe country, as is Turkey, with its 79 condemnations from the European Court of Human Rights in 2015, in addition to European Law itself, with regard to that established for the creation of international treaties (Article 216 et seq. on the Treaty on the Functioning of the European Union TFEU). The appeal was lodged by two Pakistani refugees and one Afghan. The request made to the ECJ in the appeals consisted in calling for the declaration to be made null and void and to detain the forcible return to Turkey of those refugees arriving on Greek coasts, as they are people with the right to asylum in the EU.

[38] Link: http://www.gisti.org/IMG/pdf/2016-10_rapport-ue-turquie_light.pdf

The manner in which the ECJ has replied to the appeal has been surprising, if not to say disappointing (Case T-192/16, T-193/16 and T-257/16 NF, NG and NM / European Council) of 28 February 2017[39]: "The EU General Court declares that is does not to possess the capacity to resolve the appeals of three asylum seekers against the EU-Turkey Declaration, which seeks to resolve the migratory crisis" in so far as "this act was not adopted by any of the institutions of the European Union." In the opinion of this court "there are inaccuracies in the identification of the authors of the 'EU-Turkey Declaration' in the press release", given that it is not clear whether it is the EU or its members who sign the declaration. It is from the evidence presented by the European Council that the court concludes that this agreement / declaration has been signed by the states that comprise the EU, in an international meeting parallel to the European summit, and not by this supranational institutional, the European Council, and which therefore falls outside the area of its jurisdiction.

It is even more surprising that, despite a ruling that disassociates the EU with the agreement, institutional representatives, such as Commission spokesman Margaritis Schinas stated "we remain committed to the implementation of the agreement between the EU and Turkey and, as we have said many times in the past, this involves mutual trust and fulfilment, and we hope that both parties will meet their commitments, as it is in the interest and benefit of both of them, and of the Syrian refugees."

Recently the EU has once again taken up the idea of extending the model of the Africa Plans and the agreement with Turkey to all those places that are the origin of the migratory flows or the last countries of transit. In June 2016, the European Commission, through a communication on the establishment of a New Partnership Framework with third countries, framed in the European Migration Agenda, promised to mobilize eight thousand million euros over a five-year period (from, among other funds, The Emergency Fund for Africa) to "achieve short and long-term migration management objectives" through "a combination of positive and negative incentives in EU trade and aid development policies, to reward countries willing to collaborate effectively with the EU in the management of migration, and to ensure that there are consequences for those who refuse to do so."

At the Malta Summit in February 2017, after the meeting of the EU Foreign Affairs Council, the High Representative of the European Union for Foreign Affairs and Security Policy, Federica Mogherini, said at a press conference that the 200 million euro agreement with Libya had been made in order to prevent refugees from moving to EU countries is crucial in preventing deaths at sea, "Our method is to direct the refugee flow. This is not a wall nor is it keeping people away. This is a European method that aims to address a rather complicated issue by giving priority to human rights and the fight against criminal organizations."

The lives of immigrants and refugees is infernal in countries like Libya or Morocco, and even more so in a detention camp in any of these countries. In an interview with the Spanish newspaper *El País* on October 19, 2005, a worker from the NGO SOS Racism described how "Moroccan forces began to deport detainees from near Nador, Casablanca and Rabat to Oujda. Several people from these groups, some of whom were asylum seekers, called me, saying that they were being taken south to leave them in the desert (...) when we arrived at Ain Chuater, on the desert border with Algeria, we saw four groups of buses going south. We followed them, believing that they were

[39] Link: https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170019es.pdf

organizing an even more murderous deportation to the Sahara, because there are many more obstacles there with respect to our own work and that of the journalists. We arrived at Ain Chuater the day they were regrouping to take the Senegalese and Malians to Oujda. From there we stayed in Bir Gandouz [on the border of Western Sahara with Mauritania] in two days at a rate of 2,000 kilometres a day. Now we must continue to look for survivors and dead in the desert."

Another example is the Regane detention centre in Algeria, a camp whose existence has been confirmed by the Nigerian ambassador in Algiers. It was an improvised structure made in November 2000 by the Algerian government to detain 600 sub-Saharans from a shanty settlement in Magnia (also in Algeria), which is a base point from which to enter into Morocco clandestinely, before attempting to reach Europe. These are people "waiting for repatriation", and who have arrived via Mali and Niger, both of which refuse to readmit them, despite attempts by the Algerian authorities to return them. The location of these centres coincides with the former secret detention camps made for fundamentalist prisoners in the 1980s. As the camp is crowded, the authorities "clean" the camp at night two or three times a week: they take a dozen detainees and take them into the desert, leaving them 400 kilometres from the border with Mali. "Algiers is holding 600 migrants in a detention camp in the Sahara." *El Periódico*, 25 February, 2001. Recently, 41 Syrian refugees, mostly girls, children and women, were abandoned in the no-man's land between Morocco and Algeria for more than 40 days without any kind of humanitarian aid.

The outsourcing of borders in Libya, according to reports by Doctors Without Frontiers (DWF), has also led to dramatic consequences such as systematic violence, rape, torture, or mental illness as a result of psychological abuse: "In this prison we were beaten every day, they were very, very brutal (...) the people were sick, but there was no hospital, no doctor to look after them. Some died in this prison. I saw two Nigerians die because they had been beaten too harshly (...) Many women were there too, they were all deported."- Sidi Bilal, 29[40], Libya." According to DWF, these detention centres do not meet the minimum standards of hygiene or habitability, which results in refugees suffering from skin diseases, outbreaks of diarrhoea and respiratory and urinary tract infections. As there is no rule regulating them, there is no ruling on maximum detention periods, and all rights to due process or a defence for deprivation of freedom are simply violated.

Although the New Partnership Framework on Migration with Third Countries of June 2016 prioritizes "ending the business model of human traffickers, who seek to exploit migrants for profit, it is essential to address irregular migration, and the best way to do this is to ensure that the borders are safer and better managed, "it is often border officials who illegally benefit from the refugees' need to cross borders. According to Palestinian artist and director Mohamed Tayeb, who interviewed dozens of Syrians like Khadija on the Moroccan border and in the Temporary Immigrant Stay Centre (CETI) in Melilla to produce the documentary *Exile Home* "They know that refugees are willing to pay whatever it takes to get to Spain, and they try to take advantage of this, sometimes they raise the price by up to 2,000 euros per person, regardless of age, and then share this money with the Nador Border Police. They simply close their eyes or look away for five or ten seconds until the family reaches the border post with Spain." These statements are confirmed by the investigation carried out by the Moroccan Judicial Police against border police who are linked to illegal immigration mafia-style

[40] *Turning a Blind Eye: How Europe ignores the Consequences of Outsourced Migration Management*,

groups in Melilla, and who take some of the money that the Syrian refugees give to these criminal organizations so that they can reach the asylum office in the Spanish city.

In short, the problem with this European outsourcing model (whether we are dealing with Morocco, Libya, Mauritania or Turkey) is that the management of control is left to states, actors and methods that are not always subject to the rules, principles and guarantees that on might suppose a system that abides by the rule of law and democratic apples. In other words, despite the fact that systematic breaches of rights are committed by non-member states, they are directly or indirectly motivated by EU funding, which makes the latter equally responsible for any fatal consequences that may occur.

Once inside, locate and expel (or not).

Recalling what Balibar said about borders and wherever there was a selective control, the term 'border' should be used, we must now pay attention to what has been termed the *internal border*. This refers to those physical and legal mechanisms by which states locate those who have clandestinely entered Schengen territory or who have become "irregular survivors"; they are confined to temporary camps or internment centres and finally they end up being expelled or freed, but with the legal standing of a 'deportable person', i.e., a status of non-belonging, of non-citizenship, from which a severe limitation of rights derives, in addition to an existence that entails a precarious daily life marked by the constant threat of deportation. The number of people in this situation is once again impossible to calculate. However, there are official figures available that may be illustrative. According to data from Eurostat data, during 2016, almost one million (983,860) third country nationals have been found living irregularly in the EU, without losing sight of the 2,136,055 in 2015, 669,575 in 2014 or 505,130 in 2010. In the last five years, almost 6 million people have been intercepted who did not possess the relevant documentation within European territory.

The displacement of people from Greece, Italy, Spain or the Balkan countries to the United Kingdom, Germany or Scandinavian countries (what the European authorities have termed "unauthorized secondary movements") has also led to increased police controls, identity controls and the re-establishment of internal borders between EU countries. Despite the process of eliminating internal borders, the reality is that different internal control mechanisms have been established with the aim of detecting, detaining and expelling those who have entered European territory without permission, or who have exceeded the time they had been allowed to remain therein. These inner controls are mainly implemented through the application of racial profiling, in places such as railway and bus stations, and stigmatised neighbourhoods; places where a high concentration of a certain ethnic group may be expected to be found (international phone centres, markets and mosques, etc.). In late 2010, a joint operation called Hermes was carried out at a European level. The aim of this police operation was to simultaneously coordinate the border agencies of all Member States in order to identify illegal aliens at strategic transport stations. The results of the operation were published by the European Council in the Final Report 17816/10 of 13 December 2010, which stated that between 11 and 17 October 1,900 people were identified as irregulars. As a result of the Rosalind Williams case, an African-American woman who was ordered by the Spanish National Police to identify herself due to her appearance (their actions being made on race-based criteria), the European Commission against Racism and Intolerance

(2006[41] y 2011[42]) and the United Nations Committee for the Elimination of Racial Discrimination (2011[43]) have specifically spoken out on the need to eradicate such policing practices.

In fact, the association of these immigrant movements with various acts of terrorism has increased surveillance and police pressure in certain places and with respect to certain backgrounds. Countries such as Norway, Sweden, Denmark Germany, Austria, France, Malta and Hungary have alleged that threats exist to public safety and public order so as to obtain approval from those Community institutions responsible for authorizing the reintroduction of border controls. However, the trend has been to act unilaterally in order to shortcut the issue and deal with it without delay.

It was mentioned above that several hundred thousand people have been intercepted or detained in EU countries over the last few years, due to their irregular presence in a country. The profile of these people is highly varied, and includes people whose residence permits have expired or who cannot renew them due to the impossible nature of some form of legal requirement (such as lack of work), asylum seekers and persons whose request for protection has been denied, people who, despite having resided in a country for many years, were never able to gain access to a permit, or people who were prevented from entering European territory and are being held at airports or other borders, or in internment centres.

Although they may seem like figures of the past, refugee camps have proliferated in Europe as a result of containment and confinement policies in islands or strategic locations within the EU. Names like Moira Kara-Tepe, Matamados on the Greek island of Lesbos, Vial, Souda, Dipethe on the island of Chios, or Elliniko, Softex, Idomeni and Nea Kavala on mainland Greece. These are just a few examples of camps where thousands of mostly Syrian, Iraqi and Kurdish people fleeing the war - have been crammed together, while awaiting a decision to be made by the European Union to relocate them or deport them to Turkey. Generally, abandoned buildings, stadiums and disused factories, or even fields close to borders, are the places where these camps have been hurriedly put together, sometimes with the connivance or on the direct orders of the Greek authorities, as in the port of Piraeus, in Athens. In all cases, living conditions, especially in the cold and rainy winters, are deplorable.

According to the investigation *Life in Limbo: Filling Data Gaps relating to Refugees and Displaced People in Greece*[44], after talking to the refugees who lived in the Greek camps, the main concerns voiced centred on feelings of insecurity and vulnerability, with limited access to water, electricity and poor tents, while overpopulation is the greatest problem for many camps. The Moria reception centre on the Greek island of Lesbos has room for 1,500 people, but estimates speak of 4,000 inhabitants who are held in this camp alone. This idea of overflow is also reflected in the GISTI report on Greek hotspots, although a special reference is made to asylum applications and the impossibility of offering legal assistance in decent conditions: "The associations in Athens are overwhelmed by the high number of human rights violations already have already been suffered by migrants on mainland Greece, not only in Athens, but also in Thessaloniki and Idomeni, on the border with Macedonia." European asylum

---

[41] Link: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CbC-III-2006-4-ESP.pdf

[42] Link: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-IV-2011-004-ESP.pdf

[43] Link: http://www2.ohchr.org/english/bodies/cerd/docs/co/Spain_AUV_sp.pdf

[44] Link: http://refugeerights.org.uk/wp-content/uploads/2017/03/RRDP_LifeInLimbo.pdf

regulations and the recent amendment of Greek law have led to over 50,000 people being 'trapped' by the closure of the Balkan corridor borders and who must now wait for the 'pre-registration' of their asylum request in Greece, in undignified conditions.

Calais is a town on the west coast of France, a few miles from the UK by sea, and once the site of the European refugee camp *pour excellence*, which has finally been dismantled. For years, thousands of refugees survived in 'The Jungle' waiting, after paying thousands of pounds, to cross the English Channel in the bottom of a truck or a container heading into the UK. The meagre humanitarian aid and the precarious self-administered organization meant that the conditions in this camp too, were also deplorable. In 2015, according to *An Environmental Health Assessment of the New Migrant Camp in Calais*[45] a study undertaken by the University of Birmingham and supported by Doctors Without Frontiers and the Council for Economic and Social Research (ESRC), the camp was in a situation of '"humanitarian crisis", and "below the minimum levels of any refugee camp, "due to overcrowding, insalubriousness, the insecurity of women and children inside, from xenophobic attacks or police harassment on the outside, or the peril of bonfires. In its last year, the French authorities installed about 120 containers destined to provide temporary shelter to a small group of some 50 refugees, although this decision also raised a great deal of criticism. The camp was taken down in the first months of 2016 and its inhabitants were forced out, dispersing throughout France and moving mainly to Paris. Despite this, after the eviction, some refugees stated that "we lived better in the jungle", given that those infrastructures destined to accommodate those who arrived had been reduced to a few bathrooms, toilets and portable urinals, a few water outlets and a complete disregard with respect to the collection of rubbish and waste. According to Refugee Rights[46], many organizations denounced the alarming conditions faced by refugees during the winter of 2016-2017. They faced precarious living conditions and a lack of alternatives to this problem, yet also systematic police violence. "The police are constantly waking up people during the night, and forcing them to move from one part of the city to another. They often use force in the process, and resort to tear gas if people do not immediately comply with their orders. Both during the night and during the day, the police remove the blankets and sleeping bags from the streets and throw them away, regardless of the freezing temperatures out in the open. "Despite the European Return Directive, which aimed to harmonize deportation procedures, the conditions and consequences of detention vary depending on the laws of each state. In Spain, internment takes place in closed centres with a maximum detainment period of 60 days, but in Italy confinement periods extend to up to 18 months. In the United Kingdom, because of its exception to the Directive, a three-year internment period is possible. According to the map drawn up periodically by Migreurop, more than 200 immigrant camps have opened throughout the European Union. Their typology and internal regulations vary from open regime centres to closed centres, asylum centres awaiting resolutions and centres for immigrants awaiting deportation, public centres, which are managed by the authorities themselves, or which are on occasions financed with public funds but managed by private actors. Although, as Migreurop itself warns, "other 'invisible' forms of detention should also be taken into account, such as informal centres where, under the guise of an emergency, the authorities detain those people out of reach of the public sphere, often beyond any legal framework: in reused administrative buildings, police stations, army barracks, stadiums, common prisons, airport and port stays, boat booths or even train compartments are all

[45] Link: http://www.birmingham.ac.uk/Documents/college-les/gees/research/calais-report-oct-2015.pdf
[46] Link: http://refugeerights.org.uk/wp-content/uploads/2017/02/RRDP_LifeOnTheStreets.pdf

used by the National and Border Police[47]." In December 2007, the European Parliament published a report on the conditions of these retention centres for third country nationals (detention camps, open centres, transit centres and transit areas), and paid special attention to provisions and services for people with special needs in the (then) 25 EU Member States. This report gathered information on the 130 sites visited and the needs of people detained in them, which were defined by the concept of vulnerability (punishment, poor legal, social or health care, depression, death or suicide, etc.).

The deaths of Samba Martine, on December 19, 2011 at the Aluche Internment Centre in Madrid, and Idissa Diallo, from Guinea Conakry, on January 6, 2012 or those that occurred at the Zona Franca in Barcelona (among other deaths), marked a turning point in terms of the social perception and the political dimension of the Internment Centres for Foreigners in Spain. In the United Kingdom, according to data from the Ombudsman for Prisons and Probation, as well as the INQUEST inquiry into deaths in immigration centres (IRCs) and Immigration Detention Centres (IDCs), 25 people have died since 2004. In the report entitled *The Hidden Face of Immigration Detention Camps in Europe*[48], the Migreurop organisation responds critically to the evaluation report of the Return Directive, which was published by the European Commission on 28 March 2014[49], given that the report does not take into account the violation of the rights established in the Return Directive when put into practice.

However, despite the cost of internment centres and the detrimental consequences for internees, only a relatively small percentage of them are finally expelled. According to Eurostat[50] data, over the last 5 years, some half a million people have been ordered out of Europe. In 2016, a total of 493,785 people were ordered to leave, mainly from France (81,000), Germany (70,005), Greece (33,790), Belgium (33,020), Italy (32,365) and Spain (27,845), although in previous years Greece had the highest figures, with 132,525 in 2010. However, since 2009, European countries have expelled 17,786 people who were living as migrants in an irregular situation. To do this, they used 58 million euros from European funds. This means that despite their subjection to a process of sanction, detention and a system that imposes the temporary deprivation of freedom, deportation only occurs in a few cases. The 'deportation gap' or the numerical incoherence between those who are 'forced to leave' and those who are actually deported is too great. It is here where the strategy of creating 'deportable persons' as subjects who live under a constant threat comes into play, as was mentioned earlier.

Although in a generic manner, the term 'deportation' is used, expulsion, with all its social burdens, is one more example, not only of the juridical mechanisms made to counteract irregular immigration, but also a symbolic border that, at the same time , serves as a deterrent to unregulated migratory projects and highlights once again the distinction between citizens and foreigners. This is a penalty system that has been specifically designed to punish administrative offenses committed solely by foreigners, given that a citizen would never be interned for an administrative infraction, and much less would they be expelled.

---

[47] Migrant Detention in the European Union: a Thriving Business.
Link: http://www.migreurop.org/IMG/pdf/migrant-detention-eu-en.pdf
[48] Link: http://www.migreurop.org/IMG/pdf/hiddenfaceimmigrationcamps-okweb.pdf
[49] Link:
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com%282014%290199_/com_com%282014%290199_fr.pdf
[50] Link: http://ec.europa.eu/eurostat/web/products-datasets/-/migr_eiord

Each State executes its expulsions in accordance with its legislation, its economic means and its infrastructure and according to the population that it expels. The Return Directive is simply the common framework to which each country adjusts its own measures. Frontex organizes and coordinates expulsions, usually through joint flights, which facilitates both work and expenses for Member States. These deportations are known as Joint Return Operations.

In December 2016, during the height of the German electoral campaign, and after announcing a plan of 'national effort' to accelerate the deportation of those immigrants who had been refused residence, the German authorities deported 50 asylum seekers, whose requests had been denied, to their country of origin. This country was Afghanistan, and it was considered to be a safe country. In November the suggestion had already been made in a parliamentary debate that the new policy of deporting 'failed refugees' could affect 12,500 Afghans. In fact, asylum was denied to 27% of Afghans in 2015, and for the first nine months of 2016 the rate had risen to 46%. But Germany is not the only European country that deports people to Afghanistan. In 2016, 580 people were returned to the country. These deportations, to countries such as Afghanistan, Pakistan, Mauritania, Turkey, Iraq and Ukraine, call into question, on the one hand, the legal concept of what constitutes a 'safe country' in that they are places where there are still outbreaks of war or conflict, and at the same time the principle of non-refoulement, or the non-return of refugees from the country from which they have fled, and which is a maxim of international asylum law.

However, not even EU citizens are not safe from the machinery of deportation. In 2010, both French President Nicolas Sarkozy and the then Italian President Berlusconi (to a lesser extent) were involved in what has to date been one of the greatest challenges to European citizenship: the massive deportation of Romanian and Bulgarian citizens (and therefore Europeans) of gypsy ethnicity, who had been settled in France and Italy, citing exceptional public safety issues. Beyond the political disapproval voiced by other European leaders, and the harsh criticism of Justice Commissioner Viviane Reding, the European institutions never initiated a sanctioning procedure for this breach of Community law, nor did the European Court of Justice sanction either of these two Member States. In theory, mass expulsions are prohibited by international and European law. However, since there is no legal term that defines a mass expulsion in quantitative terms, the only idea on limitation that can be drawn from the norms and treaties on human rights and guarantees is that people should not be expelled as a group, that is, that each subject deserves the right to an individual sentencing procedure where, according to the law, the causes and the decision (based on legal considerations) are provided. The EU-Turkey Agreement provides exactly the framework required for this type of group expulsion to be possible.

According to the data available, in Spain the predominant practice at the moment is to expel increasingly more people in an express manner. An 'express expulsion' (in keeping with Spanish policing terminology) may be defined as a police procedure whereby a foreign person subject to an expulsion order (with or without the application of a final sentence) is detained and expelled in less than 72 hours and without having to go through internment in a detention centre. In this type of expulsion procedure, people no longer are stopped at random or in large-scale police deployment actions, they are rather referred to a police station as a precautionary measure or through regularization procedures, or the police visit the person's home, place of work or education. And in less than 72 hours they are deported to another country. That is, the daily life of the

person in question is curtailed in an extremely direct manner. This system is cheaper than a 60-day internment period in a deportation centre, as the deportee is detained in a police station (without judicial decision having been taken). It is also more effective, as in most cases the expulsion is guaranteed since the procedural implementation takes place within a short term of two or three days, avoiding those delays that legal assistance or the lodging of appeals and precautionary suspensive measures could cause. Express expulsion takes place in police cars that journey to Morocco or Algeria or on pre-established flights. And when faced with the question, how many are there? It is difficult to give a precise number, as this information has not been made public. However, by subtracting the total number of people expelled, plus those deported from internment centres, one would obtain the number of those expelled directly from police stations. According to data provided by the Spanish government in a written parliamentary response to the parliamentary group Amaiur, in 2013 the police carried out 4,726 expulsions from internment centres and 6,462 from police stations. In 2016, of the 7,597 foreigners interned, 2,205 were expelled. However, there have been a total of 9,241 deportations of foreign nationals, according to data provided by the General Directorate of Police to the National Mechanism for the Prevention of Torture. This means that in 2016, 7,036 people were deported directly from police stations within a maximum period of 72 hours.

The European trend is a 'more effective' return policy. This was stated by the Commission in its Communication on a More Effective Return Policy in the EU. A renewed action plan COM(2017) 200 final, 2.3.2017", which states that European legislation allows countries to apply more forceful measures in several areas, such as extending the detainment of certain migrants (such as those travelling under false identities), curbing the misuse of asylum procedures or improving the exchange of information for the purposes of implementing returns.

Conclusions:

The EU (and its Member States), whose principal values are freedom, solidarity and justice, is making an extremely restrictive interpretation of these values in so far as immigration and borders are concerned. We could even be reaching the de facto suspension of the fundamental rights of individuals, who have been rejected because of their nationality, administrative status, or life history.

Although at the beginning of the issue known as the 'refugee crisis' (which is in fact a crisis of Europe itself), the reception policies of some countries were presented by some leaders as a positive development, and in line with European values, over time it was proven that the real intention was to legitimize repressive policies against irregular immigration. To put it simply: 'good refugee vs. bad irregular immigrant'. Moreover, this concept has been increasingly categorized in recent years, not so much in the legal field, but rather in the way it has been handled by the media, and in social terms, a fact that has resulted in the legitimation of practices contrary to international law, and which also run contrary to the interests of refugees; as has been seen in some countries where asylum seekers are interned in detention centres or in the case of the EU-Turkey agreement and its consequences. To put it simply again –'refugee bad, irregular immigrant bad."

The cost in human terms, although it has always been high, is today excessive and dramatic, if not to say inhumane. A deal that exchanges the maintenance of border strategy policies for actions that violate rights as fundamental as those of life, physical

integrity or human dignity is meaningless from an ethical point of view. The economic cost of detention and deportation mechanisms has no other meaning than the construction of legal categories that are attributable to immigrants and refugees whose sole purpose is to be used a ‘reserve army’ in a neoliberal economy where the labour force must be made to live in precarious conditions by necessity. Furthermore, exorbitant sums invested in the control and expulsion of immigrants encourage companies and investment funds to exert pressure on the ruling elites in order to focus their policies on increased spending and investment in increasingly sophisticated frontiers, that are both militarized and disseminated.

And this trend towards hyper-securitization is solely taken on by the population at large through a discourse of fear, uncertainty and threat. I have already said that there is a need for a debate on how the European Union, with the cooperation of its Member States and third countries, has implemented migration policies based on the construction of the migrant in the popular imagination as a ‘barbarian’, as someone who is ‘uncivilized’. To this end, EU border policies have reinforced an argument that has so often been repeated by social movements and activists: the EU, beyond its discourse of the consecration of universal human rights, has constructed an immigration system against perceived threats (mainly from Muslim countries), its policies are implemented on the basis of categorization of legal personality, post-colonial practices, outsourcing, privatization and the selection of a migrants' origins. The European immigration system, which is also applicable to other contexts, such as the United States or Australia, is becoming an increasingly disciplined structure with the aim of governing the mobility of all mankind.

4. EUROPEAN UNION POLICY ON ASYLUM AND IMMIGRATION. THE CONSTRUCTION OF AN EXCLUDING EUROPE.

Speaker: Patricia Bárcena García

Lawyer.

By reviewing the legal instruments that the EU has been approving over the last few years we can explain why people have to risk their lives to reach Europe. There are no other options.

The **Schengen Agreements**[51] were the first step in **the progressive construction of a united Europe without internal borders that favoured the free movement of European citizens while selectively limiting access to the EU for people from third countries.** Not all of them were interested in it or continue to be interested. Since its inception, the EU policy on immigration has had a short-term and mercantile vision.

The construction of this space of freedom for some people [52]required protection and "control" from the arrival of "the others", which is how **the construction of fortress Europe was initiated through policies for the outsourcing of borders and the generation of two categories of citizenship (European and the rest).**

At the same time, within the category of non-EU citizens, **other subcategories** were promoted: refugees, migrants by regular routes and those who migrated by irregular routes. Gradually **deconstructing the concept of "every person" having the rights and freedoms** proclaimed in Article 2 of the Universal Declaration of Human Rights (UDHR), without distinction of any kind such as race, colour, sex, language, religion, political opinion or any other nature, national or social origin, property, birth or other status. **At the same time, a criminalised image was constructed** of who could reach Europe by irregular routes, who resides without documentation, or who loses it (the subject without rights - expellable)**.**

This exclusionary configuration has been the source of the current Europe divided among those who proclaim the protection and guarantee of human rights and those who identify the arrival of people from third countries as a threat to their national identity, their security and their well-being.

Asylum and Immigration Policy was not a priority in the 1990s. It was border control in immigration policy and the slow construction of a common asylum system that was primordial.

Until the signing of the Treaty of Amsterdam in 1997, the EU Member States continued the theme of visas, asylum and immigration as matters of common interest, but within the own jurisdiction of each one of them. However, since the entry into force

---

[51] The first Schengen agreement dates back to the year 1984, when Germany that proposed France sign a bilateral agreement to ease the control of its shared border (13 July 1984). Subsequently, the Benelux countries were incorporated into this agreement, and on 14 June 1985 the Schengen Agreement was signed. With this agreement, the signatory States undertook to gradually implement the abolition of controls on their common borders. After five years, on 19 June 1990, the five countries signed the Schengen Implementing Convention, which was operational from 1995. During the years following the signing of the agreement, five other countries (Spain 1991, Portugal, Italy, Greece and Austria) joined it.

[52] Art.3.2. Treaty of the EU: "The Union shall provide its citizens with an area of freedom, security and justice without internal borders, in which the free movement of persons is ensured together with appropriate measures for the control of external borders, asylum, immigration and prevention and control against crime".

of this Treaty in 1999[53], the Council of the European Community was required to approve within five years the measures to be taken in accordance with Community immigration and asylum policy, including: conditions for entry, residence, procedures for obtaining visas to reside in Europe and the conditions for the transfer of residence from one State to another. And, for this, adopting the measures to deal with illegal immigration.

It was then at the **Tampere summit** in **1999** that **the basic points** on which this common policy was to pivot around were agreed upon, which continue today with slight modifications:

1. **Collaboration with the countries of origin**, which resulted in the signing of agreements aimed at curbing migration (both of national persons and those in transit) and facilitating the readmission of persons returned or expelled.
2. **Creation of a common asylum system (SECA),** which was shaped by the adoption of Directives, and which more than fifteen years later is undergoing a thorough review.
3. **Fair treatment of third-country nationals** residing legally in the territory of its Member States. Thus, excluding from this the possible equalisation of those who reside irregularly in the country with the rights and obligations with the citizens of the European Union. And opening them up to discrimination and exclusion.
4. **Management of migratory flows**. It focused more on control than on migration management.

This first Tampere program (**1999-2004**) was subsequently replaced by the **multi-annual program (2005-2009) in The Hague** where new priorities were introduced to strengthen the "space of freedom, security and justice" related to security and the prevention of terrorism.

After ten years in which, despite the adoption of a set of asylum and immigration directives, the Member States had not transposed these into their domestic legislation or had done so only in part, the Treaty on the Functioning of the EU entered into force **(Treaty of Lisbon)**, which changed the legal and institutional framework. <u>It went from being a policy of minima to a common policy</u>[54].

The European Council meeting in **Stockholm** laid down a new road map for the period **2010-2014** and, despite having a unique opportunity to advance a coherent and respectful human rights policy of the EU, the only standards secured were those aimed at encouraging return[55], criminalising solidarity, the so-called "package on illegal aid to

[53] The Treaty of Amsterdam modified Title IV of the Treaty on the European Community and these matters came under the jurisdiction of the Union (Art. 63).

[54] **Article 78 TFEU** established a legal basis for developing a "common policy" in asylum and advocated the creation of a "uniform status" of asylum and subsidiary protection valid throughout the Union. It also gave a legally binding character to the Charter of Fundamental Rights of the European Union (Art. 18) and extended the jurisdiction of the Court of Justice of the European Union (CJEU) in matters of immigration and asylum.

[55] The 'Return Directive' (2008/115/ EC) provided for common Union rules and procedures for the return of illegally staying third-country nationals.

irregular immigration"[56], and punishing those who employ citizens in an irregular situation[57].

It is true that labour was needed, but not just any labour**. It was the market, once again, that set the guidelines. Not people.** For this reason, only the arrival of a select few was favoured: those that were highly qualified (who were awarded a blue-EU card)[58], those who did the work and then returned (temporary[59]) or those that the companies and multinationals wanted to transfer to their branches and subsidiaries located in the EU to occupy managerial and specialist positions[60]. The rest were restricted entry, even hindering family reunification.

In the area of asylum, a new SECA was proposed with the aspiration, as explained on numerous occasions by the then European Commissioner for the Interior, Cecilia Malmström, to create a space of protection and solidarity for the most vulnerable.

A space that facilitates access to the asylum procedure for those in need of protection, allows more equitable, expeditious and sound decisions, assures those who fear persecution that they will not be returned to the situation of danger and, finally, provides decent and acceptable conditions for both asylum seekers and beneficiaries of international protection within the Union.

The current SECA is composed of: The Procedures Directive[61], The Reception Directive[62], The Directive for Requirements on Recognition[63], The Regulation of the Eurodac Database[64] and the Dublin Regulation[65] and was expected to be fully

---

[56] Directive 2002/90/ EC established a common definition of the offence of assistance to unlawful entry, movement and residence, and Framework Decision 2002/946/ JHA imposed criminal sanctions on such conduct.

[57] Directive 2009/52/ EC specified the penalties and measures applicable in the Member States to employers of illegally staying third-country nationals.

[58] Directive 2009/50/ EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

[59] Directive 2014/36/ EU, adopted in February 2014, regulated the conditions of entry and residence of third-country nationals for employment purposes as seasonal workers.

[60] Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in intra-company transfers.

[61] Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for the granting or withdrawal of international protection (new version) (applicable from 21 July 2015).

[62] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down rules for the reception of applicants for international protection (new version) (applicable from 21 July 2015).

[63] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 laying down rules on the conditions for the recognition of third-country nationals or stateless persons as beneficiaries of international protection, on a uniform status for refugees or persons entitled to subsidiary protection and on the content of the protection granted (new version) (applicable from 21 December 2013).

[64] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of the Eurodac system for the comparison of fingerprints for the effective implementation of Regulation (EU) No 604/2013 laying down 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 by a stateless person, and for comparative applications with the Eurodac data submitted by the Member States' security services and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (new version) (applicable from 20 July 2015).

[65] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 laying down the criteria and mechanisms for determining the Member State responsible for examining an

operational in the second half of 2015, when all the Directives were transposed to all EU Member States (June 2015).

Following the Stockholm Program, the European Council defined[66] the directives that in the next few years **(2014-2020)** was to guide the transposition, implementation and **consolidation of existing legal instruments and measures**, emphasising the need to optimise the benefits of legal migration, combat irregular migration and efficiently manage the borders. Offering protection to whoever needs it through a system (the SECA) that, due to its failure, is in the process of being revised.

Conformation of the Spanish regulatory framework and its adaptation to Union policy.

The first normative reference concerning foreigners in Spain, it picks up on the Spanish Constitution of 1978, when indicating in its articles: 13.1. *"Foreigners shall enjoy in Spain the public freedoms guaranteed by this title in the terms established by the Treaties and the Law" and* 13.4.: *"The law will establish the terms in which citizens of other countries and stateless persons may enjoy the right of asylum in Spain."*

That same year, Spain adhered to the 1951 Geneva Convention and the New York Protocol of 1967. However, it was only in 1984[67] that the first law on asylum in Spain was approved to respond to the arrival of a migrant population mainly made up of refugees who had been fleeing the dictatorships of the southern tip of Latin America: Chile, Argentina and Uruguay.

A year later, in 1985, the first Law of Aliens was passed[68]. At that moment, immigration was practically imperceptible, but the imminent entry of Spain into the European Economic Community (that was to take place in 1986), imposed the necessity of introducing these regulations into our legal framework. Its main objective was therefore to regulate (control) the entry of people into Spain, and establish a sanctioning regime to penalise the non-compliance of those entry rules. It contains no objective of an integrative nature**.**

The economic growth of the country, and the need for labour, make Spain an attractive destination. But, along with economic growth, the pressure that Europe exerted on us grew (we were already beginning to be attributed the responsibility of being "Europe's southern border"), and this consequently led to changes. In 1991, the agreement to abolish visas with Morocco was cancelled, we began talking about flow control, and we looked at immigration from a growth-threat perspective. We adopted the European discourse but our reality required responding to the arrival of people who obtained a job in our country and those who remained to reside in it irregularly; for this reason, a parliamentary approval procedure was approved[69] through a proposition, not a Law.

In 1994, the Law regulating the Right of Asylum was modified, under the premise that it was being misused by economic immigration. It began to speak of "abuse of asylum" and the figure of the foreign person, who threatens - who abuses the right - and who uses irregular routes of arrival to the country, began to be built around the image of

---

application for international protection lodged at one of the Member States by a third-country national or a stateless person (new version) (applicable from 1st January 2014).

[66] Conclusions of 26 and 27 June 2014: 'the strategic guidelines for legislative and operational programming in the area of freedom, security and justice'.

[67] Law 5/84 of 26 March, regulating the right to asylum and refugee status.

[68] Organic Law 7/85, of 1st July, on the rights and freedoms of foreigners in Spain.

[69] In the regularisation of the year 1991, 108,320 people obtained permits to reside or work in our country.

people arriving from sub-Saharan Africa. Due to the reform, Spain went from having about 15,000 asylum applications a year, to having only 7,000. A figure that gradually decreased in successive years, until 2015.

During the following years the growth of the migrant population was even greater. We still needed workers but people came, and the Law of Aliens did not provide answers to the new social reality.

There was only a brief time when the legal framework put people and their rights above control. In 2000, with an almost global consensus between parties and social movements, the Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration[70] *was discussed for the first time. Any hint of progress in the recognition of rights was, however, tarnished in a few months, since the Government majority of the Partido Popular reformed it before it was even a year old.*

At this time, this same Law has been reformed on ten occasions[71], which reflects the political and self-interested use that, throughout these years, has been made of migration and the rights that should protect migrants.

The restrictive measures taken to control migration do not consider human rights and their impact on the people applying for international protection.

Spain decided to continue to impose visas on countries with which it has historically maintained special relations; initiated with Morocco in 1991 and Peru, the Dominican Republic (1993), Cuba (2002), Colombia (2002), Ecuador (2003) and Bolivia 2007). For example, in the case of Colombia, a country immersed in a civil war for half a century, the 2,532 people who came to Spain to apply for protection in 2001 went down to 1,065 in 2002 and 752 in 2008. Nonetheless, at the same time, European countries, aware of the violence that was striking the country, issued declarations of solidarity or condemned the attacks and kidnappings that occurred daily in Colombia.

The construction of walls and barriers also began to prevent the arrival of people regardless of the reasons why they had had to leave their countries. An investment of 33 million Euro in wire with prongs six metres high was made to render the border perimeters of Ceuta and Melilla impermeable. A height that was doubled between September and November of 2005 due to the crisis unleashed in August and September of that year when more than 700 unarmed sub-Saharans tried to enter Spanish territory from the Moroccan border. Many of them were shot by Moroccan surveillance personnel; there were hundreds injured and at least fourteen people were killed by Moroccan police firing, not counting reports of unusually violent treatment at the hands of the Spanish authorities.

---

[70] Organic Law 4/00, of 11 January.

[71] MODIFICATIONS INTRODUCED BY **ORGANIC LAW 8/2000,** OF 22 DECEMBER (*BOE [Boletín Oficial del Estado] (Official Spanish Gazette) No. 307, of 23 December. Correction of errors in BOE No. 47, dated 23 February 2001*), BY **ORGANIC LAW 11/2003,** OF 29 SEPTEMBER *(BOE No. 234, of 30 September),* BY **ORGANIC LAW 14/2003,** OF 20 NOVEMBER *(BOE No. 279, of 21 November)* **,** BY **ORGANIC LAW 2/2009,** OF DECEMBER 11 *(BOE No. 299, of December 12),* BY **ORGANIC LAW 10/2011**, OF 27 JULY *(BOE No. 180, of 28 July),* BY **ROYAL DECREE-LAW 16/2012**, OF 20 APRIL *(BOE No. 98, of 24 April),* BY **SENTENCE 17/2013**, OF 31 JANUARY, OF THE CONSTITUTIONAL COURT *(BOE No. 49, of 26 February),* BY **ORGANIC LAW 4/2013**, OF 28 JUNE *(BOE No. 155, of June 29),* BY **ORGANIC LAW 4/2015**, OF 30 MARCH (*BOE No. 77 , of 31 March*), FOR **SENTENCE OF THE SUPREME COURT OF 10 FEBRUARY 2015** *(BOE No. 119, of 19 May)* AND BY **ORGANIC LAW 8/2015,** OF 22 JULY *(BOE No. 175, of 22 July).*

The EU Member States subsequently followed in the wake and built more than 235 km of fences at the EU's external borders, which cost over EUR 175 million.

During 2006 the so-called "crisis de los cayucos" *["crisis of the canoes"]* was unleashed. 39,180 people arrived at our coasts, 31,678 at the Canary Islands and 7,502 at the Peninsula and Baleares. It is not known how many perished. In view of these events, European deployment was reinforced, 12 million Euro were invested in the device Frontex (in 2008, 24 million were invested) and SIVE was extended to the Canary Islands coast. In short, the surveillance systems were tightened to ensure the interception of canoes on the high seas and to force their return. At the same time, the diplomatic offensive intensified, bilateral cooperation agreements increased [72] and controls were strengthened in the countries of origin or transit.

When the increasingly complex migratory trajectories are made by women, they are deeply affected by physical and sexual violence, mainly in border places. Also by its invisibilisation. Already in 2014, from CEAR-Euskadi it was denounced in the report *"El camino sin fin; huellas de Mujeres en la Frontera Sur" [The road without end; traces of women on the southern border]* the systematic violations that these women, victims of mafias crossing Africa to Spain, suffered and still suffer, their situation of invisibility and their extreme vulnerability. Women, among which more and more children, are being exploited by trafficking networks for sexual exploitation.

The only way to demand international protection in Spain without reaching the territory is through embassies or consulates, an option that since 2009 has disappeared since the current legislation regulating the Right of Asylum and Subsidiarity Protection only provides for the possibility of applying for a visa with the aim of being transferred to Spain to request protection, leaving the procedure to continue a regulatory evolution that has not taken place even seven years after the entry into force of the Act.

The SECA, a failed common system. Reactionary nationalisms.

Increased population movements and the arrival of people in Europe for protection have highlighted the weakness of the system at a time when a rapid response to an emergency situation is required.

Although, as we have seen, there has been a period of twenty years over which a whole set of rules were complied with, which aimed at a common project exceeding the limits of the Nation-State, there have over the years been opposing signs of reaction in which the States have been looking out for their interests alone, and which has now been clearly brought into evidence.

The 1990 **Dublin Convention**[73] **(and its subsequent amendments, Dublin II and Dublin III) does not meet current needs**[74] because it was not created with the aim of watching over refugee people and redistributing responsibility for their reception in an equitable manner (although it does make some provision in this regard), but rather of determining which State is responsible for examining each request based on criteria.

---

[72] Bilateral agreements with third countries (Senegal, Gambia, Cape Verde, Mauritania, Morocco, Mali etc.) with material, economic and human support in order to control the departure from their own coasts and for the repatriation of irregular migrants.

[73] Spain ratified the 1990 Dublin Convention in 1995.

[74] POR QUÉ DUBLÍN "NO FUNCIONA" *[WHY DUBLIN "DOES NOT WORK"]* Blanca Garcés-Mascareñas, Associate Researcher CIDOB and member of GRITIM, Universitat Pompeu Fabra.

In the 1990s, asylum concerns did not arise due to the number of people who could reach European countries for protection (the threat of arrival of people was still far away, in developing countries) but due to the fact that whoever arrived in Europe could ask for asylum in different European countries or even that they could choose the country where to do that. The Dublin Convention thus established as the main criterion that a request for protection should be made in the **first country of arrival** (thus avoiding asylum shopping and "refugees in orbit").

This criterion has had dire consequences for border states who have seen the responsibility disproportionately fall on them. And although the Geneva Convention lays down in its preamble the principle of international solidarity when the granting of the right of asylum is excessively "burdensome" for a State, this principle has not been applied. (In 1994, after receiving 460,000 asylum applications, mainly from people fleeing the Bosnian war, Germany proposed the distribution of asylum seekers that took account of the size of the country, the population and GDP). The proposal was rejected, mainly by France and United Kingdom).[75]

On the other hand, at certain times some of the States through which people entered seeking protection preferred not to identify them in order to avoid having to bear the costs of this process. (It is worth recalling the conflict that arose between Italy and France in 2011 with the arrival on the Italian shores of more than 26,000 former North African people whom Italy had let freely circulate in the absence of support from the rest of the State Members, and that was settled with the request of the leaders of both countries for the revision of Schengen.)

And finally, another issue that undermines Dublin is that not all States are prepared to guarantee the reception of persons seeking international protection. The situation in Greece and Italy made this clear recently. But before that, Greece had already been convicted by the European Court of Human Rights (ECHR) since the conditions offered to asylum-seekers did not meet minimum requirements and were considered degrading treatment. In fact, the ECHR condemned Belgium for attempting to transfer an asylum seeker to Greece.[76] Since then the application of the Dublin Convention has been suspended in the Hellenic country.

However, those who are suffering more burdensome consequences is the people who are seeking protection. Although the existence of relatives in another State is a priority for the place of entry, in practice hundreds of families are separated by lack of coordination of information, lack of agile regrouping procedures, or lack of practice in the transfer of responsibility. While the husband is in Finland with refugee status the wife has been relocated in Spain - and no one knows how many months it will be necessary for the couple to be able to meet legally and both keep refugee status.

Neither the procedure nor the reception nor the guarantees of obtaining a statute are common. Differences in national asylum regulations are evident. Many people applying for protection know this and logically do not want to go there where rights are not respected. Sometimes they refuse to be identified.

---

[75] ICMPD: An Effective Asylum Responsibility Sharing Mechanism.
Link: http://www.icmpd.org/fileadmin/ICMPD-website/ICMPD_General/Publications/2014/ICMPD_TP_Responsiblity_Sharing_October_FINAL.pdf

[76] M.S.S v. Belgium and Greece, application number 30696/09, European Court of Human Rights, 21 January 2011.
Link: http://www.unhcr.org/refworld/docid/4d39bc7f2.html

The imbalance in the number of applications for international protection and the **differences in grant rates** between the countries of the European Union are symptoms of the stagnation of the common asylum policy.

In 2016, Germany processed 745,265 applications for protection, while, for example, Spain, being the European frontier in the south, processed 15,755 applications, barely 1% of the total. Requests have dropped alarmingly in Melilla, there were only 2,440 applications for protection in 2016, less than half that of last year, and there were barely 220 requests in Ceuta (border enclaves with Africa).

The percentage of concessions in Germany and Sweden is 68% compared to 8% in Hungary or 32% in France and England. Spain is one of the countries where protection is more difficult to apply for.

The effectiveness of the rights of applicants throughout the international protection procedure, the quality of decision-making and the reception conditions are very disparate between the various States, being, in some cases, beneath international and European standards.

For example, in Malta, any foreigner without a visa, asylum seeker or not, may be held in prison for up to eighteen months. Prior to the entry into force of the Return Directive, this time was unlimited.

Greece was summoned by the European Commission on 10 February and 15 June 2016 by two Recommendations to deal with serious shortcomings in the asylum system and with a view to the resumption of transfers under the Dublin Regulation. Deficiencies such as that of 8 December 2016 [77] continued to persist mainly in the legal aid system, in guaranteeing effective judicial protection to appeal against denials of international protection, and in the protection and reception of unaccompanied minors.

The deadlines for processing an application are different in each State and the rights to which the person has access during processing also differ.

Nor have the States so far guaranteed a coherent and gender-sensitive treatment of women seeking protection in Europe. Nor do they provide favourable treatment to the most vulnerable people (minors, persons with disabilities, victims of trafficking)

In Spain until June 2016 there were scarcely six women who were granted protection for being victims of trafficking for sexual exploitation, and it is not yet possible to know the data on gender-based protections since the data are not disaggregated. Nor is it known what/how is the most favourable treatment that must be granted in the procedure to the most vulnerable groups because it has to be defined in the longed-for regulations for the development of the Law.

Xenophobic and racist movements are resurfacing in some European states in the various electoral campaigns with results that are concerning in all cases.

Some of the measures that have been proposed such as measures to control refugees directly affect dignity, and others are aimed at limiting fundamental rights such as family life or freedom.

Denmark has carried out a legislative reform that allows the Government to expropriate from refugees their assets and money to finance their stay, as Switzerland already does. The police will confiscate any amount over 10,000 Danish crowns (1,340 Euro), as well

[77] Link: https://www.boe.es/doue/2016/340/L00060-00071.pdf

as valuables, except those with "special affective value" such as wedding bands. And it has also hardened family reunification.

In Germany, according to data from the Federal Office of Criminal Investigation, there were 163 violent attacks on refugee shelters in the country in 2015, almost six times more than in the previous year.

In the United Kingdom refugees claim to have been victims in their homes, identifiable by the colour of the doors, xenophobic attacks with the launching of dog excrement, eggs, stones and even with logos of the far-right National Front party.

Austria has followed the wake of so many other European states (Spain leading) and has built barriers to stop the arrival of people, 3.7 kilometres long, in the south of the country, on the border with Slovenia.

Sweden, the home country for refugees, par excellence, said last year that it could no longer accommodate more people. For the first time since 1950 Stockholm has imposed controls on the border.

Xenophobic attacks have also grown and an anti-refugee sentiment is beginning to gain ground, according to Human Rights Watch.

For more than 15 years the European Union has been unable to comply with its own standards and has converted the right to seek protection from a fundamental right recognised in the EU Charter of Fundamental Rights, into a true luxury within the grasp of very few people.

The EC has now opened **40 infringement proceedings** against several Member States for failing to fully implement the SECA legislation.

The failure of the Relocation and Resettlement agreements.

In response to the increase in the arrival of people seeking protection in Europe, the European Commission on 13 May 2015 adopted the European Migration Agenda, which resulted in the adoption of two packages of measures in late May and early September.

Among its proposals were the **relocation** of asylum seekers from Greece and Italy and the **resettlement** of refugees from third countries. In July, the States pledged to relocate 32,256 asylum seekers from Italy and Greece, with a commitment of reaching 40,000 in December, according to the European Commission's proposal.

In September, pressured by public reaction and indignation, they accepted the relocation of 120,000 asylum seekers from Italy and Greece. Although, in the Commission's initial proposal, Hungary was to be a country from which asylum-seekers would be relocated, its Government rejected the final scheme adopted by the Council.

For this reason, out of the 120,000 relocated agreed, 54,000 remained pending reallocation among the receiving states. As far as resettlement is concerned, only the first agreement included the commitment of States to this mechanism and the resettlement of 22,504 refugees, mainly from North Africa, the Middle East and the Horn of Africa was approved.

The **relocation** and **resettlement** programmes have failed. At the beginning of June 2017, only 20,327 people had been relocated.

Spain has promised to relocate 15,888 people up to September 2017. In particular, 9,323 should be arriving from Greece and Italy, and the origin of the remaining 6,600 refugees is still awaiting determination. So far, 886 people have arrived. A trickling welcome.

In the cases of the Czech Republic, Hungary and Poland, the Commission has initiated disciplinary procedures against these for breaching their obligations under the Council Decisions on relocation in 2015. Despite repeated appeals by the Commission, these three countries continue to breach their legal obligations and have disregarded their commitments to Greece, Italy and other Member States.

In the resettlement program, out of the 22,504 persons with refugee statuses in third countries that the European Union has undertaken to accommodate, only 16,163 have been transferred to community soil.

Spain pledged to resettle 1,449 people. As of 5 June 2017, they have only transferred 418 people.

These extraordinary reception mechanisms could have been a starting point for relying on a Europe that really guarantees the rights of people, just and in solidarity. However, this reaction, rather than an act of responsibility, more resembled an auction of people accompanied by a policy of return that was effective and harmful to people.

Investing energies in securing the support of Jordan, Lebanon and Turkey, which are countries under greater migratory pressure, so that they would control the departure of people. And reinforcing naval operations to avoid the transfer of people, not to save lives.

Undoubtedly, where the failure of a European policy that respects human rights legislation and prioritises care to people has been the most palpable has been the signing of the agreement between the EU and Turkey. There is no doubt that the main objective of the European Union is to curb the arrival of refugees and migrants and in order to achieve this, it has not hesitated to associate itself with a country such as Turkey, which will receive compensation of 6,000 million Euro, visa liberalisation for its citizens, and the reopening of negotiations for its future accession to the EU.

An agreement that CEAR has denounced to the European Commission, to the European Commissioner for Human Rights and to the European Ombudsman to demand its withdrawal, with the support of more than 300 social organisations and more than 11,000 citizens who believe in Human Rights and do not want to be accomplices to barbarism.

The proposals for reform of the SECA, a new threat to international protection.

A further twist in EU policy.

Drawing on the need to create a system that was *"more equitable, efficient and sustainable"* (even using arguments very similar to those alleged by Cecilia Malmström at the time) the European Commission submitted on 6 April 2016 a communication[78] to the Council and Parliament with proposals for the reform of the Common European Asylum System, which, once again, seems to be aimed more at prioritising the interests of States and the Union rather than ensuring the fulfilment of the obligations relating to the right of asylum and international protection.

On **May 4, 2016**, the first phase of the reform began:

[78] Link: Https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-197-EN-F1-1.PDF

- New Version of Regulation of Dublin III laying down 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 a stateless person (new version):
    - Strengthening the effectiveness of the system by determining a single Member State responsible for examining applications for international protection.
    - Establishing a more equitable system of distribution through a corrective mechanism that will automatically detect if a Member State faces a disproportionate number of asylum applications.
    - Providing a clarification of the obligations of asylum seekers in the European Union, as well as the consequences of non-compliance with those obligations.
- Modifying the Eurodac Regulation so that it adapts to the modifications of the Dublin system and ensure its proper application.
- Strengthening the mandate of the European Asylum Support Office (EASO) by making it a genuine European Asylum Agency.

And on **13 July 2016** the European Commission agreed to complete the second phase to:

- Replace the Asylum Procedures Directive with a Regulation: reduce procedural deadlines, establish common guarantees, combat abuses, and establish the definition of safe countries.
- Replace the Qualification Directive by a Regulation: achieving convergence of recognition rates, punishing secondary movements, equating the duration of protection time, and establishing incentives for integration.
- Reform the Reception Directive: with a view to establishing dignified and harmonised reception conditions throughout the EU.

The main threats of this reform such as CEAR has included in its report "Cinco puntos críticos de SECA" *[Five critical points of SECA]* [79] revolve around:

1. **Penalising secondary movements.** Since it limits the possibility that people can move to another state, and even penalises them. Freedom of movement is reduced. They will not be able to choose.

   States will even lose the possibility of deciding for themselves whether they assume responsibility for an application.

2. **Guaranteeing the rights of asylum seekers and refugees is reduced**. Since limitations are introduced on fundamental rights such as free legal aid or the right to life in the family.

3. **Lack of protection of people in situations of vulnerability,** since there is no progress in improving information between States or in taking measures to provide special care to the most vulnerable.

4. **Application of restrictive concepts and criteria.** Of particular concern here is the possible automatic application of concepts such as "safe third country", "first country of asylum", "safe country of origin" or "safety hazard", as they may lead to

[79] Link: Https://www.cear.es/wp-content/uploads/2017/03/CINCO-PUNTOS-CRITICOS-SECA.pdf

the total impossibility of requesting protection or the systematic denial of applications.

5. **Barriers to reception,** through the extension of detention cases, the introduction of indeterminate concepts such as "dignified standard of living" or "risk of flight".

   And the incorporation of a corrective mechanism activated once the capacity of reception has been surpassed by 150 %, whereby States can detach themselves from it for a fee.

Conclusions and Claims:

- Over the last twenty years, in the construction of the European project, the Europe of freedoms, space of freedom, security and justice has prioritised the control, security and well-being of citizenship that is not inclusive but exclusive.
- The strategy of classifying people into refugee, migrant, legal or illegal categories perverts these concepts, gradually empties them of content and nullifies a serene debate on the right to migrate and the right to seek protection.
- The enormous production of standards has failed to establish a common asylum and migration policy that prioritises human rights and protection mechanisms (both ordinary and extraordinary). The legislator has prioritised this perspective. The principles and values that underpin the Union run the risk of collapsing along with the European project.
- The outsourcing of borders favours the death of people at sea and in the desert. Violence against women on migratory routes is a constant. Failure to adopt safe routes of access and access to the destination favours the actions of mafias and the impunity of violence.
- European action with regard to third countries cannot be limited to conditioning cooperation on border control; it is necessary to work on the causes of displacement from the standpoint of responsibility and rigour.
- Faced with the increase in requests for international protection from people arriving from countries in conflict or where it is believed that human rights are being violated, the concession rates have not exponentially increased. In 2015 more than half of the applicants came from Syria and Ukraine.
- The construction in Spain of a policy of asylum and immigration from the concept of invasion and threat has succeeded in legitimising restrictive policies, which violate human rights and pave the way for discrimination and xenophobia; movements that are already seeping through in other European countries.
- No extraordinary measure of protection or welcome will be effective if there is no political will to implement it.

We therefore REQUIRE/DEMAND:

- A reflection on the concept of citizenship, content and scope so we can move towards the recognition of all people having the same rights and obligations.
- A rigorous debate on displacements (voluntary or forced) from a human rights approach and their integral protection, whether they are political, social or cultural rights. The various instruments of protection, scope and content.

- The incorporation of a human rights approach into the policies of the European Union, as part of the new regulatory framework. The recovery of the foundational values and the creation of a true space of freedom and protection for all people.
- The elimination of bilateral agreements with countries that violate the rights of migrants.
- The opening of humanitarian corridors, issuance of visas at embassies and consulates, compliance with relocation and resettlement commitments, and adaptation of other alternatives that favour safe access routes to protection.
- The end to illegal returns on the borders of Ceuta and Melilla.
- The development of the Law on Asylum and Subsidiary Protection from a gender perspective, which incorporates agile, guaranteed procedures and in keeping with the vulnerability of each person.
- The adoption of measures of integration and generation of coexistence with equal rights, to prevent xenophobia and hate crimes.
- The immediate approval of the Regulations for the development of the Law on Asylum and Subsidiary Protection after more than seven years of delay.

5. THE DANGER OF THE UNIQUE STORY. TRANSVERSALISING THE FOCUS OF GENDER AND SEXUAL DIVERSITY.

Speaker: Beatriz Plaza Escrivà

Social researcher specialising in Internationalism - Feminism, and activist on the platform Ongi Etorri Errefuxiatuak/Welcome to migrants and refugees.

"The unique story creates stereotypes and the problem with stereotypes is not that they are fake but that they are incomplete. They create one single story, the only story. When we reject the unique story, when we realise that there is never any place that has one single story, then we recuperate a kind of paradise"

Chimamanda Adichie

On the recognition of diversity.

Although gender and sexual diversity has been the focus throughout the audience document, we thought it pertinent to devote several paragraphs to highlighting the stories that are not taken into account, and which we consider to be the central focus of the work that develops in the PPT; those that will shape the life processes of migrant and refugee people and show us how gender and diversity shape new realities.

The danger of generalisations when we speak of Human Rights (henceforth HR) lies, to a greater extent, in the fact that diversities are not taken into account and similar measures are applied for people with different needs. In the case of migrant and refugee women, girls and LGTBIQ+ people this is a reality that is maintained both in their transit and in their arrival in the country of destination. And that carries higher levels of violence and vexations against their bodies and lives, either due to their condition or due to their orientation and/or identity.

The absence of figures, either because they have not been able to be registered or have not been systematised, highlight the crisis situation in which the EU finds itself in reference to the application of international instruments for the defence of HR, as it relates to the migrant and refugee population, both in care and in transit, at borders, and in the country of destination. The inefficiency of the resettlement and relocation programmes coupled with the militarisation of borders and the abandonment of refugee camps have once again made evident the inability of the EU to welcome, which has added to the setback of HR that was developing in the field of migration policies. All this demonstrates the success of the neoliberal capitalist model, in which people are objectivised according to their functionality to the market, and that places economic benefit before the guarantee of HR and individual and collective well-being. It is a regression of the Welfare State in all its senses, whose consequences affect us in general society but that is intensified in the most vulnerable populations.

Situation of women and girls.

Both in the countries of origin and transit, as well as at arrival in the country of destination, the situation faced by women and girls differs greatly from the process experienced by other migrants. In the countries of origin, the migratory process of women and girls usually has common characteristics ranging from escape from some kind of violence or mistreatment, to the need for them to migrate in order to send back economic benefits for their wider families. In the case of trafficking for sexual exploitation, there is also the peculiarity that, in the same countries of origin, they are identified and captured by the networks operating in the enclaves, and are given, which some authors have named the 'identity of the prostitute'. In the case where they are

stigmatised through sexual abuse in their childhood or adolescence and isolated from their environments, the only option for improvement of life is provided by the captors who propose transit, the purpose of which is forced prostitution.

Another of the purposes of trafficking is labour exploitation, in which women normally embark on a migration process through 'smugglers or con men' with whom they become indebted so that when they arrive in the country of destination they will work as interns, as workers in the home or caring for dependants. In all cases the women end up with large debts, the payment which takes up the entire salary in the case of getting a job. However, in most cases they do not get to do these jobs since the promises made by the 'smugglers or con men' are false.

In transit, whether by sea or by land, women and girls suffer doubly the violence that accompanies these journeys, since rape and sexual abuse can be added in almost all cases. In addition, these rapes and sexual abuse often result in unwanted pregnancies, so that abortion or any medical complication that develops in the gestation process usually means death for many of them. And in the case that the pregnancy continues its process and there is a delivery, not being provided with adequate conditions can mean their own death and that of the baby.

Notwithstanding, in the case of adequate delivery and in the country of arrival, the emotional bond between mother and new-born is usually weak and postpartum depressions or other similar situations can develop. The lack of resources for single mother migrant women in the countries of arrival is a reality that we must make visible. Since they are forced to assume high responsibilities of care and attention for the new-born, which leaves them no time to work, since the resources they can access by themselves are difficult, and, in the case of social intervention, since they do not comply with the legal minimums, which is mostly about having the documentation in order, they are not entitled to any type of economic compensation. The only aid to which they can access are those of social emergency, which provides them with basic necessities, but which does not meet all the needs of the baby or the mother, is not sustainable over time, and much less guarantees a decent life.

Another issue that characterises the migratory process of women and girls is the fact that often they do not cross borders in the same way as other migrants. For example, in the case of the southern border of Europe, specifically in the enclaves of Ceuta and Melilla, women and girls pass hidden in cars or trucks in spaces that are designed as double bottoms, in which they can barely breathe and which require the intervention of technical personnel to open them, since they are usually screwed; thus, in case of an emergency, the person would be trapped inside without any possibility of leaving on their own.

Reports of specialist organisations have been gathering a series of trends that characterise the migration process of women and girls, which are schematically outlined below:

– In 2014, it is estimated that only 11% of women out of a total of 170,000 people who tried to cross the sea could reach the shores of the Mediterranean[80].

[80] Women's Link Worldwide: "Atrapadas en Europa:" *[Trapped in Europe:]* "¿Dónde está la dignidad?" *[Where is dignity?]*
Link: http://www.womenslinkworldwide.org/interna.php?esec=1$$-42BLXwmY0ZyLnNBVvgB&idi=&idi=

- In transit, women and girls are more likely to be prostituted or trafficked. According to UNICEF, 12% of the women arriving in Macedonia are pregnant.
- In most Internment Centre for Foreigners (CIE) women are completely invisible, and the conditions in which they are found vary according to gender. As is the case of the CIE of Valencia in which the interned women are the ones who are responsible for cleaning their cells, whereas the men do not assume this work. As we see, in this case the sexual division of labour also occurs in the case of deprivation of liberty.

Situation of LGTBIQ+ people.

Membership of the LGTBIQ+ group has, historically and even today, been an enormous source of inequality in relation to the compliance with HR. The imposed heteronormativity, reinforced by the binary approach, raises sexual relations to political relations, used to dominate women and LGTBIQ+ people. The persecution and discrimination they suffer is developed through control over their sexuality and/or identity, by which they are prevented from freely expressing themselves. Therefore, this system entails the systematic violation of the HR of LGTBIQ+ silently and with great impunity.

In most cases, LGTBIQ+ people are denied their request for international protection under the argument that, in their country of origin, they can avoid any kind of persecution by hiding their sexual preference or gender identity. This pretext refers to the "requirement of discretion" or also known as the "internal flight alternative", and is an expression frequently used by many international agencies as a recommendation, despite going against the UNHCR's guidelines on international protection and fundamental rights.

The "requirement of discretion" is compounded by the determination of credibility, which further complicates asylum-seeking processes on the grounds of sexual orientation and/or gender identity. In addition, this means a vexatious and humiliating treatment for people who decide to formalise their request for political refuge. Therefore, in most cases, and since there is no effective international protection, LGTBIQ+ people decide to start migratory processes when what they are really doing is fleeing violence to live fully in dignity and sexual freedom.

Something as simple as the right of all people to be able to responsibly manifest pleasure and sexual appetites has proved somewhat complicated to defend. For example, in the official international texts on HR there was no reference to sexuality beyond biological sex until 1993; this year marks a turning point with the Vienna Human Rights Conference where, thanks to the lobbying effort of a Women's group, "sexual rights" was included. In Vienna, recognition of sexual violence as a violation of human rights was achieved for the first time and the term "sexual" was included for the first time within the context of human rights.

The importance of the recognition of "sexual rights" within the framework of HR is significant since, on the one hand, it includes sexual rights within what has traditionally been understood as the rights of citizenship (DESCA) and, on the other hand, echoes the growing social relevance of the diversity of ways in which people live their sexuality and the right to the free expression of these same. There are eleven sexual rights:

- ✓ Right to sexual freedom.
- ✓ Right to sexual autonomy, integrity and security of the body.

- ✓ Right to sexual privacy.
- ✓ Right to sexual equality.
- ✓ Right to sexual pleasure.
- ✓ Right to emotional sexual expression.
- ✓ Right to free sexual association.
- ✓ Right to make reproductive, free and responsible decisions.
- ✓ Right to information based on scientific knowledge.
- ✓ Right to integral sexual education.
- ✓ Right to sexual health care

At present, despite the fact that we internationally recognise these rights, as regards migration processes, LGTBIQ+ people are at particular risk of suffering selective violence in the hands of private agents or actors, both in their countries of origin, in transit or in the country of arrival. The exercise of violence can be physical or psychological and is only motivated by the desire to punish whoever has a gender or identity different from the standard. The minimal expression of their identity or desire may thus imply the denouement of a process of violence and/or vexations. In the case of lesbian women this type of violence intensifies when we speak of "corrective rapes" as these also involve sexual violence, since they seek the humiliation of the victim and the renunciation of their own identity and desire based on the application of a corrective punishment.

Conclusions.

Some of the manifestations that could be considered persecution based on gender, including causal sexual orientation, according to the International Human Rights Law, would be:

1. Rape, forms of sexual violence, forced prostitution or forced pregnancy.
2. Belonging to the LGBTIQ+ group, being exposed to attacks and/or harassment.
3. Persecutory laws in themselves emanating from social norms and practices contrary to human rights, for example, female genital mutilation.
4. Punishments, penalties or sanctions that amount to torture, cruel, inhuman or degrading treatment when a woman violates a law or policy.
5. Laws or policies or practices whose goals may be justifiable, but where the methods for implementing them have severely damaging consequences, for example, forced sterilisations.
6. Persecutory practices that, although prohibited, are tolerated by the State and where the State is not diligent in preventing and eliminating them.
7. Situations arising from the transgression of social norms that severely restrict the freedom or physical and psychological integrity of women, for example, forced marriages.
8. Sexist violence in the couple.
9. Trafficking in persons for exploitation purposes.

Gender-based persecution occurs when "human rights violations are related to the role of a person due to his or her gender identity (woman, man, trans, or others) or due to their sexual preferences". This persecution is exercised even more so when it is part of a situation of inequality, and seeks in its finality the subordination or domination of one person or another, a group, ideology or religion.

For all the above, we consider that:

- The lack of information on how to report various forms of violence, the absence of effective mechanisms to identify cases, and the insufficient capacity of humanitarian personnel on issues of gender violence, among others, make it difficult to know the reality of the multiple forms of discrimination and violence that are currently being experienced by women, girls and LGTBIQ+ people.
- The borders have become imageries of war where the violation of rights and impunity are systematically practised. And in which women's bodies are at once weapons of war used to defeat and humiliate the enemy, to destroy the social base and used as a currency of exchange.
- Sexual violence suffered by women, boys and girls, in transits by all the men they encounter along the way, whether by travelling companions, policemen, mafias, must be strongly denounced, making the situation more visible and demanding action.
- Refugee and migrant women must be political subjects. In many cases they must fight against stereotypes in the places of destination and against the control of the community of origin. And aggravated by the weight of having to guard the identity of the community of origin, which patriarchy usually imposes on women. Immigrant women are not passive subjects who receive help; they are protagonists of their own migratory processes.
- The spaces of violence against women are also non-spaces, spaces without rights. Feminism has always denounced, and continues to do so, the breach of human rights; there exists a de facto alliance.
- The lack of safe routes for migrants and refugees implies that during the transit there are serious situations of direct and indirect violence. This problem is intensified with greater seriousness in the case of certain social groups, among which we want to emphasise that of girls, women and people of diverse identities and genders. Since, on many occasions, these people suffer sexual rapes, humiliations, [etc.] or other problems that must be addressed from their specificity.
- The fact that, according to the ILGA report of 2016, 39% of the member countries of the United Nations consider relationships between persons of the same sex to be illegal. And in 75 countries the lives of transgenders, gays and lesbians are restricted by a series of laws.
- On numerous occasions, persecution based on gender and/or sexual orientation is in part exercised by non-state actors such as churches, the family, or within communities. It should therefore be recognised as a violence and the concept of persecutor should be broadened.

And we add to the demands made throughout the audience:

- The formal recognition of a large part of the HR for LGTBIQ+ people so that they can exercise them in the greater part of humanity. It should be recalled that at present there are many countries that continue to maintain in their legislation homophobic laws that incite hatred, even though the UN General Assembly has promulgated the 'Declaration on Human Rights, Sexual Orientation and Gender Identity', which promulgates the repeal of any law that criminalises or punishes LGTBIQ+ people for the simple fact of being so.
- The signatory countries of the United Nations Charter be required to equate the rights of LGTBIQ+ people with those of the rest of society.
- Political and social actors trained on gender and/or sexual orientation so that they provide direct, adequate and comprehensive care to requesters.
- The situation of vulnerability of women, girls and LGTBIQ+ people in the migratory processes be made visible.
- Appropriate measures applied to the particularity of situations and an immediate response to the emergency adapted for both migrants and refugees.
- Appropriate safe routes applied for the most violated populations, such as women, girls and boys, and people of the LGTBIQ+ group.