

PERSPECTIVE

EU Migration Pact Fails to Address Human Rights Concerns in Lesbos, Greece

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On September 23, 2020, the European Commission released its draft Pact on Asylum and Migration.¹ The timing was not coincidental. Just two weeks earlier, on September 8, 2020, Moria camp, Europe’s first migrant “hotspot” and its largest refugee camp, had burned to the ground. In the five years since its opening, on the small Greek island of Lesbos, barely four miles off the coast of Turkey, the camp had become a symbol of the failure of European Union (EU) migration policy. It showcased the trudge to Europe for over one million Syrian and other distress migrants, forced to endure life-threatening journeys to seek safety. It also shone a grim spotlight on dramatic failures in refugee protection and basic human rights enforcement in the humanitarian response taking place at the heart of the wealthy Global North.² These failures included the rejection of responsibility to accept a share of asylum seekers by a growing number of EU members; the adoption of draconian border exclusion policies, including inhumane push-backs out to sea; and an acceptance of degrading and inhumane camp conditions threatening the basic safety and health of inhabitants.³

Efforts to address Europe’s migration challenges are therefore welcome. But will the new Pact on Asylum and Migration improve the situation? Does the EU’s attempt to launch an effective approach to migration based on “flexible solidarity,” allowing different member states different roles, contain the elements of a successful strategy for rectifying the abuses just noted? Does the pact guarantee basic human rights to refugees and others entitled, under both international and European law, to protection? Or is this “last-gasp realpolitik effort by European leaders,” as it has been described, likely to exacerbate exclusion policies and further reduce protection for vulnerable migrants?⁴

Early signs suggest little cause for optimism from a migrants’ rights perspective.⁵ The draft Pact on Asylum and Migration starts by acknowledging the need for migration in Europe and a commitment to migrant protection, and it includes some positive proposals, such as expanded opportunities for unaccompanied children to join relatives in countries other than their first country of entry. But the overriding message communicated by the pact is a call for more effective migrant exclusion, return, and deterrence.

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The pact fails to strengthen mechanisms for enforcing compliance with existing international and EU standards relating to migrants' human rights. Rather, it calls for an even more stringent procedure to assess asylum claims for certain groups already facing high asylum refusal rates, lower protection standards for migrant children unless they are unaccompanied or under 12 years, more efficiency in removing rejected asylum seekers, enhanced efforts to deter Europe-bound migration, and increased externalization of humanitarian responsibility for forced migrants trying to find safety and security. Human Rights Watch notes that the proposals for border control wrongly assume that most arriving migrants do not have protection needs and that decisions on asylum claims can be made speedily.⁶ If, as seems probable, the Pact on Asylum and Migration is not extensively revised to take greater account of the EU's human rights obligations, violations such as those perpetrated at Moria and elsewhere at EU borders and offshore are likely to continue and multiply. On the other hand, if European policy makers take advantage of the opportunity to review their policies and renew their stated commitments to inclusion, to humanitarian responsibility sharing on the international stage, and to advancing development principles in a collaborative manner, then the normative framework already in place can be operationalized to strengthen mutually beneficial partnerships among countries within the EU.

Existing European standards

Relevant European and international standards pertaining to the circumstances of migrants in Europe are numerous; they span basic human rights such as the right to life, the right to freedom from torture and inhuman or degrading treatment or punishment, the right to the highest attainable standard of physical and mental health, the right to education, and, in the case of children (persons under 18), the right to have their best interests taken into account as a primary consideration. They also include migration-specific protections.

Human rights organizations have drawn re-

peated attention to severe violations of European and international human rights relating to migrants' reception, asylum procedures protection, security, health, and sanitation.⁷ They have pointed out that exclusionary provisions in EU migration policy, the protracted asylum process, and the externalization of humanitarian responsibility to ill-equipped peripheral regions clearly breach binding obligations, including those set out in the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, the Refugee Convention and its Protocol, the Convention on the Rights of the Child, and the Sphere Handbook.⁸ Standards specific to child migrants are set out in numerous European documents, including the Qualifications Directive, the EU Agenda for the Rights of the Child, and the Action Plan on Unaccompanied Minors.⁹

Circumstances on the Greek island of Lesbos illustrate the many ways in which current EU migration policy contravenes these well-established obligations and generates human rights violations that directly impinge on the health and well-being of distress migrants. The limited, informal, and unstructured education activities offered in the camp, justified by the notion that Lesbos was a short-term transit point and not a destination country, deprived children of crucial education, at times for periods longer than two years. The lack of artificial light in the camp, along with the coexistence of thousands of people of different ages, genders, and nationalities, soon turned the camp into an unsafe space for women and children, exposing them to cases of physical, psychological and sexual abuse, violence, and exploitation.¹⁰

Failure around COVID-19: Growing migrant destitution and local xenophobia

Years before the COVID-19 pandemic shone a spotlight on the human rights and public health violations caused by current EU migration policy, Moria camp provided stark evidence. Though Moria's design capacity was for 3,000 migrants, demand always exceeded that capacity. At times the camp hosted more than 20,000 migrants.¹¹

Its inhumane conditions—extreme overcrowding and deficiencies in basic sanitary and social protections—violated human rights to personal security, health care, and primary education.¹² The provision of basic care for both adults and children was limited: only a few nongovernmental health care providers served the camp during the week, and only one organization operated on a volunteer basis during the nights and weekends. As a result of these service shortages, thousands of patients seeking care were turned away, while those who were treated often received treatment outdoors and with a complete lack of privacy. The only public hospital on the island, which serves the whole local population as well as migrants, struggled to provide both specialized and basic services to either population.¹³ Because of the limited types of medical service provided, thousands of vulnerable asylum-seeking people, including children, the elderly, and pregnant women—among them hundreds with chronic diseases—were deprived of critical care.¹⁴ Extremely limited soap, clean water, and sanitation facilities (70 people per toilet and 80 people per shower) created a fertile ground for outbreaks of communicable diseases, including respiratory diseases and chickenpox.

Under these conditions, the COVID-19 pandemic has posed a grave threat, amplifying existing concerns. Despite calls for relocation, more than 13,000 asylum seekers remained crammed inside Moria as the virus spread across Europe. To protect the local population (but not camp residents), the entire camp was placed in quarantine in late March 2020, a lockdown planned initially for 14 days but extended to 160 days. News of the first COVID-19 positive cases in Moria broke in early September, after the lockdown ended. However, newly diagnosed COVID-19-positive asylum seekers refused to quarantine themselves in a separate area within the camp, outraging the remaining camp inhabitants and fueling tensions and infighting.¹⁵ On September 8, Moria was set ablaze and 60% of the camp was destroyed. The next day, a second blaze destroyed the rest of it.

For six days before Moria's replacement camp opened its doors a few kilometers from the initial

location, 13,000 migrants were forced to live and sleep on the main road, creating cribs for their babies out of rags and hastily salvaging their possessions from the wreckage. Six days after Moria burned down, Moria 2.0, a new EU-funded camp, opened on the island. Thousands of migrants were moved in despite extremely rudimentary living conditions: just 37 sanitation facilities, inadequate drinking water, thousands of tents erected over gravel and dirt, and no water drainage facilities. Heavy rainfall in early October predictably led to flooding, the destruction of personal belongings, and the creation of new health hazards as children waded in waist-high dirty water. Sadly, though the camp was built well into the COVID-19 pandemic, its design failed to prevent the spread of COVID-19, with cases among the migrant population rising to almost 300 within three weeks.¹⁶ Soon thereafter, new cases were documented among the staff working in the camp, including members of the Greek police force, the European Border and Coast Guard Agency, and international organizations.

Two months after the new camp opened its doors, and despite coordinated efforts to transfer more than 2,500 migrants from Lesbos to mainland Greece, thousands of vulnerable migrants remain in perilous conditions, in tents unfit for the fast-approaching winter and located a mere 65 feet from the sea.¹⁷ EU migration policy has failed both in terms of the facilities afforded to those forced to flee and more broadly in terms of its regional strategies and interventions. By failing to provide minimum standards of reception at its borders, allowing asylum determination processes to become increasingly protracted, and failing to enforce meaningful relocation to other EU locations, EU migration policy continues to violate asylum seekers' basic human dignity, forcing occupants to line up for hours to use sanitation services, collect water, and get food. More broadly, by failing to institute humanitarian corridors for asylum seekers in the wake of the Syrian tragedy, by collaborating with neighboring states (including Turkey and Libya) to complicate refugees' routes to safety, by curtailing life-saving interventions in the Mediterranean and withdrawing humanitarian protection, and by compelling

asylum seekers to remain within the territory of their first point of arrival, EU migration policy has privileged migrant exclusion over human rights enforcement.

The failure of EU migration policy to integrate migration considerations into a broader economic, social, and rights framework also has consequences for local host communities.¹⁸ The failure to apply relocation responsibility across Europe fuels resentment and growing xenophobia among local hosts. Lesbos's local population of 97,000 fears an imminent public health crisis on an island that lacks the capacity to respond appropriately. Official COVID-19 testing continues to confirm that as a result of the overcrowded and unsanitary conditions in the camp, the virus is present among migrants, hundreds of whom continue to leave the camp daily and interact with the local population. More specifically, with food shortages reported within the new camp, thousands of migrants are compelled to venture beyond the camp to the city center and neighboring villages to buy supplies during the window of time they are allowed to leave the camp; according to anecdotal data, few wear protective face coverings.

After years of bearing a disproportionate share of the responsibility to house distress migrants, with the predictably negative impact on tourism, which is central to the local economy, island residents fear more of the same with the construction of the new camp. Only last year, Lesbos recorded 22,250 asylum applications, double the number that Austria and almost triple the number that Finland recorded during the same period.¹⁹ Island residents doubt Europe's claim that the new camp is a temporary emergency measure—Moria camp was, after all, another “temporary solution” that came to an end after five years only because it burned to the ground.

What does the future hold?

Greek authorities had hoped that the recent humanitarian disaster at Moria would result in better living conditions in Lesbos and that negotiations at the EU level for a permanent relocation mechanism

would improve Europe's protective obligations toward refugees and other humanitarian migrants.²⁰ The new Pact on Migration and Asylum, however, proposes the “faster use of border procedure followed by swift return procedure, to speed up decision-making and make asylum procedures more efficient.”²¹ It allows member states to issue asylum and return decisions without predefined safeguards, paving the way for procedural unfairness that increases the risk of prolonged detention and refoulement. Given the pact's current emphasis on the externalization of migration control and humanitarian responsibility to third countries, the pressure on countries at the EU's borders (such as Greece) is set to increase. By the end of 2020, Samos, one of the five Greek islands currently hosting significant numbers of migrants in overcrowded camps, will be the first Greek island with a closed migrant camp (where migrants are not allowed to leave and return freely).²² Lesbos seems set to follow Samos, despite the reaction of the local population.

The new plan to fortify Europe will force Greece to turn its islands into de facto prisons for migrants, asylum seekers, and refugees, a policy that evokes Australia's much-criticized recent precedent in the Pacific.²³ For many years, a country that represents just 2% of the EU's population has been compelled to respond to 13% of the EU's asylum applications, a trend that will apparently continue unabated.²⁴

Forcing a tiny population dependent on tourism and agriculture for its economic survival to bear the long-term responsibility for the health, well-being, and livelihood of a sizeable, vulnerable, and desperate migrant population is likely to destroy empathy and reduce the humanitarian generosity on which inclusive humanitarian protection depends. The basic spirit of hospitality and inclusive humanity, previously felt strongly among host communities in Greece and beyond, is evaporating.²⁵ For now, despite rising frustration and fear, Lesbos's local population remains peaceful, with many island residents still sympathetic to the deep suffering of the migrants they see. The question is, for how long?²⁶

Distress migrants are entitled to fundamen-

tal human rights protections in terms of security, health care, education, and shelter as they attempt to build new lives. These are the principles on which the EU was built and that remain enshrined in both international and European law. The COVID-19 pandemic provides an additional urgent reason to reduce the incentives for xenophobia, discrimination, and exclusion. The EU should use the opportunity of a new Pact on Migration and Asylum to generate robustly protective humanitarian structures that deliver on the principles it proclaims: nondiscrimination, security, and justice.²⁷ The results will enrich the Union as a whole, enabling youthful and energetic new populations to contribute to building a diverse and vibrant zone of peace and prosperity that benefits all inhabitants. The alternative is bleak: a future that is likely to exacerbate xenophobia, nativist privilege, and abandonment of the rule of law.

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