



## EUROPEAN MIGRATION AND ASYLUM PLAN - MPDL

In a context in which part of the political forces oppose immigration and criminalise migrants, the EU Member States approved the European Pact on Migration and Asylum (PEM) last April 2024, an agreement that many European and Spanish leaders considered a success, given the European balances, and which Commissioner Johansson described as "a lesser evil".

However, **civil society organisations working for human rights and the reception and integration of migrants and refugees consider it a "catastrophe" in terms of human rights**, and in any case a missed opportunity to achieve a balanced agreement in terms of rights.

**The origins of the EEAP lie in the crisis of the European asylum system in 2015**, caused by the massive influx of more than one million Syrian refugees, which Chancellor Merkel attempted to resolve **through** a quota-based distribution among the different states, but the initial opposition of Hungary and Poland, joined by other countries, made it impossible. This failure in terms of solidarity led the European Commission to **a deal with Turkey, the so-called 'shame deal'**, whereby, in exchange for billions of euros, Turkey would take in Syrian migrants, preventing them from entering the EU, and taking on the analysis and control of whether or not they met the conditions for asylum. It was the worst experience of border externalisation and revealed the existing gaps and shortcomings and the remoteness of a common European asylum system with guarantees and efficiency. It led to the crisis of the Dublin Regulation, which assigns responsibility for processing asylum applications to the country of first entry into the EU, normally and en masse the countries of southern Europe, to the indifference of the rest.

In September 2020 the President of the European Commission proposed a new regulatory framework amending the failed previous one. It would, it was announced, be a new system designed to provide security, clarity and dignified conditions for people arriving in the EU and also allow Europeans to have confidence that migration is managed in an effective and humane manner, fully in line with enlightened values and international law.

The result, however, has been an agreement that continues to have a negative impact on everything that had not worked in terms of rights: primacy of the interests of states, greater reinforcement in control and externalisation of borders with a decrease in guarantees to prevent people from reaching the EU and expel them as quickly as possible, with the risk of violating the "principle of non-refoulement", and a supposedly non-binding solidarity.

**The new Pact does indeed include increased control of the EU's external borders, even extending the practice of outsourcing border control to 'safe' third countries, even if they do not guarantee human rights,** such as Tunisia, Libya and Egypt, or more recently Albania, evading the asylum responsibilities of European states. But the courts in some countries are stopping such attempts, for violating human rights. Recently it was the Italian courts that are preventing Meloni from sending its migrants to Albania, and let us remember that Britain also tried with Rwanda, which the British courts declared unsafe. With Tunisia in July 2023 the EU and Italy signed an agreement at a cost of 105 million euros to stop immigration to the latter country, without any guarantee of the human rights of the people trying to do so. A recent report by The Guardian has shown the huge abuses and human rights violations of sub-Saharan migrants by Tunisia and its National Guard, who "systematically rob, beat and abandon women and children in the desert without food and water".

On the other hand, the EEAP aims to implement an approach to protection based on solidarity between all EU member states in order to achieve a fairer and better distribution of immigrants, when they exceed a reasonable number in the countries of first entry. **A supposed "compulsory" solidarity of the 27** with the border countries, Spain, Italy, Greece and Poland, which is not such, but **"flexible"**, à la carte, as each state can choose between accepting migrants arriving in those countries or rejecting them by paying €20,000 for each person rejected. **This is not solidarity, since no member state will be obliged to carry out relocations, and an intolerable moral challenge, where people have a price tag,** like the former slave markets, in serious conflict with the values of enlightened Europe.

The Pact also entails a **general tightening of conditions for asylum seekers,** with a common procedure of prior border control (pre-screening) with fewer guarantees in terms of deadlines and rights, which includes women, children and people with disabilities, applying different and discriminatory criteria depending on the State of origin. Risk of remaining in a situation of deprivation of liberty until they are authorised to enter the EU, a kind of **"legal fiction of non-entry"**, whereby it is interpreted that a person has not entered the EU until a Member State authorises it, regardless of whether they are physically present in that European state. This would imply that such a person could be deprived of liberty at a country's border, without access to defence and other rights, for up to nine months. This fiction is incompatible, for example, with the guarantees given by the Spanish Constitution to all persons in Spain under the jurisdiction of the Spanish authorities, as it also seems clearly contrary to the European Convention on Human Rights itself.

An example of such a tightening is the **refugee status determination procedure, the core of asylum procedures.** It assesses whether the person has been, or is at risk of being, persecuted because of their "race, religion, nationality, membership of a particular social group or political opinion", or would suffer serious harm as defined in Article 15 of the EU Qualification Directive. But what is often not taken into account is whether such persons might be at risk of serious harm upon deportation or return to a transit country or another third country; whether their health status might prevent their return; whether they might have strong private or family ties in the country, especially but not only when they have been living in that EU country for years; and whether they might be eligible for other residence permits at the national level.

Finally, **the Pact does not address the promotion of legal and safe channels of entry into the EU, which civil society organisations across Europe are calling for, channels that guarantee the safety and protection of people, economic migrants or asylum seekers and international protection.** These channels include employment, family reunification, study or other reasons, or through the use of humanitarian visas. Many of **the** people who pay mafias to bring them to Europe in dinghies or small boats would pay for a plane ticket if they could get a visa to enter the EU.

The EEAP is largely based on **the idea that tightening border procedures will reduce the number of migrants and asylum seekers.** But this is not and will not be the case. People are fleeing hunger, destitution, war, sexual exploitation, the effects of climate change in their countries. The Pact will create more walls, reduce/reduce protection and increase North-South discrimination. Enlightened Europe, its values, the equal dignity of all men and women regardless of their origin, respect for the rights of individuals, have been marginalised in the interests of certain states. These have been driven by the anti-immigration discourse and policies of the European extreme right, which has made this field a central focus of its action, singling out migrants and refugees as a threat to national security.

#### **The margins of each State for the implementation of the Covenant.**

The EEAP has set a two-year period for progressive implementation by member states. And it is well known that despite the harshness of the EEAP, very soon after its adoption fifteen EU countries led by Denmark signed a letter to the European Commission expressing their intention to develop the **externalisation of migration and asylum policy** more intensively than agreed, applying even more rigid and discriminatory measures than those included in the EEAP.

But **States have margins for its application in terms of respecting and guaranteeing the human rights of migrants and International Humanitarian Law,** so that, in the process of implementation, **the Spanish Government can apply more flexible policies that serve as an example for the rest of the EU countries in the construction of a migration and asylum policy that puts people and their rights at the centre.** In this sense, twenty civil society organisations that work in the reception of migrants and refugees, including the Movimiento por la Paz - MPDL-, have addressed the President of the Government, asking him to promote a process of implementation of the new Pact that ensures the safeguarding of the guarantees already existing in Spanish legislation and respect for human rights, with the effective participation of civil society, in addition to continuing to work to improve the situation of unaccompanied migrant children and adolescents and to complete the administrative regularisation promoted through a popular legislative initiative.

Among the **most important points where the Spanish government can and should apply more assuring policies** in the PEMT implementation process are the following:

- **Promote legal and safe channels** for arriving in Spain, as well as for applying for asylum in embassies and consulates abroad.
- **Implementing the content of the Covenant in a rights-based manner**, with an approach that puts people and their rights at the centre of the management of migration and asylum policies
- **Maintain the protection guarantees provided for in Spanish legislation**, ensuring compliance with international human rights standards. As "**host**" societies, it is our ethical, political and legal obligation to guarantee that the rights of each and every person in Spanish territory are fulfilled.

This implies, for example, that irrespective of the "legal fiction of non-entry", **the constitutional 72-hour pre-trial detention period should not be extended**, guaranteeing the right to free legal assistance at all stages of the procedure and an interpreter in the language of the applicant, as well as an effective remedy with suspensive effect, respecting the principle of "non-refoulement" and that detention should be the last of the measures.

- **Ensure an adequate system for the identification of needs**, also ensuring that adequate material and human resources are available for this purpose.
- **Maintain and expand a stable reception system, through a network of sufficiently equipped centres** that promote the social inclusion of migrants.
- **Ensure the participation of civil society organisations** in the preparation of the Implementation Plan and during the process of its implementation.

We find it important to note that with one month to go before Member States are due to submit their implementation plans to the Commission, the courts have begun to modulate the scope of border externalisation and the human rights harm it entails.

In this sense, both Italian and European courts are calling for a review of what is meant by a safe country, reversing decisions such as those of Giorgia Meloni's government to transfer migrants rescued from the Mediterranean to identification and repatriation centres in Albania.

## **The cultural battle against xenophobia and racism.**

The battle of the extreme right against immigration is a battle against the founding values of the European Union, the equality of all people regardless of their origin and provenance, the enlightened values, and the respect and guarantee of their basic rights. And in this movement against migrants, the Migration and Asylum Pact is a step backwards that calls into question these principles that are at the origin of the EU.

It is therefore necessary to oppose and mobilise, **promoting a cultural battle against xenophobia and hatred of migrants**. Because we are talking about people, men and women, girls and boys, and it is essential to remember that, in **the face of the dehumanisation, polarisation and criminalisation of migration, what is at stake is people's lives. Behind every decision to migrate there is a personal story** that may be linked to lack of opportunities, social inequality, violence, war, conflict, persecution, discrimination or circumstances arising from climate change. In most cases, the choice to migrate or the need to flee is not a free choice; those who make the decision have no other alternative. Hence also the need to regulate real and safe migration processes.

Spain has one of the most guaranteed legal frameworks in terms of the rights of foreigners and applicants for international protection, and even with the European Pact we can continue to lead a model that is respectful of rights, inclusive and coherent with social needs.

Because migrants are a threat neither to the social cohesion of our countries, nor to the social state, nor to our economies.