

## **Keeping Refugees at Bay: The Legacy of the 2016 “Refugee Crisis”**

**Article by Francesca Spinelli**

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**Long treated as “second-class refugees”, Afghans are today wondering how much they can count on support from the European Union. Ever since the Taliban took power and the evacuation operations ended, European governments seem to have a single priority: limiting the movement of potential Afghan asylum seekers. Despite local shows of support for their resettlement, routes for legally and safely reaching the EU remain few and far between.**

“One of my clients wants to bring her mother and sister, who are trapped in Afghanistan, to Belgium. Her sister was a midwife specialising in post-abortion care. I submitted a humanitarian visa request for this case on 25 August. Apart from an automatic confirmation of receipt, I haven’t received any response. The authorities act as if it’s not urgent.” That is the damning assessment of Belgian lawyer Selma Benkhelifa, a member of the [Progress Lawyers Network](#).

The Taliban’s swift seizure of power, completed on 15 August 2021, left millions of Afghans, especially women, in an extremely vulnerable position. Those who managed to flee the country in the evacuation that ended on 31 August left a country descending into chaos behind. Indeed, as the [United Nations High Commissioner for Refugees](#) (UNHCR) describe a “humanitarian crisis” on top of the effects of over “40 years of conflict, as well as increasing natural disasters, chronic poverty, and food insecurity”. With every passing day, the situation becomes ever more horrific: malnutrition is worsening, the health system is collapsing, the economy is paralysed. The UNHCR initially said it expected up to half a million more Afghan refugees between now and the end of the year, but that did not factor in the determination of neighbouring countries – principally Pakistan and Iran – to discourage these mass movements of people.

In the meantime, in Europe, “we’ve heard nothing else since the end of August,” notes Nassim Majidi, Co-Founder of the [Samuel Hall](#) think tank on migration and displacement. “Silence on the relatives of the evacuees who are still there, silence too on the people who were accepted onto the lists and who couldn’ be evacuated.”

Did the EU learn any lessons from the 2015-16 “refugee crisis”? The answer, unfortunately, is yes, because the lesson learnt is “to keep refugees at a distance once again” (as [described](#) by Swiss geographer Étienne Piguet), and the tools developed and strengthened over the past six years do not bode well for Afghans hoping to find refuge in Europe.

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## **The flaws of solidarity**

Much more than a crisis, the events of 2015-16 laid bare the flaws of a system based on an alarmist and dehumanising vision of so-called “illegal” migration and the unequal way in which responsibility is shared in European management of asylum seekers. Since 1990, responsibility has been determined by the Dublin Regulation, which generally assigns responsibility for asylum claims to the first EU member state entered by the claimant. However, overexposed EU border states cannot count on solidarity from other member states when needed, as we saw when arrivals spiked between 2015 and 2016, the predictable result of ongoing conflicts in Iraq and Syria and the advance of ISIS in the region.

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Since 2015, every single proposal to create more or less mandatory mechanisms for relocating asylum seekers has failed. The Pact on Migration and Asylum, presented by the Commission in September 2020, ran into the same obstacles, and today it seems unlikely that the full package of proposals will be approved. Only parts of the proposal that can be agreed upon in the Council of the European Union will move closer towards becoming EU law and strengthening the three pillars of European migration and asylum policy: externalisation, border closures, and returns.

As a result, since 2015, the EU has applied growing pressure to third-party states – through payments, aid conditionality, and promises of visa liberalisation – to get them to police the EU’s external borders on its behalf. Epitomising this pressure, the agreement signed between the EU and Turkey on 18 March 2016, the legality of which is highly dubious, reduced the number of arrivals at the EU’s external borders: Belgian NGO CNCD-11.11.11 describes it as a “cynical accounting success”.

A second trend has accelerated since 2015: the militarisation of border areas, with the proliferation of detention and asylum processing centres, as well as illegal push-back operations. Lastly, the obsession with returns is now openly accepted, to the point where the Commission even proposed the absurd concept of “return sponsorships” in its Pact on Migration and Asylum. This is the idea that a member state refusing to take in asylum seekers could instead show its “solidarity” by helping another member state to return migrants without permission to stay in the EU.

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## **“Second-class refugees”**

If there is one country from which asylum seekers have been particularly penalised by the European Union, it is Afghanistan – and this began before 2015. Accounting for the second highest number of asylum applications in the EU, Afghans “have long been treated as second-class refugees,” says Abdul Ghafoor, the director of [AMASO](#) (Afghanistan Migrants Advice and Support Organisation), founded in 2013 in Kabul to support returnees and draw attention to the EU’s returns policy. But, explains Nassim Majidi, migration away from Afghanistan “is essential, it’s a means of survival. Whenever there is a social, political, or economic crisis, there aren’t many options for Afghans other than to leave. In Europe, there’s often a desire to label them as either economic migrants or refugees, but it isn’t black and white.”

Ignoring any nuance, the EU turned the screw in 2015. Afghans were among the first victims of the “hotspot approach” launched in May 2015 to help Italy and Greece cope with the influx of asylum seekers, and which, [writes](#) lawyer Claire Rodier, “rapidly resulted in the creation of holding – if not detention – centres which are violent, overcrowded, underequipped.” In 2016, the EU and the Afghan government signed an agreement on migration, the Joint Way Forward (renewed in 2021 and renamed the Joint Declaration on Migration Cooperation), with the goal of increasing returns.

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Because of their large numbers and limited recognition rates, (according to [Eurostat](#), an average of 56.21 per cent in 2020 across the whole EU, with a difference ranging from 1 per cent in Bulgaria to 93 per cent in Italy), there are significant numbers of “removable” Afghans on EU soil. Over the years, several member states – particularly Sweden, Denmark and, until 2020, the United Kingdom – have increased deportations operations, even though “programmes for return and resettlement in Afghanistan don’t work,” explains Nassim Majidi. “Most people leave again, as we’ve been able to document.”

The obsession with returns is such that, earlier in 2021, the Afghan government’s 8 July [request](#) to European countries to end forced returns due to the “deteriorating security situation” in Afghanistan was ignored by most states. On 5 August – 10 days after the fall of Kabul – the governments of Germany, Austria, Belgium, Denmark, Greece and the Netherlands felt no shame in sending a [letter](#) to the Commission expressing their concern

about the lack of cooperation from Afghan authorities.

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## **Conflicting priorities**

European reactions to the Taliban seizing power were initially poorly coordinated, with each member state managing their own lists of people to evacuate. Most governments suspended deportations to Afghanistan (with exceptions including Romania and Bulgaria). Some member states, like Austria and Slovenia, declared from the outset that they would not take in any Afghan refugees. Then, on 31 August, the Council clearly outlined the EU's priorities in its statement on the situation in Afghanistan: “Based on lessons learned, the EU and its Member States stand determined to act jointly to prevent the recurrence of uncontrolled large-scale illegal migration movements faced in the past, by preparing a coordinated and orderly response.”

On the other hand, in a 16 September resolution (passed with 536 votes in favour, 96 against and 50 abstentions), the European Parliament called for solidarity with Afghans, stressing that: “the EU's policy should include, as a matter of priority, an expansion of resettlement for those who are most at risk and most vulnerable, as well as further complementary pathways, such as humanitarian visas and a special visa programme for Afghan women seeking protection from the Taliban regime.” The Greens/EFA parliamentary group had expressed these demands a few days earlier: “All EU countries must take responsibility for refugees. It's time to step up resettlement, facilitate family reunification and prepare for the arrival of Afghan refugees at our border.”

Resettlement, humanitarian visas, family reunification: routes which, because they enable people to legally and safely access the EU, are distrusted by member states. The same goes for the 2001 European directive on temporary protection, which has not been implemented, and for *prima facie* recognition of refugee status (where such status is granted collectively to a group instead of each case being determined individually), something that Samuel Hall and Amnesty International are urgently calling for in the case of Afghan asylum seekers, particularly women.

Humanitarian visas are an especially depressing chapter in the recent history of European asylum policy. Following a 2018 resolution of the European Parliament, the Commission was supposed to put forward a proposal for a regulation by March 2019, which it still has not done. In the meantime, these visas have been handed out arbitrarily by certain member states. It is a situation ripe for scandals like the cash-for-visas scam that ran in Belgium between 2017 and 2018.

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### **“When they’re dead, what good will it be?”**

Today, people like Sami cannot understand what is preventing their relatives from boarding a plane and joining them in Europe. Having arrived in Belgium in 2015 at the age of 15 “after travelling through 10 countries in four months”, Sami could look after his parents, two brothers, and sister. But his application for humanitarian visas, submitted by Selma Benkhelifa, is dragging on and on. “They tell us to follow the ‘normal procedure’, which is to send the documents via FedEx from Kabul to Islamabad, but FedEx has closed. Through the normal route, you have to provide a certificate of good conduct. Who are they going to ask for this document? Talking about a ‘normal route’ in a situation as abnormal as Afghanistan’s makes no sense,” Benkhelifa points out. “If I receive a humanitarian visa in two months’ time, what am I going to do with it? When they’re dead, what good will it be?” laments Sami. “These policies create a need for people smugglers,” concludes Benkhelifa. “What’s Sami going to do if his application goes nowhere? He’s going to pay people smugglers so his family can get out of the country.”

The frustration is not just felt by the diaspora. At a local level, councils, universities, and charities are ready to welcome refugees. It is perhaps the only positive legacy of 2015 and 2016: solidarity movements have grown, strengthened and unified. But although mayors have shown solidarity – the [Mayors Migration Council](#), which represents 240,000 cities around the world, issued a statement welcoming refugees – Majidi emphasises that “national governments must leave the door open so that Afghans can keep coming.”

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For member states, on the other hand, this door must be closed and locked as soon as possible by delegating the resettlement of Afghan asylum seekers to countries in the region. However, these states seem little inclined to take on this role. Pakistan, Iran, and Tajikistan are closing their borders or creating “temporary protection” buffer zones, something that worries Majidi: “It’s a return to solutions from 40 years ago: camps.” Turkey, [irritated by its European partners](#), has also closed its border with Iran and “is looking to restart expulsions,” says Abdul Ghafoor. “There are thousands of Afghans detained in deportation centres across the country.” As for the Taliban, they have begun to

prevent people from leaving the country.

In certain EU countries, local initiatives will enable the evacuation of some women, students, activists, and artists, but these are likely to remain few and far between thanks to the obstructionism of governments. To nobody's surprise, governments are also reluctant to commit to resettlement programmes, which explains the lack of concrete results emerging from the EU's High-level Resettlement Forum held on 7 October. As for the people who manage to "illegally" reach Europe, they could find themselves locked in the new "prison camp" opened on 18 September on the Greek island of Somos, another dark legacy of the 2015-16 "migration crisis".

Meanwhile, people whose asylum application was pending in an EU country before the fall of Kabul will continue to fear for their future. Intra-European transfers of "Dublin cases" (people sent back to the member state that was supposed to process their asylum claim) have not been suspended: an Afghan can be sent back to Bulgaria from France, as happened on 27 September, and there find themselves at risk of deportation to Afghanistan. The French government does not appear concerned by the situation. Yet, as Abdul Ghafoor reminds us, "the Taliban spokesman has announced that they will accept deportees, but that will have to go before a religious court."

## **Disunity and lawlessness**

On 8 and 9 September 2021, at the annual conference of the Odysseus network of experts on immigration and asylum law, an important fact was pointed out: what paved the way for the common European asylum system was member states' desire to be part of the Schengen area. Today, there is no incentive for European governments to engage in this common system. EU asylum rules are followed if they do not get in the way of national interests, otherwise they can be broken, and this is a growing trend across the bloc.

"Whether it takes the form of racist provocation like in Hungary or Poland, abdication of responsibility like in Greece, humanitarian grandstanding like in France, the response from European institutions and governments continues to be denial: denial of the responsibility towards refugees that their international obligations entail," wrote Claire Rodier and historian Emmanuel Blanchard in 2016.

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Member states who do not push back asylum seekers at their borders are now a minority. As pushbacks have increased, so has their violence and the militaristic language used by governments in talking about asylum seekers, as evidenced by a recent investigation in Croatia and Greece by eight European media outlets, and by a letter signed by 12 member states demanding that the Commission fund "physical barriers" at the EU's external borders. But it should not be forgotten that the brutality of these images and this language

is the result of decades of policies supported by all member states.

In this context, what can be done to ensure that the right to asylum is upheld? At a [webinar on human rights violations at the Polish and Lithuanian borders](#) on 7 October, Green MEP Tineke Strik, highlighted various avenues, from infringement proceedings against member states who do not respect fundamental rights, to making access to European funds conditional on upholding these rights. “There’s more to be done by the Commission, but also the European Parliament and member states, to protect migrants and refugees, and those who are working with migrants and refugees,” underlined Strik.

They must not be let down by a lack of political will. As of 6 October, at least six people had already lost their lives at border between Belarus and Poland. An [investigation](#) by Amnesty International laid blame at the door of Poland, as well as Latvia and Lithuania. “On 25 August, the European Court of Human Rights ordered Poland to provide humanitarian assistance to migrants and refugees at their borders. This was renewed on 27 September. Poland has so far failed to comply with the Court’s order,” Amnesty International wrote on 30 September.

An increasingly disunited union of countries that flout laws, ignore courts, and leave human beings to die at their borders – if European countries continue down this path, are they really in a position to lecture the Taliban?

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