

Editorial

Who are the ‘vulnerable’ in Ireland today?

There has been a lot of talk about ‘protecting the vulnerable’ in the lead up to the recent Budget. So many vested interests, politicians, trade unions and others now appropriate the word it begins to lose its sense of meaning. Yet within our society there are clearly people who are vulnerable, whose needs are not represented, whose concerns are urgent and whose voices are not heard.

The burden of adjustment for Ireland’s economic catastrophe is falling disproportionately on those who live on the margins of Irish society. Budget Day involved a media frenzy calculating the impact of changes on a cross section of Irish society. But, for those who are really vulnerable, often their voices are not heard and the impact is not calculated. The myriad of recent expenditure cuts will ultimately result in curtailment or closure of necessary services. Often the ‘quiet’ voices opposing these service cuts, including children at risk, people who are homeless and destitute migrants to name but a few, remain unheard. Bypassed by the Celtic Tiger they are the real ‘vulnerable’. Now unjustly they pay the cost for the ‘exuberance’ of reckless property speculators, pampered politicians, incompetent regulators and unrepentant bankers.

The Jesuit Refugee Service’s (JRS) mission is ‘to accompany, advocate and serve’ the cause of refugees and forcibly displaced persons worldwide. Inspired by the Society of Jesus’s commitment to a faith that does justice, JRS’s advocacy is centred on ‘specific people with names and faces’ who are forced to leave their homes fleeing violence and persecution. This issue of *Working Notes* enables ‘specific people’ to tell their story whether they are living in direct provision in Ireland, in detention in Europe, in a refugee camp in Thailand or internally displaced in Bosnia. We hear the voices of real people in each of the articles: Djamila, Abbo, Namono, Abdul and Gabriel.

Elizabeth O’Rourke analyses the impact of the Irish Government’s policy of direct provision on the lives of young people and families seeking protection. A 16 year old Djamila recounts why she does not

bring her school friends back to the accommodation centre. ‘They say ‘oh you’re so lucky... you live in a hotel’ ... They don’t understand.’ A father living in direct provision is stung by his children being known as the ‘hostel kids’. In their own words they provide a searing critique of the policies of direct provision and dispersal and how they fail children and families who are bound by them. While acknowledging policies must be underpinned by values that ensure the dignity of each person seeking protection is respected.

Philip Amaral picks up this theme of not being heard when examining gaps in protection in Europe. He emphasises that people in detention or migrants who are destitute are not voiceless. Their voices remain strong and they are willing to speak. But he cautions that their voices remain largely unheard, because they are behind walls or living invisibly on the streets. They are ‘the other’. He argues that is why JRS writes reports: to document the testimonies of the unheard and to enable their voices be heard by policymakers in Dublin and Brussels, by international organisations and by concerned citizens worldwide.

Mark Raper SJ, drawing on twenty years of experience with JRS, reflects on the Jesuit response to the worldwide plight of refugees. He eloquently argues the need to listen to the ‘unheard’. He notes refugees’ voices are often unheard, unheeded, effectively silenced and that ‘The one who accompanies refugees must know how to listen to the unheard, to the softly spoken. Martin Luther King said: “a riot is the language of the unheard.” The unheard are everywhere.’

More than thirty years after it was founded in response to the needs of the Boat People fleeing Vietnam, JRS is present in over 50 countries. Now there are over 10 million refugees worldwide. Every day in refugee camps, in places of detention, on the streets of cities and in centres for people seeking asylum, JRS people hear stories. Mark Raper issues a timely reminder, ‘Our primary service is to listen to the people, and by listening, to help them find courage to go on with life.’

Living in Direct Provision: Resident Voices

Elizabeth O'Rourke

Introduction

2010 marks the tenth anniversary of the introduction of the policies of Direct Provision and Dispersal.

Direct provision is a scheme for individuals and families seeking asylum or other forms of protection, which provides accommodation on a full board basis and aims to directly provide all basic daily needs of asylum applicants. Dispersal is a policy whereby asylum applicants, after an initial short stay in Dublin to process their asylum application, are sent to one of 51 state provided accommodation centres located throughout 19 counties. While awaiting a decision on their asylum claim applicants are not eligible for child benefit, do not have a right to work and have limited education rights.

Last year the Jesuit Refugee Service (JRS) worked with over 90 families living in Direct Provision in five locations in Dublin and three in Limerick. The work of JRS Ireland with people seeking asylum is principally in the areas of outreach, psychosocial support, sports, education and training.

Among the activities that JRS organises are a Homework Club in a direct provision centre for 15-20 children two afternoons per week; an intensive Summer Programme of activities during July and August, in which over 60 families participated last year; providing regular language classes and training courses in centres; and sharing the journey of many individuals and families seeking asylum through weekly outreach.

In their Own Words: Experiences of Direct Provision

In the work of JRS worldwide advocating for more just and humane asylum systems, forcibly displaced persons are placed at the centre – as ‘the subject not the objects of change’.

An important dimension of our advocacy work is that people's story is heard. The case studies in this section tell the stories of young people and families in the direct provision system in their own words.

Case Study 1

Djamila is a 16 year old girl from Afghanistan who has been living in Direct Provision for four years. She shares a room with her mother and 19 year old sister:

I want to get a real home. Here you don't go out of the room all day. You can't go downstairs. Here there used to be kids in the pool room but kids aren't supposed to be there, because there's other people there. There are men there.

She got in trouble before and was reported by the centre management.

I got a letter from the Department [Reception Integration Agency] once. They said 'one more time and you're thrown out of the hotels'. They put you far from here. A family that caused lots of trouble they put them in Galway

Djamila tries to hide from school friends the fact that her family are seeking asylum and spends most of her time outside school with other children from the Centre.

I'm mostly friends with hostel people more than school kids. I don't like to bring people back here. I don't tell them [at school] I'm an asylum seeker, I say I'm foreign and that's all, they can talk whatever they want. If they ask any more I say my father was in the war and now I'm here. They say 'oh you're so lucky... you live in a hotel' and I say 'yeah, it's great I know'. They don't understand.

She does not have any money so relies on friends to get her lunch at school:

I have a few friends in school. Every day my friends buy me lunch. They have ten Euros each, without them I'd have nothing.

Djamila looks forward to having her own home and says that arguments regularly break out in the Centre:

When we move into our own house you can get food whenever you want.

You can get up whenever you want and have your own food. ... Here you always hear people fighting. Two years ago a woman tried to stab another woman with a bread knife and two weeks ago there was a big fight in the laundry room. One time a woman pushed my mum. I was so angry with her!

Case Study 2

Abbo is a 12 year old girl from Nigeria. She has been living in Direct Provision for three years with her mother, three sisters and one brother. She shares a room with her older sister and her mother, two younger sisters and her brother share another room. She feels that the children in school do not understand her situation and spends more time with other children from the centre:

Some of them think it's really good [living in a hotel], but they don't have a clue. Sometimes some of them laugh at me. They say 'why you don't go back to your country' and I say 'we don't want to live there [in the hostel] my mum is making me, but we can't go back to our country'. One or two of them used to laugh at me – they thought living in a hostel is weird.



Asylum seeking women receiving English language certificates

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She feels that life is difficult for her mother. For her the worst part of living in the Centre is that she has nothing to do and spends most of her time after school in her room because there is nowhere to go:

It's bad for my mum 'cos I have two small sisters. She gets tired of going up and down to the top of the hotel. I have to get up early to do things for her. My mum doesn't like me going downstairs. I stay in my room most of the time. Downstairs you mix with people [mum is afraid] they might be a bad influence. I have DVDs and the internet.

Abbo is very aware that resources and money are scarce for her family. She says she does not get any money from her mum and the family struggles to survive on the direct provision weekly allowance of €19.10 per adult and €9.60 per child.

I need money for school now and she has nothing. In May my class are going to Clare. I need 20 Euros deposit. My Mum doesn't have it though. My brother can't go on a trip with his team also. We can't afford it. He wants to go so much. It's too much for my Mum. The teacher doesn't know. It's really hard

Case Study 3

Namono is from Uganda and has a one year old daughter called Sarah. She lived in two different direct provision centres; in the first she had a more positive experience however in the second centre life was more difficult. Subsequently she received refugee status and now lives in Lucan.

You want your child to eat healthy food but you don't have a choice you can't do anything. In [the first centre] you ask for something and they try to get it for you. In [the second centre] on the other hand it was impossible. It's up to you to use your 28 euros to buy the food you want to eat. I don't want her to eat that food that is very fried and not healthy

For her the most difficult part was the attitude of the managers in the second hostel she lived in. She gets very emotional talking about how she was treated and how she was made to feel:

Definitely the management was the most difficult part [in particular] the constant shouting. If they're not shouting at you they're shouting at someone else. They make you feel so small. Sometimes the people there would talk back and the manager says 'well go back to your own country if you're not happy with it'. They write in a book about you every day. They are looking at you. You can't express what you want to say. If you answer back they transfer you to a bad place so people learn to shut up.

She thinks it's important for people to remember the situation asylum seekers could be escaping from:

They don't know my life. People have no idea how bad my life has been.

She understands that the situation is difficult but feels it is not being handled in the best way possible:

I know the state is trying and I know it's difficult. But they don't know what it is like. Oh my god the things that go through your head. The way the people treat you and the way they think about you... Some places are self-catering this could be better. If you have a child you share with other people with a child. At least you can cook what you want for your child

Policy Concerns: Children and Families in Direct Provision

Direct Provision was introduced by the government as a pilot scheme in 1999 and became official Irish government policy in 2000. Three meals per day are provided to residents at specific times, together with a weekly social welfare allowance of €19.10 per adult and €9.60 per child.¹ Residents are not allowed to cook their own food and are usually required to share bedrooms and bathrooms.² Families get their own room(s) to live in, which in some centres includes a bathroom and in others they must share.³

Residents must stay in the direct provision address in order to receive their weekly direct provision payments. This is also the address for correspondence relating to their asylum claim. Failure to respond to certain official correspondence relating to outcomes at different stages of their asylum application may invalidate their claim.

Reflecting on the case studies above and the JRS experience of working with children and families living in direct provision centres, a number of important concerns relating to the underlying policies have been identified:

1. Parenting

Parenting can be very difficult in the setting of the centres. Parents can feel that they have little control because ultimately the centre management make key decisions concerning their families' lives. As highlighted in the previous case studies this arises in relation to decisions about food, where the children can play, whether a child/teenager can have their own room etc.

Many parents are also concerned about child protection. One mother described herself as 'paranoid' about her daughter's safety. She could not let her out of her sight because there

were 'random men around the hostel'.⁴ Mothers worry about their children mixing with strangers and in particular with single men. This mother also worried about her ten year old son mixing with teenagers and older children who might be engaging in discussions and behaviour unsuitable for a younger child.

The Reception and Integration Agency's (RIA's) Child Protection Policy for Accommodation Centres states, 'Parents/guardians have responsibility for the welfare of their child(ren). However, all those working in Accommodation Centres have a duty to care for residents.' A number of child welfare issues are effectively beyond the resident's control, dictated by the ways in which the centre is managed.⁵ However, staff members are not care workers and may not have the skills or received the training necessary for some of the daily decisions they are required to make about child welfare.

It is worth emphasising in the 10 year period since its [Direct Provision] introduction it is the only social welfare payment not to have increased.

2. Poverty

A key concern raised in respect of the Direct Provision residents is that the meagre weekly allowance of €19.10 per adult and €9.60 per child places families and individuals in a situation of quasi-destitution. It is worth emphasising in the 10 year period since its introduction it is the only social welfare payment not to have increased.

In *Beyond the Pale: Asylum Seeking Children and Social Exclusion*, it is contended that children dependent upon direct provision experience extreme income poverty as a result of public policy.⁶ The researchers of this report called for it to be abolished. Research carried out in one direct provision centre in Waterford found that 90% of the residents who responded felt that the direct provision allowance did not meet their needs.⁷

In two of the case studies above children reported being short of money and missing out on things peers were doing as a result. After school activities are not possible for most of the asylum seeking children we have contact with because their parents do not have the means.

3. Social Exclusion

Djamila and Abbo both felt that the other children in their class didn't understand what it was like to live in a 'hotel' and this was a barrier to socialising with them. Sometimes children thought it was great to be living in a hotel and other times classmates thought it was strange and mocked the children.

A father residing in a centre outside Dublin noted that his children and others from the centre were known as the 'hostel kids' in school.⁸ He feels there is a stigma in the community and in school about the children. There is no place in the centre to invite his sons' classmates to come and play so they tend to get excluded when parents arrange trips for their children to each others' houses. These experiences are consistent with the findings of the *Hidden Cork*⁹ report by NASC, which found that outside of school, the children of asylum seekers have little or no interaction with other children.

4. Education and Life Skills

All asylum seeker and refugee children aged between four and eighteen have a right to the same primary and post-primary education as the rest of the Irish population. However the additional costs of schooling can be hard for asylum seeking parents to manage, particularly if a parent has more than one child in school. Since all asylum seekers are no longer entitled to Child Benefit, they must meet any extra expenses for their children from their weekly payments of €19.10, and €9.60 for each child. At present, asylum seeking parents can apply for the Back to School Clothing and Footwear Allowance for their children, but can struggle when such expenses arise outside of this payment period. There remains a constant concern that their eligibility to receive these benefits might be changed or removed.

A longer term issue of concern for parents is tied into the absence of a right to work and the example this sets for their children. Children are growing up without ever having seen a parent go out to work or indeed cook a meal. In addition residents find themselves increasingly institutionalised in the direct provision system relying on the centre management to mediate their education, health and social welfare needs. There are concerns about the longitudinal impacts on children reared in a direct provision setting.

5. Accommodation

In 2008 the Commissioner for Human Rights of the Council of Europe visited Kinsale Road

accommodation centre near Cork airport and spoke to staff members and residents in private. He concluded that the facility was, in general, of a good standard, however was concerned about the current state of accommodation for families. The Commissioner was concerned that there were no apartments available for families with children; each family shared one room, which resulted in very limited private space. NGOs and other civil society representatives informed the Commissioner that this is a general problem in Irish reception centres. The Commissioner was also concerned about the 'low degree of personal autonomy asylum-seekers may retain throughout the process, knowing that it can take three to five years to have an asylum application determined'.¹⁰

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The negative side of direct provision accommodation was highlighted in the case studies. The interviewed were aware of and witnessed regular and sometimes violent arguments. Their parents confined them to their own rooms to protect them from other negative or inappropriate influences in the centre. Parents interviewed have raised concerns about the inadequate living space and the obvious problems that arise from children and parents having to share a bedroom over a long period.¹¹

A Children's Research Centre report found that young people's experience of Direct Provision was that the accommodation was very poor quality, meals were unhealthy and the atmosphere was stressful.¹² There can be a strong link between the quality of housing and a person's health. Overcrowding and enforced passivity have negative effects on the mental health of asylum seekers, which in turn may lead to poorer physical health.

6. Child Services and Supports

Asylum seekers in this country are often here on their own and so can not avail of the extended family network to support them and their children. In some hostels there are limited or no facilities to play. The UN Declaration on Rights of the Child principle 7 states that:

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Children have to be supervised at all times and so in practice children spend the large majority of time in their bedroom. Children end up spending much of their free time indoors in their bedroom. Many children have to share one room with their parent(s) and siblings. This is not only the family's bedroom but it is often their recreational space as well. While some hostels do have recreational facilities, many have little or inappropriate space.

7. Food

Living in direct provision has a certain impact on both physical and mental health. Especially when there is no self-catering the question of access to a nutritionally adequate diet is important. JRS regularly receive complaints about food in the centers. In her case study Namono believed the food provided in the centre was not healthy for her child and set aside money from her allowance to buy specific foods she thought necessary. The Health Service Executive (HSE) has raised concerns that Direct Provision Centres do not offer quality, culturally appropriate food.¹³ For many organisations working in direct provision centres food is one of the most commonly raised complaints by residents.

8. Mental Health

Research conducted by the Children's Research Centre at Trinity College Dublin in 2005 found that life in direct provision accommodation had been detrimental to residents' psychosocial wellbeing.¹⁴ As one asylum seeker has put it: 'coming out of the centre you need counselling'. Parents feel this is having an impact on their children as well. One mother suspects that children living in the centre have less confidence and lower self esteem when they leave. She worries that her son is becoming withdrawn.

Sometimes there may be aggressive and violent incidents in centres. Arguments often break out. As highlighted in the first case study and from speaking to other children regularly fights break out between residents in the hostels. Tensions may run high between residents, sometimes over issues like laundry which may seem minor but in the stressful environment can take on greater significance.

A concern of residents is that their children are regularly surrounded by people who may be depressed or have a mental illness:

People have so many problems in the centre, you can see people getting crazy and our children always see this, they say what's wrong with that person who's talking to themselves, or what's wrong with that person who's crying?'¹⁵



JRS Homework Club in a Direct Provision centre

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Direct Provision: Recommendations

The challenge to the State in providing suitable and, in these difficult economic times, cost effective reception policies and accommodation for individuals and families seeking asylum are considerable. Based on the testimony of residents and the findings of numerous pieces of research over the last ten years on the direct provision system it can be concluded:

- The Direct Provision System should be radically reformed or replaced by a scheme that ensures any person awaiting a decision on their application for protection can be allowed to do so with dignity and full respect for their fundamental rights. This is especially urgent in the case of children and families living and growing up in direct provision.

In the light of current budgetary constraints it is likely Direct Provision will remain in place for the foreseeable future. Speedier decision times and falling applicant numbers will lead to savings. A revenue neutral approach would allow these savings to be directed to measures which could greatly improve the conditions for residents living in direct provision, including:

- Shorter decision times: Introducing the Single Procedure and Front Loading of Legal Assistance, achieved by a more effective use and configuration of existing Refugee Legal Service (RLS) resources, would hopefully lead to speedier and better quality adjudication of protection claims.
- Additional family space: Provide larger and more rooms for families with children.
- Increased family supports: Consider an increase in the provision of childcare, supports and services for families seeking asylum.
- Appropriate training: Ensure direct provision centre staff and management receive training that will ensure high standards of child protection and welfare are implemented.
- Expanded self-catering options: Provide all residents even a limited opportunity to prepare some of their own meals, would make life in direct provision more bearable. Utilise existing self-catering facilities to maximum capacity.
- Independent complaints mechanism: Introduce an independent complaints procedure in all centres, which would ensure that residents concerns can be voiced without fear of summary transfer.
- Parliamentary oversight: At a recent Joint Committee on Health and Children following visits by TDs to two direct provision centres, Committee members committed to making follow up visits to accommodation centres. In assessing the effectiveness of direct provision policies oversight by parliamentary committees has an important role to play in ensuring the rights and dignity of all persons seeking asylum is respected.¹⁶

Notes

1. These weekly allowance have remained unchanged since 2000.
2. 6,238 people were living in Direct Provision at the end of October 2010. 32% of residents are children under 18 and 50% of all residents in direct provision are families. These statistics are available at [http://www.ria.gov.ie/filestore/publications/RIAOct\(A4\)2010.pdf](http://www.ria.gov.ie/filestore/publications/RIAOct(A4)2010.pdf)
3. Full description of Direct Provision conditions is available at http://www.ria.gov.ie/the_asylum_process/reception_and_dispersal/
4. JRS Direct Provision Interview 1.
5. AkiDwa, 'Am Only Saying It Now': *Experiences of asylum Seeking Women in Ireland*, Dublin: AkiDwA, 2010, p.15.
6. B. Fanning, A. Veale, D. O' Connor, *Beyond the Pale*:

Asylum Seeker Children and Social Exclusion in Ireland, Dublin: Irish Refugee Council, 2010.

7. Waterford Area Partnership, *The Needs of Asylum Seeker Men Living in Viking House Direct Provision Centre Waterford*, The Men's Development Network and RAPID, 2006, <http://www.wap.ie/Publications/Viking%20House%20Research%20Report%20Nov%2006.pdf> (accessed 2 December 2010).
8. JRS Direct Provision Interview 2.
9. NASC, *The Perspectives of Asylum Seekers on Direct Provision and the Asylum Legal System*, Cork: NASC, 2008.
10. Report by the Commissioner on Human Rights Mr Thomas Hammarberg on his visit to Ireland, available at <https://wcd.coe.int/wcd/com.intranet.InstraServlet?Index=no&comm and=com.intranet.CmdBlobGet&IntranetImage=1441147&SecMode=1&DocId=1272888&Usage=2> (accessed 2 December 2010).
11. JRS Direct Provision Interview 3.
12. Whyte, J., Smyth, K, *Making a New Life in Ireland: Lone Refugee and Asylum-Seeking Mothers and their Children*, Dublin: Children's Research Centre, Trinity College, 2005, pp 75-6.
13. Health Service Executive (HSE), *National Intercultural Health Strategy 2007 – 2012*, Dublin: HSE, 2008, p. 42.
14. Whyte, J., Smyth, K, *op. cit* , p.51.
15. JRS Direct Provision Interview 4.
16. Available at <http://debates.oireachtas.ie/DDebate.aspx?F=HEJ20101012.xml&Node=H4#H4> (accessed 2 December 2010).

Elizabeth O'Rourke is Integration Officer for Jesuit Refugee Service Ireland

The World Mobilised: The Jesuit Response to Refugees*

Mark Raper SJ

Introduction

Three core insights came together for Fr Pedro Arrupe SJ when he launched Jesuit Refugee Service 30 years ago this week. The first compelling factor was his compassion for the refugees in their suffering. He wrote to the Society on 14 November 1980 ‘...last year, struck and shocked by the plight of thousands of boat people and refugees, I felt it my duty...’. For Arrupe the refugees were ‘signs of the times’, a feature of his historic time that compelled a compassionate response. Second, having been Superior General already for 18 years, he had a strategic sense of how the Society worked and what it was capable of: its mission, structure and strengths. Third, Pedro Arrupe had confidence in the goodwill and resourcefulness of the many partners willing to share in the same mission – ‘the active collaboration of many lay people who work with us’.

Those same elements have helped to build the world wide project that is JRS today. If any of these elements is missing now, JRS would fall apart. First, JRS is inspired and instructed by the lives and experiences of the refugees – their lives inform our prayer, our discernment and planning, our way of proceeding. Second the Society, as a global body present in over 120 countries, adapting and trying to learn from each local culture, has a mission that is universal, to go by preference to frontier places, to serve a faith that does justice. Third, many friends and partners join this mission and make it possible. Many would never come to know us, and we them, if it were not for our shared solidarity on behalf of people in distress.

Part I: The Refugees

All associated with JRS will tell you: ‘the refugees are our teachers’. From them we learn much. As an organisation, the Jesuit Refugee Service was built from the bottom up. Experiences in the field and reflection on those experiences gave JRS its shape. Its vision came from its founder Pedro Arrupe, certainly, its horizons are shaped by our reading

of the Gospel, but each new program is worked out on the ground with the people we serve, fitting their needs and mobilising their resourcefulness. Structure is not the end itself but rather a means to service. JRS had to be structured so that it could be true to its mission to ‘accompany, serve and defend the rights of refugees’. Yet we can own that mission because it is verified in our lived experience on the ground.

For example the experience of *acompañamiento* for JRS workers in Central America gave new resonance to the meaning of ‘being with’. When North Americans volunteered to live with communities of refugees in El Salvador, local military knew that if and when they used US supplied M16s against those communities and if any American citizens were harmed, then military aid and external political support for the dictatorship would dry up. Just by being there, by accompaniment, one could protect human rights.

Looking through the eyes of the people we serve we are given a fresh view, a quite new perspective, sometimes of joy, sometimes of shock. Forever after the world is a different place.

I met a Rwandan woman, whose husband was taken by the civil war, whose oldest son was also caught and killed by neighbours, yet she will still cook and bring food for her neighbours, whatever they have done. She goes on dreaming of a world without war. Now I can know that peace is really possible.

I met a Sudanese woman whose neighbour was dying of cholera. She took the neighbour’s child despite risks to herself, and nursed the child to life. From her I now know what compassion really is.

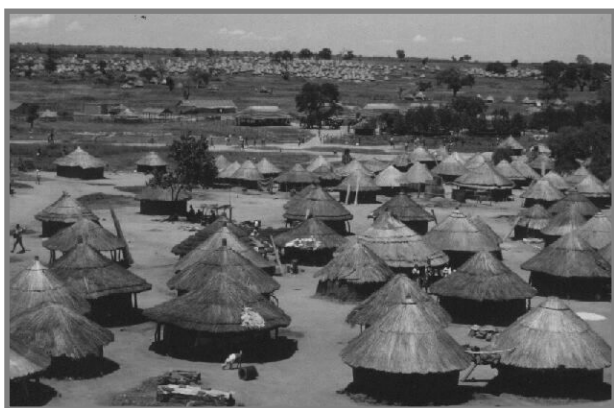
I met a Vietnamese woman who forgave, face to face, and in front of many people, the man responsible for the death of her sister and two of her children. Later she found her husband who had fled by a different route, and they started their lives together again.

***This article is adapted from the first Annual Pedro Arrupe SJ Lecture hosted jointly by Jesuit Refugee Service and ISIRC (Institute for Interdisciplinary Studies of Religions and Cultures, Pontifical Gregorian University).**

In a Thai camp I met a woman who looked after her two surviving children plus 20 orphans. Eight other children and her husband had died in Cambodia. She wanted to forgive her husband's killer and she prayed for the peace of her country.

These women give reconciliation fresh sense. Every day in every camp, every detention centre, and in urban refugee settings, JRS people hear stories like this. Our primary service is to listen to the people, and by listening, to help them find courage to go on with life. What we have seen and heard changed our lives.

Refugees showed me what human resilience can mean. Visiting newly arrived refugees, whether in the Krajina district across from the Bihac pocket in Bosnia, or at the Burma border close to Mae Hong Song in Thailand, or in the squatter settlements of Nairobi, Kampala or Pretoria, I would regularly find them most pre-occupied for their children, which means for the future.



Refugee camp, Ogujebe, Uganda

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Time and again I have met young men and women teachers, who travelled months on foot with their people through the dense African scrub or Asian jungle, yet as soon as they reached a safe place, they would construct a shelter, gather children together to learn, and inspire them with plans and hope for their future. The first task in these resilient communities was to get the school going.

Arriving once in a clearing in northern Uganda, where thousands of Sudanese were setting up camp after weeks of walking. I chanced upon a man hungry, exhausted and surrounded by children, and asked what we could bring that would help him most. 'A blackboard and some chalk', he replied. He was a teacher, concerned only that the children's education should continue.

Of course each refugee situation is different. We were with the Khmer in interminable, intractable camps, and witnessed how they somatised their grief. We accompanied the Vietnamese on the way to somewhere better, creative, eager, learning quickly. Some of us were with the Huong people, the hill-tribe Lao, still arranged in the tight discipline of their mountain, tribal loyalties and obligations. Others of us meet and accompany Sudanese: tall, quiet, dignified, valuing education like gold. Others of us gave our hearts to Rwandan people whose gentleness contrasted so painfully with the horror they had endured. Others worked with Bosnian Muslims who were shocked to discover that the JRS volunteers, even though they were Christians, could love them, and that they prayed to a God remarkably similar to their Allah.

Gabriel: A refugee story

I will tell you one refugee's story. The story has no happy outcome, indeed far from it. But it may help to communicate some of the feelings that inspire many who accompany the refugees.

Gabriel, a six-foot-six Dinka, had arrived in Thailand after a journey that for his people rivalled Marco Polo's. Travelling by foot to escape the fighting which had begun in 1983 in his home in Southern Sudan, he had crossed to Egypt and on to Iraq to study, but instead was drafted to be a porter in the Iran-Iraq war of the eighties. Escaping, he failed to get passage westwards to Europe and so, heading east towards Australia, was stopped in Singapore and diverted to Thailand.

There I found him, culturally disoriented, lonely and desperate. He visited me frequently, and with an officer from the United Nations High Commissioner for Refugees (UNHCR), we searched everywhere for a country to take him. Australia, New Zealand, USA, Canada, Sweden, none would even interview him. Finally he was offered three choices, a trip home to Sudan, Kenya, or Liberia. In desperation he accepted Liberia and departed in 1988.

Several times he wrote to me, his words dictated to a Scottish Salesian priest. A few years later I was in my new position in Rome. Disturbed by the suffering of the Liberian people, I went in 1991 to war-ravaged Monrovia to see what could be done. While there I also hunted for Gabriel. Visiting the Salesians, I asked if they had known him. Sure enough, they pointed me to a Scot, the one who had written Gabriel's letters. He told me how Gabriel

had died, mistaken for a Mandingo, waving his long arms and showing his refugee card, trying to explain to a drugged, over-armed Krahn follower of Charles Taylor, that he was ‘under the protection’ of the United Nations. I wept for Gabriel and the many victims of that senseless never ending war.

Perhaps there is no moral to draw from the story of Gabriel who had traversed, mostly on foot, the geography of our world of conflict and refugees: escaping the war in Sudan, caught in a Middle East one, blocked when trying asylum routes west, east, south and north, floating in the eddy of the Indochinese refugee tide, finally a target in someone else’s war. But try to imagine this. Almost all of the 145 or more countries which have signed the Refugee Convention, including my own homeland, Australia, have policies of tightening their borders. As a result some 80% of the displaced persons in the world now live in the Global South. Many, blocked forcibly on their journeys, are held in detention for years.

My Sudanese friend Gabriel was one of the ‘unheard’. Refugees’ voices are often unheard, unheeded, effectively silenced. Yet they are the gentle breeze, the still small voice of the presence of God of which we read in the story of Elijah. The one who accompanies refugees must know how to listen to the unheard, to the softly spoken. Martin Luther King said: ‘a riot is the language of the unheard.’ The unheard are everywhere.

*The one who accompanies
refugees must know how to listen
to the unheard, to the softly
spoken.*

Listening to the refugees, learning like Elijah to know the presence of God in the whispers from the edges of society, we hear the message that another kind of world is possible. This helps us overcome the normal temptation to consider refugees as helpless, and to respond instead with solidarity.

Refugees are people whose choices have been taken. For those who do choose to take their side, there is only one way forward, which is to listen and to learn from them, and to make tools, such as education, available to them, and to empower them to seek their rights. It is not enough to accept the imposed solutions of the powerful.

Part II: Don Pedro Arrupe: how the Society works and what is its mission today

As Superior General, Pedro Arrupe guided the Society through the renewal initiated by Vatican II. He called a General Congregation (GC32) in 1975, whose most influential document was Decree 4, ‘Our Mission Today: the Service of Faith and the Promotion of Justice’. The core of the text runs:

The mission of the Society of Jesus today is the service of faith, of which the promotion of justice is an absolute requirement. This is so because the reconciliation of men (and women) among themselves, which their reconciliation with God demands, must be based on justice. In one form or another, this has always been the mission of the Society: but it gains new meaning and urgency in the light of the needs and aspirations of the men (and women) of our time, and it is in that light that we must embrace it anew. [GC32, Decree 4]

The challenge to understand this text and put it into practice is still with us. The Society renewed its commitment to this expression of its mission recently in the 35th General Congregation (GC35) with a fresh statement of ‘reconciliation with God, with one another and with all creation’. We meditate it, renew our understanding, and try to make practical decisions in the light of it. The truth of the text is proved by its martyrs ... murdered by people antagonized by those who live out a faith that does justice. JRS has many brothers and sisters who have given their lives in the course of their service. We honour them too in this anniversary.

A key to understanding Pedro Arrupe is Hiroshima: where he was in 1945 when the bomb fell. He likened the refugee crisis to the way the atomic bomb not only affected its victims, but also impacted then and now on the consciousness of the world. Rowan Williams, in his speech to America Magazine accepting the Champion prize for his efforts in ecumenism, spoke of how he prepared for a visit to Japan by reading Fr Arrupe’s writings on his experiences in 1945:

And as I read, I began to understand more and more deeply how someone formed in the Jesuit tradition that was Champion’s could see into the heart, into the depths of evil, and yet see beyond. In the face of unspeakable inhumanities, Pedro Arrupe was able to witness to the humanism, the depth of hope, which is the proper contribution of Christians to culture and politics and ecumenism.

Although Pedro Arrupe set the vision of JRS in place, it was Peter-Hans Kolvenbach who, as Superior General for over 24 years gave JRS its real place in the Society. From his experience in Lebanon, where his own office had been bombed a number of times, he understood this service. It was Fr Kovenbach who extended the call of concern for refugees to every Jesuit.

The Society's universality, our mobility, and above all our apostolic availability are the qualities rooted in our tradition which should help us to meet the challenges offered by the refugee crisis of our time.



Anxiety at UN head count, Thailand

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The third Jesuit General under whose guidance JRS is now going forward is Fr Adolfo Nicolás, who constantly returns to three themes: the universal mission of the Society, that is its call to go to the 'frontiers'; depth of the Spirit; and creativity. Each of these themes reflects the mission given to JRS already thirty years ago.

Part III: The world wide network of Collaborators who make up the JRS

In the third part I want to speak of the wide network that has been animated by Fr Pedro Arrupe's vision and initiative. Arrupe saw JRS as a 'switchboard' connecting identified needs with offers of assistance. He was sure that the Society could rely not only on the cooperation of its own members and communities, and not only on the parishes, schools and other institutions under its care, but also on the generosity of our many friends, especially religious congregations and lay movements.

Let me quote a remarkable, yet typical woman who has been working with JRS for over 20 years. Sr Denise Coghlan a Mercy Sister in Cambodia:

Pedro Arrupe called for a response of love and service to the needs of people forced to flee their homes after the cluster bombs, guns, rockets, and chemical weapons ravaged Vietnam, Cambodia and Laos. Much earlier he had tended the injuries of innocent sufferers from the atomic bombs dropped in Japan. From this call grew JRS.

Thirty years later, and I have been part of it for twenty three of those years, JRS is a network of friends, or indeed many networks of friends which include refugees, people who serve among refugees, academics, human rights advocates, the public who support the work from afar, and in some places government and UN officials. The hope of all is that those who flee may live in freedom and dignity.

For many of us it has been an experience of meeting God in the most unlikely places and being blessed by some of the poorest people in the world. It has been listening to incredible stories, most of them true! It has been a place where involvement at the grass roots and advocacy at the highest level has worked together unto good. It has enabled the voice of survivors to be heard and international treaties to be negotiated. To JRS I owe many wonderful friends, experiences I could not have imagined, and an admiration for the power of the human spirit to rise.

With only a tiny contribution by Jesuits, JRS makes possible the courageous, collaborative efforts of hundreds of co-workers, lay and religious, and thousands of refugee co-workers.

In addition, JRS has magnificent partners in the global federation of Caritas agencies and other non government organisations, especially the Catholic and other faith based bodies that give immense financial support, advice and encouragement to its work. The local Churches are partners on the ground. The world wide networks of Jesuit educational institutions provide a ready social base to JRS.

JRS has many friends in governments and in the international organisations, who respect the mobility, the credibility and the wisdom of a body that is on the ground among the refugees. An organisation that can reflect, analyse and propose policy that can lead to breakthroughs, or can oppose destructive policies intelligently and in an informed way.

Conclusion

I have hardly spoken about the historical development of JRS from almost random undertakings into a coherent international body with a robust yet flexible structure, a hub in Rome, ten regional centres with the autonomy to take initiatives, and a presence in over 50 countries. Its impact derives from the credibility of its presence in the field.

I have not spoken of the dramatic changes in the world of forced displacement, of the time before and after the fall of the Berlin Wall, or when 'communism' was replaced with 'terrorism' as the enemy in the mind of the West. In these thirty years the population of the world has risen from 4.4 billion in 1980 to almost 7 billion in 2010. Today there are fewer places for refugees to go.

Returning now to a new assignment in Asia Pacific where I accompanied refugees in the 1980s I find new categories of forcibly displaced persons. Displacement in Asia Pacific today is caused by conflicts, poverty, inequality, poor governance, and by disasters for which often the preparations have been totally inadequate. Refugees and other migrants often use the same routes, use the same 'agents' or smugglers, leave behind the same oppressive human rights situations.

The term IDP – internally displaced persons – was only invented in the 1980s and came into use in the 1990s as more and more victims of conflict were unable to leave their countries. Undocumented workers, stranded migrants, trafficked persons, especially women and children, have all increased. Thailand alone holds over 3 million stateless persons.

Victims of natural disasters are many, such as the 7 million still homeless following the recent Pakistan floods. Those affected by earthquakes, cyclones and tsunamis grow in number, often because development is uncontrolled, especially in the coastal estuarial cities of Asia.

These are new challenges for the mission of JRS, since it is not necessarily restricted to a tight mandate like a UN agency, but rather its mandate arises out of its compassion for the victims of disaster. JRS, since its beginning designed as an integral part of the life of the Society, derives its identity from the inspiration of lived experience with refugees and the priorities set out in its

Constitutions:

- Who are the most forgotten, unheard, not accompanied?
- Who are not served by others?
- Who can we serve best with the means available to us?

JRS integrates a spiritual calling with the vocation to serve the human family. As religious we live poorly so that all who meet us will know that God is our treasure, and those who are in destitution or who fear for their lives will find a friend in us.

Our Church today is in crisis wherever it fails to hear and understand the hunger of people for meaning. Pope Benedict XVI called the Society of Jesus to reach out to this hunger, to go to those 'frontier' places where the Church finds it difficult to go or cannot go. By definition, refugees are there at the 'frontiers'. This mission offers many opportunities.

When offering this challenge and invitation, Benedict spoke about JRS in his message to General Congregation 35:

Taking up one of the latest intuitions of Father Arrupe, your Society continues to engage in a meritorious way in the service of the refugees, who are often the poorest among the poor and need not only material help but also the deeper spiritual, human and psychological proximity especially proper to your service.

The JRS story is about the lives and hopes of people whom we know personally. JRS opens a door of insight, beyond transitory and shocking images, into the inspiring efforts of people to defend their rights, protect their families and give their children a future. Fr. Arrupe was a prophet. His vision for JRS has not only given great service to people in need, it continues to bring wisdom and blessing to the Society and to all those who, through it, meet the displaced, dispossessed and 'unheard' people of our world.

Mark Raper SJ is currently President of the Jesuit Conference of Asia Pacific. He served 20 years with Jesuit Refugee Service, first as the Regional Director of for Asia Pacific during the 1980s, and then from 1990 to 2000 as its International Director.

Bridging the Protection Gap: Immigration Detention and Forced Migrant Destitution

Philip Amaral

Introduction

Asylum and migration has been at the forefront of European Union policymaking for many years, but especially so during the last decade. The gradual enlargement of the Union and the disappearance of internal borders has obliged national governments and EU institutions to fundamentally re-think how refugees and migrants are welcomed into European society. Indeed, these factors have led to a legal restructuring with EU-wide implications.

In the 1999 European Council in Tampere, Finland, EU Heads of State and Government called for the establishment of a *Common European Asylum System (CEAS)*. The Council's call for a EU-wide system to provide international protection to refugees in full accordance with the 1951 Refugee Convention was an important step forward. Since then, the EU has adopted important legislative measures: Directives on Reception Conditions for asylum seekers,¹ on Qualification for becoming a refugee or a beneficiary of subsidiary protection,² on Asylum Procedures³ and the Regulation on allocating member state responsibility for examining asylum applications, i.e. the so-called 'Dublin Regulation'.⁴ This stage of EU legal harmonisation on asylum, having ended in 2005, was intended as a first step towards a full CEAS, foreseen to be in place by 2012.⁵ Parallel to this process, the Council, together with the European Parliament, adopted the Directive on the Return of illegally staying third-country nationals.⁶

During its growth in the thirty years since its founding, the Jesuit Refugee Service has strived to remain true to its mission – to accompany, to serve and to advocate – in the face of the ever-changing needs of refugees and the forcibly displaced, and the challenges they pose for states. In particular, JRS in Europe has witnessed a marked increase in xenophobic public sentiment towards all categories of migrants, whether they came to Europe in search for a better life or fleeing from persecution. Being close to refugees, and being touched by their realities – in detention centres, city streets, soup kitchens and homeless shelters – has been at the heart of our approach.

It is precisely this 'closeness' that has taught us that despite the EU's efforts to provide common protection standards for migrants and refugees, alarming gaps still remain. There are still glaring discrepancies in the way EU member states meet the needs of asylum seekers and undocumented migrants. In Europe JRS offices are particularly aware of such discrepancies in two areas where migrants are most vulnerable: behind the high walls and barred windows of detention centres, and in cities and towns where migrants live destitute, without access to basic social support and services.

This article will describe two recently published reports that exemplify how JRS has adapted to the ever-growing needs of refugees and the forcibly displaced, in order to respond to the ever-widening gap in protection that exists in EU law and policy on asylum and migration. Both reports depict the realities of refugees and forced migrants who live on the margins of society in Europe.

Detention in Europe

Migrants are detained throughout Europe in a variety of conditions and legal contexts.⁷ Asylum seekers are detained while they await a decision on their application, as are undocumented migrants who are to be returned to their country of origin. Sadly, families and children are detained as well.⁸ It is admissible for a state to detain a foreigner, but only under clearly prescribed and narrow legal conditions. A state may detain a foreigner in order to prevent an unauthorised entry into the territory.⁹

A person who enters an EU country and asks for asylum may be detained under limited circumstances: to verify one's identity, to undertake a preliminary interview, to investigate one's intention to purposefully mislead the authorities and for reasons of national security and public order.¹⁰ However a person cannot be detained for the sole basis that s/he is an asylum seeker;¹¹ and an undocumented migrant should not be detained unless the state is actively prepared to undertake his or her return home.¹² Importantly, if detention is to be used at all, it should occur only as a last resort and in a manner that is proportional and reasonable to the person's situation: the unnecessary and

prolonged detention of any foreigner would not hold up to legal scrutiny.^{13]}

The human impact of detention has been observed and documented by a number of institutions and monitoring bodies. Between 2005 and 2009 Members of the European Parliament visited detention centres across Europe, and published reports describing sub-standard conditions they witnessed in some countries.¹⁴ In her former role as Her Majesty's Inspectorate of Prisons, Dame Anne Owers, conducted several inspections of immigration removal centres in the UK and has repeatedly criticised the detention of children, describing it as neither 'exceptional' nor 'necessary'.¹⁵ The Council of Europe described a 'long list of serious problems' with detention centres in their January 2010 report,¹⁶ and the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, has published several reports on detention in Europe, in particularly on the poor conditions of centres in Greece.¹⁷

For many years now JRS staff and volunteers visit and accompany detainees in a number of European countries. They provide social and legal counselling, spiritual guidance and material assistance; in other cases they serve simply as a listener. Our long experience in accompanying detainees has confirmed the reports of official bodies and monitoring institutions: that detention can bring very negative consequences to the individuals who experience it. Long bouts of isolation from family, depression and prolonged confinement contribute to a pattern of physical, mental and spiritual deterioration.¹⁸ This is why we have always advocated for detention to be used only as a last resort, if at all. And in the case of asylum seekers, we believe that they should not be detained whatsoever.

Vulnerability in detention

In June 2010 we published a report that has lent critical weight to the observations others and we have made over the years. The report, *Becoming Vulnerable in Detention*, is the result of an 18-month long project we have undertaken in 23 EU member states in partnership with JRS offices as well as with other organisations.¹⁹ The purpose of this study was twofold: to research how people with special needs cope in detention, e.g. people with medical illnesses, trauma, families, children and the elderly, and to research how detention impacts people at a personal level – in other words, how a person's level of vulnerability is affected in

the environment of detention. Together with our project partners we collected interviews with almost 700 detained asylum seekers and undocumented migrants in 21 EU member states. We asked detainees to tell us about their lives in detention and how it affected them at a personal level. Whereas our other reports have typically focused on the conditions of detention, we wanted to get to the heart of the matter: the human dimension of detention.

The environment of detention deteriorates the lives of almost everyone who experiences it

The study reveals two very important findings about life in a detention centre. Firstly, is that people with special needs – such as families, the medically ill, trauma victims – are indeed vulnerable within the environment of detention, and deserve special attention due to the factors they possess. Secondly, however, we found that detention is harmful towards persons who do not possess any officially recognized 'special needs' – people who, before their detention, were relatively healthy. The environment of detention deteriorates the lives of almost everyone who experiences it; and it is important to note that this occurs irrespective of the quality of the living conditions in the centre. In other words, people do become vulnerable in detention, and the negative consequences deepen as detention is prolonged.

The study identifies three levels of vulnerability that are present in the lives of detainees. At the personal level, we see that detention has detrimental consequences to their physical and mental health. Not only is depression and anxiety commonly reported, but also crippling stress, which emanates from the lack of a 'future perspective', or, simply not knowing how detention will impact their lives and which direction they'll need to take after their release. Related to this is the finding that most of the detainees we interviewed knew little about their asylum or immigration case; and they knew even less about when they might be able to be released from detention.

At the social level, we see that detainees' inability to stay in touch with family and loved ones on the outside, and with sources of support such as lawyers and social workers, deepens their level of vulnerability to the harmful consequences of

detention. Actually the most frequent type of social contact detainees have is with a detention centre's staff. In some instances these relations can really help detainees cope through the difficulties of detention, as most staff persons want to do good.

Indeed, our analysis shows that detainees more readily attribute their feelings of 'safety' in a detention centre to the staff, and their 'lack of safety' to co-detainees. But we saw other instances where staff exploited the vulnerability of detainees, and this sometimes led to abuse, especially when language barriers were involved.

At the environmental level we see that the prison-like architecture so typical of detention centres, such as barred doors and windows and high walls, only worsens detainees' sense of personal worth and well-being. One out of every two detainees we interviewed used the word 'prison' or 'prisoner' to describe whatever they were feeling.

The research that was done in Ireland revealed that detainees' lack of information about their asylum cases had a negative impact on their mental health. Some of the detainees we spoke to were unaware of their rights, the details of the asylum procedure or even how to get in touch with a solicitor. This unawareness and the resulting questions deepened their anxiety. 'I have applied for asylum but no one explained me how it works,' said one detainee. 'I have not met or spoken to a lawyer. I filled in the application by myself and the governor sent it in. It is difficult to get information.'²⁰

Detainees live on the margins of society and in the protection gaps created by EU common legal standards that encourage EU member states to race down to the lowest common denominator, rather than to the highest levels of protection. They are behind high walls and barred windows. People living in the community usually never have to come into contact with them.

Aside from the physical building they are kept in, detainees are virtually invisible to the outside world. Around Europe JRS offices have had a long experience with accompanying people in detention, and we have learned a great deal about the realities they face. But in recent years JRS offices have encountered a new reality, one that also has to do with migrants living on the margins and within protection gaps: not in detention centres, but on the streets of our towns and cities.

Destitution in Europe

Throughout Europe JRS offices accompany migrants who for good reasons cannot return to their countries of origin, and are excluded from social services in the countries where they are living. These persons are living in limbo, in an impasse, without any perspective of what may come next in their lives. Little has been known about the social and legal realities of these destitute migrants: who they are, how they meet their needs and why they stay living in a country despite experiencing extreme poverty.



Destitute Migrant in European capital

© JRS Europe

In 2007 we published our first report on the phenomenon of *forced migrant destitution*.²¹ The report came as a result of JRS offices around Europe who began to encounter migrants living on the streets with little to no social support from the state. They were asylum seekers who were waiting for a decision on their application, or they were 'rejected' asylum seekers, or undocumented migrants who could not be returned to their home country. In other cases we saw that these persons were allowed to remain within the country, not as refugees, nor as legal residents, but as persons with a 'tolerated' status. In all cases they were unable to work, put their children into school, get access to medical care and even access to a regular and healthy diet.

That report was our first step towards documenting the plight of destitute forced migrants in Europe. In March 2010 we published a follow-up to that report entitled, *Living in Limbo*, which revises the research we originally did while adding data from three new countries: Ireland, Spain and Sweden.

In total, the report presents the reality of destitute forced migrants in 12 EU member states plus Ukraine.²² The report reveals the existence of a large gap in protection for society's most vulnerable migrants; a gap that is often created by state policy and left unattended by EU policymaking.

In the context of our work, the definition of 'destitution' has three critical elements:

- The **lack of means** 'to meet basic needs of shelter, warmth, food, water and health.'²³
- The **consequence of a state's policy** to systematically exclude certain groups of migrants because of their (lack of) residence status from access to services granted to citizens and other groups of migrants.
- A **cyclical pattern of exclusion from basic and fundamental services and rights**, pushing forced migrants into a downward spiral of destitution.

The study reveals a reality of forced migrants – persons who have come to Europe fleeing from persecution, human rights violations or danger to their health and security – who are unable to get a foot on the ground, to establish a life for themselves and their families because of state's policy that aims to exclude them. And in most cases they are in this situation out of circumstances that are not of their fault: a lengthy asylum procedure that leaves them waiting without a means to be self-sufficient, or an inability to go back to their country of origin because they cannot get the necessary documentation. Destitution raises questions of particular moral and ethical gravity: what do we do with forced migrants who cannot be returned home and become stuck in our countries? What responsibilities do we have towards this category of persons?

Destitution as a pan-European human rights problem

The issue of destitution is also a human rights problem. State parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have agreed to take steps 'with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means' (art. 2.1). While the ICESCR does not contain individually enforceable obligations, article 2.2 of the Covenant expressively commits state parties to ensure that the exercise

of rights enumerated in the Covenant will be without discrimination 'of any kind', such as, *inter alia*, colour, national origin 'or other status.' This non-discrimination rule allows limitations of the enjoyment of social rights only insofar as they might be compatible with the nature of these rights (art. 4). Even if a distinction could be justified with objective reasons, such distinctions should not touch the core of the respective right.²⁴

This must be respected in the interpretation and implementation of the relevant national law, especially with regard to: the right to social security (art. 9), the right to an adequate standard of living (art. 11.1) and the right to enjoy the highest attainable standard of physical and mental health (art. 12). To discriminate against person in granting rights derived from the ICESCR would constitute a violation of the International Convention on the Elimination of All Forms of Racial Discrimination. According to the UN committee that monitors this Convention, the ICESCR provides for human rights that states must grant to everyone who is subject to their jurisdiction.²⁵

What do we do with forced migrants who cannot be returned home and become stuck in our countries? What responsibilities do we have towards this category of persons?

Added to this, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) enshrines the right to freedom from discrimination on the grounds of, *inter alia*, national origin or 'other status.' As regards EU law, the Reception Conditions Directive lays down minimum standards that member states must adhere to, such as schooling for minors, housing, health care and an adequate standard of living.²⁶ In cases where an undocumented migrant cannot be removed from a EU member state's territory, that member state must ensure that emergency health care is provided, that minors are granted access to the basic education system and the special needs of vulnerable persons are taken into account.²⁷

From our research we see that while no story of destitution is similar, various links can be found that establish destitution as a European phenomenon. There is the link between health and housing; not having a fixed address is an obstacle to

getting healthcare; the inability to receive medical treatment worsens the health conditions of forced migrants who are homeless. There is the connection to work, as poor health is a hindrance to finding and meaningful employment. A crucial element contributing to the downward spiral of destitution is the negative impact it has on a person's mental health.

Poor health and an inability to be self-sufficient puts a great deal of stress upon the forced migrant, who might live isolated in the community, far away from family and untrusting of sources of support. The longer the periods spent in destitution, the more unbearable migrants consider their situation to be and the more likely they experience severe depression or even suicidal ideation. Poor mental health, so common in destitute forced migrants, impedes their ability take language classes or other vocational courses that might improve their chance to integrate into the local community and to be self-sufficient.

In the report's chapter on Ireland readers can learn about the case of Abdul: an Afghani man who came to Ireland in 2005 and applied for asylum.²⁸ Upon arrival he was placed in a Direct Provision accommodation facility in Cork, where he stayed for three years. During that time he suffered from depression and post-traumatic stress disorder incurred from his experiences in Afghanistan. He was medicated and even hospitalised. He was then transferred to another accommodation facility in County Limerick after having been accused of an incident, which he denied. The new facility was distant from the nearest village leaving Abdul isolated. His mental health problems worsened. He was eventually refused accommodation after having been accused of 'several incidents of violent and threatening behaviour', which he again denied. This left him without assistance from his Community Welfare Officer and also without accommodation. He remained homeless for three months. Finally, with the help of a solicitor, his case at was settled at court and the State granted him access to accommodation – and he was eventually granted refugee status.

The research done in Ireland, with destitute persons as well as NGOs, reveals that Abdul's case is not isolated. Many other forced migrants become destitute in the face of similar circumstances. And in Ireland we see an element that is common throughout the rest of Europe: that NGOs and charity groups take over typical State functions

in order to minimise destitution. Charity groups and NGOs do all they can to help destitute forced migrants. But they have fewer resources than the State, and in the end, it is ultimately the State's responsibility to provide for the basic and fundamental rights of foreigners.



A place of detention for people seeking asylum

© Caritas Slovakia

Conclusion

Our reports on detention and destitution in Europe are two recent examples that mark JRS' long tradition of 'closeness' to refugees and the forcibly displaced: people who are on the margins of our society, living within the large protection gaps made by member state policies that aim to exclude, and by EU law that does not attain a high enough standard of protection. But these two reports also demonstrate that it is possible to link field-based research to policymaking at the EU and national level.

The European Parliament and the Council are debating a proposal made by the European Commission to legislatively amend the Reception Conditions Directive. The amendments put forth by the Commission reflect many of the recommendations we have made in *Becoming Vulnerable in Detention*: that detention should be used only in the last resort, that asylum seekers should not be detained during their asylum procedure and that qualified individual assessments should be made in order to determine a person's level of vulnerability and special need.²⁹ Alongside this we observe that the Commission's proposals also support recommendations we have made in *Living in Limbo*: that member states should grant asylum seekers the same level of social assistance that nationals would receive.

Also that they should be granted entry into the labour market no later than six months after they have applied for protection and that health care should be provided to them in the same way as to nationals.³⁰

As of this writing, negotiations between the European Parliament and the Council on the aforementioned proposals are stalled. Member states are reluctant to adopt better common standards of protection, especially those that would entail, in their view, higher costs. The European Parliament occupies an important role as they have equal decision-making status when it comes to EU lawmaking on asylum.³¹ In any case, the EU has already agreed to develop high common standards of protection: there just needs to be a stronger display of political will.³²

While the EU institutions are debating how to improve asylum laws, member states are in the process of transposing the EU Return Directive into their national law. The manner in which member states do this bears significant implications for the way detention is carried out for undocumented migrants who are to be returned to their countries of origin. Positively, the Return Directive provides that detention should only be used ‘unless other sufficient but less coercive measures can be applied effectively.’³³

The Directive’s most controversial aspect is in its provision for the maximum time length of detention: it sets a maximum limit of six months, but leaves member states the possibility of extending it for another 12 months. As shown in *Becoming Vulnerable to Detention*, prolonged detention, even after one month, leads to severe physical and mental health consequences. We would not want member states to increase the length of detention for migrants who are to be returned. Instead we encourage member states to decrease their reliance on detention altogether, and to develop policies that would be less coercive for migrants while attending to the migration policy interests of the state.³⁴

People who are in detention and who are destitute are not voiceless. Indeed, despite the gravity of their circumstances, their voices remain strong and willing to speak. And the measure of their personal sense of dignity remains undimmed despite the adversities they face. But the voices of forced migrants remain largely unheard, because they are behind walls or living invisibly on the streets. They

are ‘the other.’ That is why we, as JRS in Europe but also as an international body, write these reports: to document their testimonies, on paper, so we can transmit them to the broader world. We can take their voices to policymakers in Dublin and Brussels, to NGOs all over Europe, to the UN in Geneva, to medical practitioners and social workers, lawyers and to concerned citizens.

For the last thirty years the ability of JRS to speak about the situations of detention and in destitution, and our ability to undertake effective advocacy with decision-makers, has depended on our close proximity to refugees and the forcibly displaced. And thus it will continue to be so for as long as necessary.

Notes

1. COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
2. COUNCIL DIRECTIVE 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.
3. COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.
4. COUNCIL REGULATION (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
5. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 June 2008 – Policy Plan on Asylum: An integrated approach to protection across the EU [COM(2008) 360 final – not published in the Official Journal]
6. DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals
7. For more information on detention in Europe, see www.detention-in-europe.org, and, www.globaldetentionproject.org.
8. In 2008 Belgium ended the detention of migrant families with children and developed a policy to accommodate them in social housing. For more information see: Verbauwheide, *Alternatives to detention for families with minor children – The Belgian approach*, http://www.eutrio.be/files/bveu/media/source1854/documents/WS_I_-_Discussant_I_Mr_Verbauwheide_-_Alternatives_for_detention_for_families_with_minor_children.pdf.
9. This is expressed in Article 5(1)(f) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), but within a prescribed framework: ‘Everyone has a right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ... the unlawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom an action is being taken with a view to deportation or extradition.’ Detention in this context, however, must still remain well within the confines of necessity, reasonability and proportionality.
10. UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers

(February 1999), guidelines 3(i-iv).

11. EU Asylum Procedures Directive, article 18(1), 'Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.'
12. EU Return Directive, article 15(1), 'Any detention shall ... only be maintained as long as removal arrangements are in progress and are executed with due diligence.'
13. The UN Working Group on Arbitrary Detention (WGAD) has consistently upheld the principle of proportionality. In their report of 24 October 2002, the WGAD stated that 'any deprivation of liberty must be proportionate to the aims pursued and a fair balance shall be struck' (para. 12) between the interests of the state and of the fundamental right to liberty of the person. On 18 January 2010, the WGAD said, 'If there is to be administrative detention, the principle of proportionality requires it to be the last resort' (para. 59).
14. For more information see the 2008 study by consultancy firm STEPS for the European Parliament: *The conditions in centres for third country nationals (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states*. Malta has received particular attention from MEPs for the poor state of its detention facilities: see 'MEPs "disgusted" by detention centres', *Times of Malta*, 25 March 2006.
15. HM Inspectorate of Prisons report on an inspection of Yarl's Wood Immigration Removal Centre, 9-13 November 2009, p.5. For more information on the inspections carried out by HM Inspectorate of Prisons, go to <http://www.justice.gov.uk/inspectors/hmi-prisons/immigration-removal-centre-inspections.htm>
16. Council of Europe, Parliamentary Assembly, 11 January 2010, *The detention of asylum seekers and irregular migrants in Europe*, Committee on Migration, Refugees and Population, doc. 12105, Rapporteur: Mrs. Anna Catarina Mendonça.
17. Report by Thomas Hammaberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008, published in Strasbourg on 4 February 2009. Similar reports can be found on the Commissioner's website: http://www.coe.int/t/commissioner/Default_en.asp
18. Several scientific studies in recent years have found correlations between detention and depression, anxiety and suicidal ideation. For examples see the footnotes on p. 20 of *Becoming Vulnerable in Detention* (JRS-Europe, 2010).
19. JRS-Europe, *Becoming Vulnerable in Detention*, 2010, p. 415, can be downloaded on www.jrseurope.org and www.detention-in-europe.org. The report is the final result of the 'Detention of Vulnerable Asylum Seekers (DE VAS)' project, co-financed by the European Commission under the European Refugee Fund.
20. Quote from a detainee interviewed in Dochas Centre, a prison for women that is part of Mountjoy Prison, p. 242 of *Becoming Vulnerable in Detention*.
21. JRS-Europe, *We Are Dying Silent*, available for download at www.jrseurope.org, 2007. The publication of the report was supported with a grant from the Network for European Foundations through the European Programme for Integration and Migration.
22. JRS-Europe, *Living in Limbo*, 2010, p. 160, available for download at www.jrseurope.org. Its publication was supported with grant from the Network for European Foundations through the European Programme for Integration and Migration.
23. Hannah Lewis, *Destitution in Leeds: The experiences of people seeking asylum and supporting agencies*. York 2007 (The Joseph Rowntree Charitable Trust), p. 11.
24. See Joan Fitzpatrick, *The human rights of migrants*. In: T. Alexander Aleinikoff and Vincent Chatal (eds.), *Migration and International Legal Norms*, The Hague et al. 2003, pp. 169-184.
25. The UN Committee for the Elimination of All Forms of Discrimination, General Recommendation 30: Discrimination against non-citizens. UN Doc. CERD/C/64/Misc. 11/rev.3, 12 March 2004.
26. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
27. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.
28. JRS-Europe, *Living in Limbo*, case studies from Ireland, p. 38.
29. COM(2008) 815, Commission proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum standards for the reception of asylum seekers, article 8 (detention).
30. *Ibid.*, recital 11 and article 17, recital 14 and article 15, and article 9, respectively.
31. Formerly known as the 'co-decision procedure', and now as the 'ordinary legislative procedure' after the adoption of the Lisbon Treaty, this procedure is based on the principal that neither the European Parliament nor the Council may adopt legislation without the other's assent. For more information see: http://ec.europa.eu/codecision/index_en.htm.
32. In March 2010 the EU reaffirmed its commitment to a *Common European Asylum System* of high protection standards in its adoption of the 'Stockholm Programme', which sets out the EU's priorities in the areas of justice, freedom and security for the period of 2010-14. For more information see: http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/jl0034_en.htm.
33. EU Return Directive, article 15(1).
34. For more information on alternatives to detention see: JRS-Europe (2008), *Alternatives to Detention of Asylum Seekers: Working paper*, http://www.detention-in-europe.org/images/stories/jrs%20europe%20paper_alternatives%20to%20detention.pdf.

Philip Amaral is the Policy and Communications Officer with Jesuit Refugee Service (JRS) Europe, based in Brussels.