

European immigration and asylum policy: An illusion of security without freedom and justice

We, the Jesuit Social Apostolate Delegations of Europe, Latin America and of the Caribbean join others on **18 December** in celebrating the **International Day of Solidarity with Migrants**, and the anniversary of the signing of the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Their Families*. In celebrating this important day we seek to focus attention on the personal situation of those who migrate or seek refuge, their families and their communities, and societies in countries of origin and destination. Yet in doing so, we recognise that the personal situations of migrants and refugees are affected by political and legislative decisions that jeopardise their access to human rights.

From this perspective the Jesuit Social Apostolate is concerned by the recent negative trend that European policies on immigration and asylum have taken, as manifested with the recent adoption of the *Return Directive* and the *European Pact on Immigration and Asylum*. It reveals a worrisome intention: to strengthen security at the expense of liberty and justice, although the Pact proclaims support for human rights and the social integration of legal migrants and refugees.

With a concern for the fate of society's most vulnerable, the migrants themselves, we wish to express our concern towards five areas that inhabit the fine line between legality and illegality, and between human rights protection and their degeneration:

- An insistence on the obligatory departure and expulsion of irregular migrants (confusingly labelled "voluntary return" and simply "return") does not consider the human rights threats they may face in their country of origin, nor Member States' obligation to guarantee effective legal aid.
- An impractical departure period (between 7 and 30 days) that does not allow an irregular migrant enough time to "voluntarily return" to their country of origin, and the ability of Member States to detain an irregular migrant awaiting return for up to 6 months with a possible extension of up to 18 months: a measure that is in complete disproportion to the amount of actual time needed to enforce an expulsion order.
- An EU-wide entry ban for up to five years, which impacts the ability of the migrant to seek protection in Europe should the situation change in his or her country of origin.
- The exclusion of the directive's procedural safeguards for those irregular migrants intercepted at the border, which may prevent persons from expressing their need for asylum protection in Europe.
- A lack of clear regulations insisting on safeguarding, first and foremost, the best interests of children when they are faced with returning to their country of origin (be this to parents, legal guardians or foster child care facilities)

The Social Apostolate Delegations acknowledge that there is no political opportunity at the present juncture to modify the provisions found within the *Return Directive*. However we are confident that its legal provisions can be appealed to the Court of Justice of the European Communities, and the European Court of Human Rights, to see that international humanitarian and human rights law are upheld after Member States will have transposed the *Return Directive*

into their national law. Furthermore, when a political opportunity does arrive to legislatively amend the directive, we strongly encourage Member States to distance themselves from the short-term demands of their labour markets, to take into account the long-term structural needs of European societies, and to restore a manifest concern for those most vulnerable within their population.