

**The Permanent Peoples' Tribunal Hearing On the Human Rights of Migrant and
Refugee Peoples**

**EUROPEAN PARLIAMENT, BRUSSELS
on Tuesday 9th April from 9.00-13.00.
Room ASP 1G2**

Policies of criminalisation, conscription and marginalisation

Frances Webber, Human Rights lawyer and Vice-Chair of the Institute of Race Relations

Borders act as filters. European immigration policies create hierarchies of human beings. They favour those from rich countries, business persons, investors, entrepreneurs, corporate executives, lawyers.

They do not favour those who build the homes and offices, pick the crops, butcher the meat, catch the fish, cook and serve or deliver our meals, care for our old and sick, clean our offices, homes and hotel rooms, wash our laundry, deliver our groceries or our Amazon purchases. A disproportionate number of these low-paid, undervalued workers are migrant workers – they may be EU citizens or settled migrants, or on temporary or seasonal labour programmes, or undocumented – and often, as well as fighting for basic workplace rights, they are having to fight for the right simply to be here.

The London hearing looked at the treatment of migrants and refugees in the global chain of labour, in particular those seen as the 'bad migrants', the asylum seekers and unrecognised refugees, and the undocumented.

Other hearings of the Tribunal - in Paris and Palermo looked at the barriers put in the way of spontaneous migration: the militarisation of the EU's sea borders, the EU's abandonment of search and rescue, the illegal push-backs and now, the pull-backs enabled by deals with Turkey and Libya. Under cover of a fight against organised crime and traffickers, the authorities make war on refugees and spontaneous migrants, and on the humanitarian volunteers who come to their aid. You will hear later from one of these volunteers.

The thread of criminalisation, proscription, coercion, conscription and marginalisation runs through member states' dealings with migrants and refugees, which is destructive not just of the lives, hopes and futures of those affected, but also of the values and principles underpinning European society, which find expression in documents such as the ECHR and the EU Charter of Fundamental Rights.

The criminalisation of migration – the creation of illegality - starts with policies which deny safe and lawful means of travel to Europe – visa controls and carrier sanctions. It continues through the use of state violence - tear gas and stun grenades by police in Greece, tear gas against children in Calais, police beating and robbing border

crossers in Croatia, to automatic detention of asylum seekers, and to criminal charges of illegal entry, illegal stay, illegal working, assisting illegal entry, human smuggling.

The criminal law should set standards of decent conduct, and mark collective disapproval of acts which disregard such standards and damage the moral fabric of society. The criminal law should not be used against those merely seeking safety and security in another country. Article 31 of the Refugee Convention expressly forbids penalties for those crossing borders illegally in search of asylum. Moving from one country to another should not attract criminal penalties. Yet in many EU countries, mere entry in breach of immigration laws results in detention, and sometimes prosecution.

The criminal law should not be used to penalise decency and human kindness. Yet in many EU states, it is used against those aiding migrants and refugees. The IRR has been monitoring the criminalisation of solidarity action, and in its 2017 report *Humanitarianism: the unacceptable face of solidarity*, analysed 26 cases in which 45 individuals had been subjected to arrest, investigation, prosecution and/ or conviction in member states since 2015. In its April 2019 update it reports on 17 new cases involving 99 individuals, in 15 months, including the Brussels 'herbergeurs'. Activities forming the subject matter of arrests and charges include giving refugees coffee and cake or somewhere to sleep, giving train tickets and lifts, alerting coastguards to boats in distress, and sea and mountain rescue. It is time Parliament insisted that only profit-making activities are penalised under the Facilitation Directive.

Nor should working to support oneself and ones family be a crime. Yet the law criminalises workers without regular status, and the Employer Sanctions Directive requires member states to penalise employers of undocumented workers. The Directive's anti-exploitation provisions are a dead letter, unenforced and forgotten in the rush to detect and remove workers. In the UK, the law is even worse – it allows workers' wages to be confiscated as proceeds of crime.

Since 2016 it is also a crime (in the UK) to drive, if you are undocumented. Driving – minicabbing, Uber and deliveroo jobs are mainstays of migrants' survival in the informal economy. Other low-pay jobs need transport, such as working as an agency carer or in an out-of-town warehouse. These laws keep asylum seekers, undocumented migrants and refugees trapped in insecurity and illegality.

DETENTION

More and more migrants and refugees are detained, at borders and across Europe, for longer periods, in worse conditions.

More detention centres are run by the private sector, and more brutality and inhuman and degrading treatment are reported.

Recent allegations from North Rhine-Westphalia, Germany include routine use of solitary confinement, inappropriate genital examination and surveillance of inmates in toilets. The state prosecutor already has a 50,000 page file of allegations of brutal and degrading treatment in privatised centres.

The hotspots in Greece and Italy have become a byword for misery and degradation.

Brutality and abuse are rife in the UK's privately run detention centres, where inmates, perhaps after being 'rescued' from traffickers or exploitative employers, receive one pound an hour, one-eighth of the minimum wage, for performing cleaning, maintenance and other work. In 2017 inmates performed nearly 900,000 hours of such work. A judge recently dismissed a legal challenge to this rate of pay, on the ground that the work was not compulsory.

CONSCRIPTION

Employers are not the only ones who must check immigration status.

In several EU countries, undocumented migrants cannot access public housing, emergency or homeless accommodation, and landlords, rental agencies, or housing inspectors must report them to immigration authorities. In the UK, private landlords must refuse to rent accommodation to those unable to prove their residence right. Landlords renting to undocumented migrants can face large fines, even prison. The law has led to British and long-resident Commonwealth citizens being made homeless for lack of documentation. Last month the High Court ruled the law incompatible with human rights, as it creates discrimination against Black and Minority Ethnic people seeking tenancies.

Several EU countries restrict access to free health care according to immigration status, and health workers must provide patients' personal data to immigration authorities. NHS workers in the UK must now screen patients, and charge 150% of the cost of the treatment in advance. Cancer sufferers are turned away for lack of means, and expectant mothers deterred from ante-natal care. Many health professionals hate the charging regime and campaign to abolish it. The Home Office still obtains patient information for immigration enforcement despite pledging not to.

Teachers In the UK were asked in 2016 to obtain and record data on the nationality and country of origin of their pupils. A big campaign removed the requirement two years later, but immigration authorities still use information from schools to trace undocumented families.

Since 2009, university and college staff must record and send regular reports on non-EU students' enrolment, attendance and academic progress to the Home Office.

Banks and other financial institutions were told in 2018 they must not open or maintain accounts of those unable to prove residency rights.

Driving licences must not be issued ...

Marriage registrars, local authorities must report suspected undocumented migrants, and immigration officers are embedded in some social work departments.

Members of the public are encouraged to report suspected 'illegals' through an anonymous hotline, which hundreds of thousands of people use every year, encouraged by politicians and the rabidly racist press.

MARGINALISATION

The effects of the policies of criminalisation, conscription and exclusion are visible on our streets and in our public spaces, the swelling numbers of homeless migrants and refugees in ad-hoc shelters and encampments in Calais and Ventimiglia, Thessaloniki and Bihac, in squats in Rome, under Parisian bridges, in Maximilien Park. We don't see – unless we are humanitarian volunteers – the fear, the distress, the anger and the indignity our politicians and their policies inflict.

EXPLOITATION

Criminalisation creates sites without rights. Our tribunal heard from agricultural and meat processing workers in Spain, Italy and the UK, who described seasonal work programmes which by tying workers to employers, institutionalise exploitation and isolation, empower gangmasters, deny family reunion rights and protection against accidents and pesticides; systematic theft from workers by under-recording hours; false self-employment and denial of rights. We heard from workers in warehouses, driving, construction, hotels and hospitality, who spoke of bonded labour, delayed wages, dreadful working and living conditions, disguised self-employment; the culture of fear, mirroring that created by the pervasive immigration controls ...

We heard how this rightlessness is amplified and accompanied by physical and sexual violence for women workers, above all those working in homes as domestic workers.

Under the UK employer sanctions regime, employers who cooperate with the Home Office can get fines reduced or waived. Threatened or actual collaboration with the Home Office is a powerful weapon for employers faced with workers seeking to unionise or fight for decent pay and conditions.

Undocumented workers can be treated with impunity, they have no rights. The courts refuse to recognise 'illegal' contracts, and there is no public funding for legal claims against employers.

In a system where everything is subordinated to immigration control, the status of 'migrant' puts people outside the protection of the law, outside the site of rights.

This is going on under our noses.
It is shocking.

But what's heartening is the level of resistance to this dehumanising marginalisation. In the workplace, where cleaners have taken successful strike action in several high-profile sites, where unions are organising despite the difficulties, where ethnic employers are supporting catering workers in anti-raids actions. In detention, with self-help groups providing mutual support, solidarity groups protesting outside centres, former detainees campaigning. In communities, with anti-deportation networks. Resistance to the hostile environment.

Much (though not all) of the evidence to the London hearing referred to the UK. You may be thinking it's all irrelevant, as the UK won't be part of the EU for much longer. It's not irrelevant, for two reasons. One: The reality in the UK is reflected across Europe and across the global north. The details might be different, but the overall pattern of criminalisation, conscription of civil society into immigration policing, marginalisation and exploitation is all too familiar and pervasive.

And two: the Windrush scandal revealed how easy it is to become homeless and destitute and to have your physical and mental health destroyed if you can't prove entitlement to be in the country. Following Brexit, it could be you, it could be any EU citizen subjected to the 'hostile environment'. The important thing is not to say 'but I'm an EU national, this shouldn't happen to me', but 'this kind of treatment shouldn't happen to anyone'. Fundamental rights – to livelihood, to health, to housing, to education – should not be contingent on immigration status. These rights were once considered universal. If they're not universal, they're no longer rights, but privileges.