



OXFAM
Ireland

EQUAL RIGHT TO REFUGE
POLICY BRIEF

INTRODUCTION

The crisis in Ukraine has seen a welcome and historic response from Ireland and the EU, offering sanctuary and immediate protection to people fleeing Ukraine. Oxfam Ireland welcomed the Irish government's early announcement of a visa waiver for people fleeing Ukraine and the unanimous decision by EU Ministers for Justice to activate the Temporary Protection Mechanism, affording those fleeing access to a three-year residence permit, education and employment in any EU country, without having to have individual asylum claims assessed. Oxfam has concluded an exploratory mission in states surrounding Ukraine and is planning to work with refugees in these countries to help them with their immediate needs.

But not everyone is being allowed to leave. Men are supposed to stay and fight, whereas non-Ukrainian nationals from particularly Africa and the Middle East, are stopped at the border in what the UN has called "racialised denial of entry". For these people, being pushed back across the border into Ukraine extends the risk beyond the ongoing violence.

Beyond Ukraine and its neighbouring countries, this must be a turning point for the EU's migration response as a whole, moving away from the unlawful and inhumane treatment of some and showing solidarity to all those fleeing conflict and persecution, regardless of where they come from.

Across the EU, people forced to flee continue to suffer as a result of policies and procedures that are illegal under EU and international law. Arriving traumatised by what they left behind as well as the journey to safety, people then face violent pushbacks at EU borders, are denied their right to seek asylum for unfounded reasons and are left to languish in inhumane conditions in camps.

As an organisation working globally on crisis situations, Oxfam Ireland has highlighted the importance of Ireland and the EU upholding their commitment to receive and protect refugees and displaced people from all countries and regions seeking protection in the EU without discrimination, including those arriving in other Member States and border areas, fleeing from other crises across the world. Oxfam has worked with refugees and migrants in Greece since 2015 and these experiences have grounded and informed our policy asks. While recognising Ireland's unique position as a non-Schengen state with opt outs from the migration and asylum acquis, Oxfam Ireland stress the scope for the Irish government to act for refugee rights and international law at EU level.

Oxfam Ireland calls on the Government to ensure:

1. Equal access to seek international protection for all fleeing Ukraine.

1.1. No discrimination at the borders.

1.2. Inclusive of persons with disabilities.

1.3 EU institutions and member states fund, coordinate and facilitate safe and orderly transfers to EU member states.

2. The EU and Member States uphold their commitment to receive and protect refugees and displaced people from all countries and regions seeking protection in the EU without discrimination, including those arriving in other Member States and border areas, fleeing from other crises across the world.

2.1. Stop practices and policies that are illegal under international law

- o Pushbacks
- o Denying the right to claim asylum

2.2. Improve conditions in camps at hotspots so that they meet basic reception standards and avoid the use of de facto detention.

2.3. Promote mandatory responsibility-sharing through a permanent relocation mechanism

2.4. Re-start Search and Rescue at EU's borders and stop criminalizing NGOs and others who help people stranded

2.5. Maintain resettlement pledges

1.EQUAL ACCESS TO INTERNATIONAL PROTECTION FOR ALL FLEEING UKRAINE

Oxfam Ireland is gravely concerned by the impacts of crisis in Ukraine which will bring about great suffering for civilians and communities. As innocent civilians cross into neighbouring countries and travel beyond seeking safety, Oxfam Ireland calls on Ireland as an EU member state to ensure that all people who need protection receive it.

1.1 NO DISCRIMINATION AT THE EU/UKRAINE BORDERS

Oxfam has received reports from the border of ethnic minorities being pushed back to Ukraine as they try to leave and cross into an EU member state. The UN has raised concerns about racialised denial of entry for those fleeing Ukraine.

Every person has the right to seek asylum, regardless of their race, religion or country of origin. Non-discrimination is a key obligation on states signatories to the Refugee Convention, which all EU member states have signed on to.

Frontex is already present at the EU/Ukraine borders and is prepared to increase support to over 2,600 officers for EU-Ukraine borders. [Frontex employs fundamental rights monitors](#) to “monitor the procedures related to border management and returns and the environment in which those are implemented. They not only assess compliance with fundamental rights, but also play an important role in flagging challenges and risks as well as opportunities for the promotion of EU and international law.”

Ireland currently participates in Frontex activities such as land / sea operations at hotspots and joint returns operations. This can be expanded to contribute to provide personnel for monitoring rights at the borders.

The EU and Member States should take all possible measures to ensure that all individuals can cross borders and have access to safe territories. It is fundamentally important that borders from Ukraine to neighbouring states remain open to all individuals without discrimination.

Oxfam Ireland calls on the Irish government to:

- I. **Urge and support their counterparts in those EU member states that border Ukraine (Hungary, Poland, Slovakia, and Romania) to keep their borders open without discrimination.**
- II. **Offer to support by sending independent human rights monitors to monitor the rights compliance at the borders.**

1.2 INCLUSIVE OF PERSONS WITH DISABILITIES

People with a disability who have to leave their countries find themselves in particularly disadvantaged situations. Refugees who are disabled are an extremely vulnerable group and are, therefore, in need of special attention. However, there are no legal instruments at an international level, as such, to protect the rights of refugees with a disability. Refugees with a disability can only refer to scattered provisions of conventions, instruments and international humanitarian law. (Source: [UN](#) International Norms and Standards Pertaining to People with Disabilities)

In 2022, there are [2.7 million](#) persons with disabilities registered in Ukraine, however it's anticipated that this figure is much higher. There are [80,000 – 100,000 children in Ukraine](#) living in orphanages, psychiatric facilities, residential boarding schools, and other institutions. Half of these children have disabilities. Given the barriers to independent living for children with disabilities in Ukraine, thousands of adults with disabilities also reside in institutions, many of whom have known no other home. This means that their ability to cope independently can be limited and therefore, they are conditioned to become dependent on others for assistance with both basic and complex activities of daily living.

The UN Convention on the Rights of Persons with Disabilities, which Ireland ratified in 2018, includes the following provision:

Article 11 – Situations of risk and humanitarian emergencies:

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Administrative and asylum procedures and durable solutions should be inclusive for persons with disabilities, including by reinforcing protection of persons with disabilities within asylum systems and resettlement submissions, improving access to national service systems for refugees, and safe and dignified conditions for return.

In responding to the Ukraine crisis the Irish government should take steps to ensure that relocation and evacuation measures do not force more persons with disabilities to live in institutions in the long term. In accommodating displaced persons with disabilities state services must ensure that persons with disabilities are not separated from their primary care givers and that all interventions support existing care giver dynamics. Information and communication channels must be open, accessible and inclusive of all persons with disabilities and their carers e.g. helplines, websites, banners, sign-language interpreters etc.

Oxfam Ireland calls on the Irish government to:

- I. Promote, resource and implement all necessary measures to ensure inclusive humanitarian assistance, services and protection for persons with disabilities seeking refuge.**
- II. Ensure that mechanisms to receive and protect refugees and displaced people from all countries and regions seeking protection in the EU are not discriminatory to persons with disabilities.**
- III. Collect and analyse information on the specific barriers that persons with disabilities face to safety and protection and analysed through a gender, age and disability intersectional lens.**

1.3 EU INSTITUTIONS AND MEMBER STATES FUND, COORDINATE AND FACILITATE SAFE AND ORDERLY TRANSFERS TO EU MEMBER STATES.

In order for individuals fleeing Ukraine to access their rights under the TPD, it is essential that they are able to quickly and safely reach the territories of Member States offering protection. Currently individuals who have fled to Ireland from Ukraine have largely travelled by their own means, through informal assistance by private individuals and volunteers, or by ad hoc travel arrangements provided nationally and locally in EU member states. While this immense civil solidarity is commendable, private resources and volunteerism will not suffice to ensure equal access to travel and to transfer millions of refugees across Europe in a safe and orderly manner. Moreover, the lack of transparency and oversight characterising private travel arrangements bear urgent protection risks, including trafficking and other forms of exploitation and abuse. In particular for people with vulnerabilities, including the tens of thousands of children in institutions, about half of whom have a disability. Oxfam Ireland welcomes the commitments Ministers made at the extraordinary JHA Council to support further coordination of guidance and travel within the EU and a centralised Europe-wide approach coordinated by the European Commission and eu-LISA.

Safe transfers limit the risks of human trafficking, exploitation and abuse, as well as of re-traumatisation. A number of transport operators currently offering support through humanitarian trains and free tickets for public transport. The Irish government should call for the EU to ensure that people fleeing Ukraine can travel free of charge to the member state they will reside in. Failure to do so increases the risk of trafficking.

Oxfam Ireland calls on the Irish government to:

- I. Work with the European Commission and airline, bus and railway companies, to arrange direct travel routes free of cost (where necessary by providing funding for air carriers, bus and train providers) to quickly and safely transfer individuals from neighbouring states and between member states.
- II. Ensure that transfers give primary consideration to individuals' preferences, and meaningful links to member states such as family links or language skills, including for Ukrainian nationals, third country nationals, stateless persons and individuals

2. PREVENT THE EMERGENCE OF A TWO-TIER DISCRIMATORY REFUGEE SYSTEM IN EU

Ireland and the EU must uphold their commitment to receive and protect refugees and displaced people from all countries and regions seeking protection in the EU without discrimination, including those arriving in other Member States and border areas, fleeing from other crises across the world.

2.1 STOP PRACTICES AND POLICIES THAT ARE ILLEGAL UNDER INTERNATIONAL LAW

PUSHBACKS

Pushbacks (pushing back a person over a border without giving them a chance to make a claim for international protection) violates the principle of international law of nonrefoulement, which is the cornerstone of international refugee law.

The principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.

The principle of non-refoulement is explicitly mentioned in the Charter of Fundamental Rights of the European Union. In addition, [Article 3 of the Asylum Procedures Directive 2013/32/EU](#) says Member States must permit asylum applications ‘in the[ir] territorial waters’.

Pushbacks take place at several EU border points including at the borders of Greece, Poland, Bosnia, Croatia, Hungary, Lithuania (according to the [UN](#) and the [Danish Refugee Council](#)).

The UN Special Rapporteur on the human rights of migrants, [Felipe González Morales Special Rapporteur in his June 2021 report to the Human Rights Council](#) states that **pushbacks are widespread**, and in many contexts they have become a routine element of border governance.

[The Greek Ombudsman confirmed the Greek authorities'](#) systematic approach to pushbacks noting the ‘constantly repeating patterns’ of pushbacks, both at Greece’s land border in Evros and in the Aegean islands. Official state investigations into alleged pushbacks are not carried out, even those with hard evidence which show people contacting the Greek authorities before being pushed back to Turkey.

More recently in [February 2022, the UN High Commissioner for Refugees, Filippo Grandi expressed](#) “alarm at recurrent and consistent reports coming from Greece’s land and sea borders with Turkey, where UNHCR has recorded almost 540 reported incidents of informal returns by Greece since the beginning of 2020”.

[Oxfam submitted, together with WeMove](#) and the law firm De Brauw Blackstone Westbroek, a [complaint](#) to the European Commission with the request to start an **infringement procedure against Greece** for violations of EU law, including **pushbacks** in September 2020.

Together with our partners [the Greek Council for Refugees, Oxfam has](#) have collected testimonies from refugees detailing being pushed back from Greece to Turkey.

The New Pact on Migration and Asylum Border includes a proposed monitoring mechanism (under Article 7 of the [Screening Regulation](#)) which aims to “ensure compliance with EU and international law” and deal with allegations of refoulement. [Oxfam joined with 7 other NGOs](#) in calling for the mechanism to be independent and accountable with built in costs if member state governments fail to cooperate with the mechanism.

Oxfam Ireland calls on Irish government use their influence at the European Council to call for:

- I. All EU member states to fully respect international and EU law and stop pushbacks.
- II. Independent, effective and thorough investigations of all pushback cases.
- III. The proposed border monitoring mechanism in the New Pact on Migration and Asylum to be robust in strength and geographic scope.

DENYING THE RIGHT TO CLAIM ASYLUM

Everyone fleeing persecution or serious harm in their own country has **the right to ask for international protection**. Seeking asylum is a fundamental right and enshrined in both the 1951 Convention to which all EU member states are signatory and in [Article 18](#) of the EU Charter of Fundamental Rights.

Oxfam along with our partners in Greece, the Greek Council for refugees have recorded the refusal of the right to claim asylum in Greece. This is reported in our [September 2021 Lesbos Bulletin](#) with details of how **Greek authorities refused to look at an Afghan family's application for asylum** and instead made the unfounded decision that, despite only spending four days in Turkey before entering Greece, the family must be returned. This is notwithstanding the fact that Turkey is refusing returns from Greece since 2020 which means this family is now stuck in Lesbos.

In September 2021, Greece adopted legislation which introduced for the first time a €100 fee as a requirement for accessing the asylum procedure and namely for submitting a second or further subsequent asylum application. This fee prevents effective access to making a claim to asylum. As detailed in our [December 2021 Lesbos Bulletin](#), the Greek government did not introduce a way to pay this fee, so those needing to make a subsequent application were left in legal limbo.

Oxfam Ireland calls on the Irish government to use its voice at EU level and with counterparts on the Council to:

- I. Urge each member state to ensure asylum seekers' effective access to the asylum procedure and substantive examination of their asylum applications.
- II. Urge Greece to remove the illegal obligation of a €100 fee for second and further subsequent asylum applications' registration that violates the right to access to asylum procedure.

2.2 IMPROVE CONDITIONS IN GREEK CAMPS

Refugees have for many years been housed in inhumane conditions in a number of EU member states, sleeping in tents in adverse weather conditions in overcrowded camps without adequate sanitation. Since 2015, Oxfam has been working in Greece and this winter [noted that](#) since Moria camp burned down, the 2,620 residents of Mavrovouni ('Moria 2.0') are suffering their second winter in tents. Facilities and infrastructures are absolutely inadequate, with protection issues in the camp affecting single women, survivors of gender and sexual based violence, and children. The majority of the population of the camp is from Afghanistan (72%), Somalia (9%) and the Democratic Republic of Congo (5%). A third of them are children (31%), with nearly 1 out of 4 children younger than 12 years old.

Learning from the experience of responding to asylum & protection needs in Europe over the last 8 years, the EU must commit to abandon their "hotspot approach" to reception. All people, including those languishing in camps on the Greek islands, need access to timely asylum procedures and humane and rights-respecting accommodation while their request for protection and asylum are being processed.

The proposed solution to this humanitarian disaster is 'closed controlled access centres' that are 100% EU funded. Residents sleep in containers instead of tents but are in prison-like conditions. The first of the EU funded 'closed controlled access centres' opened on the island of Samos in September 2021 and will serve as the blueprint for the EU's rollout of centres across the Greek islands. Oxfam Ireland visited this camp three months after its opening and observed excessive security including surrounded by a double fence of barbed wire, with elevated watch towers. [Oxfam and GCR released a report](#) on conditions in the closed camps including the use of detention.

Approximately one in five people living in the camp have been in de facto detention for two months as a result of new rules introduced in November restricting movement for those without a 'valid asylum card'. This is despite a Greek court finding this practice illegal in a ruling on a case of an Afghan resident in the Samos centre last December. The Greek administration continues to deny this illegal practice. Yet, testimonies gathered by the Greek Council for Refugees and Oxfam show this practice remains very much a reality.

Oxfam Ireland calls on the Irish government use its voice at EU level and with counterparts on the Council to:

- I. **Raise with their Greek counterparts as a matter of urgency the need to improve conditions in refugee camps in Greece.**
- II. **Support the European Commission and the Greek authorities to abandon the policy of closed camps.**

- III. Support the European Commission and the Greek authorities in establishing a mechanism to monitor the living conditions of migrants in the camps and secure that basic human needs such as access to healthy, safe and nutritious food and efficient medical care will not be undermined.
- IV. Relocate asylum seekers from Greece to Ireland, prioritising those who are identified by Greek authorities and NGOs as those most in need of relocation

2.3 ESTABLISH A PERMANENT RELOCATION MECHANISM

At the moment, normally the state where the asylum seeker first entered the EU is responsible for examining their asylum claim. If the [International Protection Office](#) believes an asylum seeker could have claimed asylum in another EU member state the asylum seekers can be returned to that country, under the Dublin Regulation. This system both removes choice from asylum seekers and means that border member states are managing a disproportionate share of the EU responsibility for international protection.

In 2015, the European Council took two decisions on mandatory relocation of asylum seekers from Greece, Italy and Hungary to share responsibility for hosting among other member states. This did not apply to Ireland because of previously negotiated opt-outs but Ireland voluntarily opted in and relocated asylum seekers from Greece.

The Irish government should make sharing responsibility with Greece for receiving and welcoming people asking for asylum in Europe meaningful and permanent. Most urgently this should include relocation of asylum seekers who are identified by Greek authorities and NGOs as those most in need of relocation.

The Irish government should support negotiations of a permanent relocation mechanism and in the context of negotiations on the New Pact on Migration and Asylum promote mandatory responsibility-sharing through relocation as the primary solidarity instrument, particularly in times of increased arrivals. A mandatory relocation mechanism should increase predictability and ensure the accountability of member states in complying with their responsibilities.

Oxfam Ireland calls on the Irish government to actively support and promote a permanent relocation mechanism to be part of the New Pact on Migration and Asylum.

2.4 RESTART SEARCH AND RESCUE AT EU'S BORDERS

In 2021, nearly 3,500 people died attempting to enter the EU through land and sea borders, making it the deadliest year for refugees and migrants in the region since 2018, according to [the IOM](#). In 2019, the European Parliament voted against a resolution supporting more search and rescue operations in the Mediterranean.

The EU and its member states should do everything it can to prevent further tragedies. While people continue to make these treacherous journeys across the Mediterranean there is a need for sustained and coordinated search and rescue operations.

Ireland has experience in joint Search and Rescue missions with EU colleagues having been active in 'Operation Pontus' a bilateral operation with Italy and later in July 2017, Dáil approval was secured for the deployment of an Irish Naval Service vessel as part of Operation Sophia. Ireland can build on these experiences to promote and participate in search and rescue operations at EU borders.

Oxfam Ireland calls on the Irish government to support and contribute to search and rescue operations in the Aegean and Mediterranean.

2.5 MAINTAIN EXISTING RESETTLEMENT PLEDGES

There were 20.7 million refugees of concern to UNHCR around the world at the end of 2020, but less than one per cent of refugees are resettled each year.

In 2015, the **Irish Refugee Protection Programme (IRPP)** was established in response to the humanitarian crisis that developed in Southern Europe. In December 2019, the Irish government committed to a new phase of the Irish Refugee Protection Programme (IRPP), to **increase annual resettlement quota by 50 each year over 4 years: 650 in 2020, 700 in 2021, 750 in 2022 and 800 in 2023**. Ireland has pledged with the UNHCR to **resettle 2,900 refugees between 2020 and 2023**. The arrivals for the first two years to largely comprise Syrian refugees resident in Jordan and Lebanon, along with a pilot group of 150 Eritrean refugees resident in Ethiopia. These resettlement pledges are a vital lifeline to those left languishing in camps and must be met.

Oxfam Ireland calls on the Irish government to ensure that Ireland's existing pledges to relocate refugees to Ireland are met.

OXFAM IRELAND

Oxfam is a global development and humanitarian organisation that mobilises the power of people against poverty. Around the globe, Oxfam works to find practical, innovative ways for people to lift themselves out of poverty. We save lives and help rebuild livelihoods when crisis strikes, and we campaign so that the voices of the poor influence the local and global decisions that affect them. Last year, Oxfam Ireland, in partnership with Irish Aid, worked in over nine countries and reached 12 million people through our development and humanitarian programmes.

In Ireland, we advocate nationally and globally on a variety of issues, including financing for development, inequality, tax justice, women's rights and human rights in humanitarian crises. At EU level, Oxfam challenges EU policies to make them work for people in poverty. In Brussels, we work to influence key decision-makers in the EU institutions to ensure that EU policies affecting poor countries have a far reaching, positive impact on the lives of those most in need.

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March 2022