

Obstacles to access to the right of asylum in the world

Introduction

Many regions of the world are fraught with past and ongoing political crises and conflicts that give rise to serious Human Rights violations, with devastating results. Today's migrants, far from being solely economic migrants fleeing starvation and abject poverty, are often refugees fleeing oppression, finding refuge first and foremost in neighbouring countries. Taking in the men and women who risk their lives to undertake the perilous journey to another country – and who are only a minority – is an international obligation and an elementary human duty.

FIDH finds that the vast majority of those concerned are denied access to the determination of refugee status, and that even when such status is obtained it does not always imply equal rights to those of nationals. In 2005, for instance, whereas there were 9.2 million “refugees” (recognised as such by the UNHCR according to the terms of the 1951 Geneva Convention on the status of refugees) in the world, only 170,000 were granted official refugee status in the host State.

In practice access to the right of asylum, which guarantees the refugee official recognition of his or her status and the enjoyment of related rights, is hindered by numerous obstacles. To start with such obstacles can make it impossible even to file a request for asylum, and in any case only a small percentage of requests are granted.

1. Obstacles to filing a request for asylum.

Only a small percentage (less than 10%) of refugees¹ worldwide file a request for asylum. However, even if some of them do not necessarily want asylum, there is no doubt that a far larger number would be eligible for the protection granted by the right of asylum. The small percentage is mainly due to two kinds of obstacles to access to filing a request for asylum.

- The implementation of “defensive” migratory policies that restrict access by refugees to territories, mainly in the most developed countries, thereby automatically preventing any possibility of filing an asylum request.
- The absence of infrastructure and institutions capable of dealing with asylum matters, and the impossibility of obtaining information or support for applying for asylum. This type of obstacle is particularly prevalent in the countries of the “South”.

1.1 The various categories of refugees and their “eligibility” for applying for asylum

Even though the distinction does not exist officially, there is a difference between the situation of “individual refugees” and that of “mass” refugees. Individual refugees generally leave their country owing to the

¹ UNHCR defines a **refugee** as *any person who is outside the country of his nationality and is unable or unwilling to return to it, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.*

repression to which they are subjected by the authorities, often for political reasons. Mass refugees usually leave their country because of a war or ethnic persecutions.

However, many mass refugees take refuge temporarily in a neighbouring country, in the hope of returning home as soon as possible. They will not necessarily request asylum in the host country. On the other hand, individual refugees who leave their country because of persecution related to their opinions and who seek refuge in more distant countries (Europe or the United States for instance) will be more naturally inclined to ask for asylum in the host country.

1.2 Main obstacles in the “North”: implementation of defensive migratory policies designed to prevent access of refugees to national territories, thereby making it impossible to file an asylum request

Faced with less massive, less sudden arrivals, at longer intervals, the developed countries have set up obstacles to access to their territory that prevent refugees from exercising their right to international protection when they are in danger. Such policies very often lead to a violation of the right of asylum.

Whereas many migrants leave their country secretly and in great haste because of the threat or the existence of danger, the requirement to **produce a passport and visa** for entry into the territory of a country is an obstacle to the right of asylum, and therefore a violation of Human Rights.

Likewise in establishing the **carriers’ liability**, as is the case in Europe, when airlines or freighters take on board, knowingly or not, passengers without valid entry documents, the developed countries have committed new forms of Human Rights violations. For although they are in no way empowered to examine requests for asylum, carriers now carry out their own checks on passengers in the country of origin to make sure there are no “illegal” passengers.

In addition, in recent years there have been many cases of boats **intercepted at sea**, particularly in the South Pacific, in the Caribbean and in the Mediterranean. By intercepting immigrant boats at sea, States can prevent access to their territory and applications for asylum.

Abusively invoking the concept of “safe third countries” is also a way of denying asylum seekers access to territory. Thus many countries are classified by others as being “safe countries”, although they are not.

1.3 Main obstacles in the “South”: lack of competent institutions for dealing with asylum matters and unavailability of information and support for filing an asylum request

The very small percentage of refugees who file an asylum request in the countries of the South shows in particular how difficult it is to have access to asylum. In the most developed countries asylum procedures are well established, and applicants can obtain support from associations and public agencies for filing their request (not that all requests are granted). In many countries however, particularly in the South, the opposite is true, and asylum procedures are not as well established. In many States party to the Convention or linked to the UNHCR by a Headquarters agreement, there is a sore lack of institutional facilities for the management and individual treatment of asylum requests, and of basic humanitarian mechanisms.

When a State lacks the means of identifying an asylum seeker and for registering the application the result can be a Human Rights violation. First because when there are no facilities and structures in the host country an asylum seeker may be unable to get access to asylum procedures, and his or her status will not be recognised. In such countries it can also be very difficult for refugees to have access to information and support for filing a request. And deprived of status, even if the refugee is in danger in his home country, he or

she can be sent back (*refoulé*) and will then also be more vulnerable to discrimination, arbitrary detention, exploitation, and will be deprived of basic social protection and assistance.

Conclusion

It can therefore be concluded, regarding the possibility of filing an asylum request, that it is easier for refugees to have access to the territory of countries of the South, but they will not be able to file an asylum request. Conversely, they have little access to the most developed countries, but they are much more likely to be able to file an application once they are in the country.

These conclusions would appear to be supported by statistics on the number of asylum requests filed in various parts of the world. The countries of the South are host to over 70% of all refugees worldwide, but they barely receive a third of all asylum requests. Conversely, Europe is host to only 23% of all refugees, but receives over half the world figure for asylum requests.

2. The small percentage of asylum requests granted

In 2005, around a third of asylum requests filed in the world were granted. This is a low percentage, especially in view of the fact that in the same year only 10% of refugees in the world filed an asylum request. That means that in 2005 only 3% approximately of the total number of refugees estimated by UNHCR were given asylum.

In Africa, 80% of refugees were declared as such *prima facie* or on the basis of a grouped recognition, whereas in Europe 75% of refugees had to make an individual application in order to be recognised as refugees. In order to avail themselves of the provisions of the 1951 United Nations Convention on Refugees, asylum seekers have to prove that they have good reason to fear persecution in their country of origin, and that they therefore need international protection.

There are two main methods of granting such recognition: group recognition (or *prima facie*) and recognition following an individual request. In the case of individual recognition procedures, there are three kinds of obstacles:

- The first is that the asylum seeker may consider that his request has not been properly examined, in particular when he has transited through a so-called “safe” country, or when his request is examined under an accelerated procedure because an initial examination had pronounced it to be “clearly groundless”.
- The second problem is that frequently applicants have no way of appealing a negative decision. And when they do have the opportunity, some applicants are transferred outside the territory even before their appeal is judged.
- Lastly, the quality of the examination process is very often inadequate, either owing to lack of means (unqualified staff, lack of structures) or because of a political will to limit the number of requests granted.

Percentages of asylum requests granted in 2005 in the various parts of the world

In Europe, 13% of the 374,000 requests were granted.

In Africa, 38.4% of the 125,000 requests were granted.

In the Americas, 48% of the 72,000 requests were granted.

In Asia – Pacific, 40% of the 75,000 requests were granted.

In Central Asia, South-West Asia, North Africa/Middle East, 16% of the 22,000 requests were granted.

We would like to recall that the specificity of the right of asylum must not be dependent on migratory policies. The Geneva Convention on Refugees must therefore be fully complied with, and the ensuing obligations fulfilled. States must recognise the role and the authority of the High Commissioner for Refugees (HCR), who must fulfil his duties in accordance with his mandate, and not according to the interests of States. It follows that the HCR budget must be increased in order to enable it to carry out the missions entrusted to it.