

Human Rights Council

Protecting the universal human rights of illegal migrants



Forum:	Human Rights Council
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Introduction

Illegal migration, like any form of migration, occurs as a direct result of a combination of Push and/or Pull factors from the places of origin and destination. What differentiates illegal migration from legal forms of migration, such as through asylum processes, is that illegal migration occurs without approval of the state or government, stripping the migrants from any rights they would receive otherwise. However the approach that has become popularized recently aims less at aiding these migrants through integrative policies, but places emphasis on the quickly relocate the migrants back to their home countries, if necessary through excessive force. What turns this into a never-ending vicious cycle, is the fact that many illegal migrants gave up all their belongings back in their home-countries in order to be able to afford the journey. Hence when relocated to their origin countries, they end up as refugees in their own country.

The guardian states that by 2013, there were a total of 232 million documented migrants around the world. While these are known due to their possession of proof of identity, such as passports, it is near impossible to give any reasonable numbers as estimates for the global number of illegal migrants, as they travel without documentation in a majority of the cases. Hence only rough speculations are available, giving the entire issue a dimension of uncertainty. This added dimension raises a number of concerns, as without accurate numbers governments are unable to create action plans. Moreover, without accurate figures regarding total number of migrants, speculative exaggeration by the media incites an aura of popular disapproval towards migrants. Hence one major aspect feeling the hatred towards illegal migrants by locals is the “fear of the unknown”, which surrounds the issue of illegal migration.

The Universal declaration of Human Rights states in Article 2 that Human Rights are attributed universally *“without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*



Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” The statements made therein apply equally to all types of migrants, illegal or legal, and thus a primary approach to establishing Human Rights for these migrants lies within the universal ratification of the declaration, and the enforcement thereof by national and transnational governing bodies.

Definition of Key Terms

Diaspora

Migrants that have spread from a common national background across the world, however retained their national identities in the process. Key examples hereof are “China Towns”, wherein Chinese populations continue Chinese lifestyle outside national borders.

Refugee

Migrants that have either been forced out of their country by a danger to their lives, or the lives of their family, through war, natural disasters, or political unrest. Sometimes such migrants may have lost their homes in the origin countries making them permanent refugees, or may simply be refugees for a limited period of time until the issue on the origin country is settled. Many refugees are propagated as illegal migrants, as they often do not have the time, money, or knowledge to complete the required paperwork before their expatriation.

Economic Migrant

Economic migration often has poverty or other economic “push” factors as a motivation. Economic migrants seek a better future for themselves and their families as a result of the migration. The Mexico-USA migration is a popular example hereof.

Asylum Seeker

Asylum seekers are individuals who fear prosecution or death in their origins as a result of religious, political, or ideological beliefs. Asylum seekers must first make an application for asylum in their destination countries, whereafter the validity of their application is evaluated, and if accepted, will receive aid and shelter until the threat is deemed passed.



Internally Displaced Person

Internally displaced people are refugees on a national level.

Voluntary Migration

While most illegal migration occurs due to extreme conditions of some sort in the origin countries, there are cases where illegal migration is caused through voluntary decision. An example for this is tourists/workers that overstay their respective VISAS.

Forced Migration

Forced migration is defined as any type of migration where the migrants have little to no ability to stay in their origin country without seeing their life, or the quality thereof, endangered.

General Overview

Motivations for Illegal Migration

In order to tackle the issue accordingly, one must first become aware of the motivations of the migrants, as each motivation for migration will have different types of migrants, meaning that the responses must be adequately tailored. In the following overviews, the illegal form of the given type of migration is presented.

Economic Migration

As mentioned previously, economic migration occurs as a result of dire economic condition in origin countries. Through this, many migrants are willing to risk their entire livelihood in order to achieve better economic chances for themselves and their families in more economically developed areas. The migrants will often save up a large sum of money prior to the migration, and then use that money to pay a trafficker to get them to the more developed country. Key examples hereof are the migrations Mexico-USA and Morocco-Spain/Italy. Often in the recipient countries the migrants are met with the preconception that they will steal the local's vocation, and hence abuse and poor quality of life is frequent.

Family Reunification



Migration with the purpose of family reunification is most frequent for economic forms of migration, as herein often one member of the family will migrate initially to support his family through remittances¹. The migrated family member will gradually become integrated in the destination society, and may even be able to receive citizenship or an extended worker's visa. After a period of time however, the desire to reunite with their family becomes ever more defined, and hence an additional migration, this time of the family members, occurs. The issue hereby is often that these family members are illegal migrants, as they do not classify under the conditions of most worker's visas. Thus they face prosecution and possible expatriation, occasionally even the removal of citizenship of the initial migrator. Article 16.3 of the Universal Declaration of Human Rights (UDHR) states that: *"The family is the natural and fundamental group unit of society and is entitled to **protection** by society and the State."* By placing limitations of remigration of family members to join previously migrated persons, families are forced into separation in fear of worsening the present situation. Thereby governments are not protecting the rights of the family, but rather limiting them, thereby contradicting the UDHR.

Deprivation of Citizenship

In certain cases, a minority within a country will be removed the right of citizenship, and deemed as illegal migrants, despite the factuality that they had been residing in that country for generations. These individuals will in these cases then be forcefully urged to expatriate. Recent cases of such deprivation of citizenship are the Rohingya people, who are actively prosecuted in Myanmar and Bangladesh, forced out of the countries.

Refugees and Asylum Seekers

Refugees and Asylum seekers fall under the category of forced migrants. They both face danger of some sort in their home countries, and have thus decided to undertake the journey for safety. Hereby Refugees are not necessarily Asylum seekers, as some refugees are environmental refugees. In most cases however it is the Refugees that are illegal migrants, as Asylum seekers need to go through an asylum application process upon entering the country, which ultimately grants them the right to not be expatriated. Refugees on the other hand often receive barely any rights in the destination countries, including the denial of identity or processing. Instead they are collected in refugee shelters wherein they are often left to their own accords, promoting crime and disparities. Key examples therefore in recent times are the migrations

¹ Payments from Migrant back to origin country

caused by the Syrian, Iraq, and Afghanistan war, alongside those caused by the terror of ISIS in the Middle East. These conflicts have created innumerable number of refugees flowing into Europe, and despite Europe's relative developmental status, many refugees receive poor treatment upon arriving on the shores of the union. The main concern with refugees is their desperation in undertaking the journey, causing them to take huge risks, especially in the modes of transportation. Countless refugees perish in the travel to their destination countries, making the primary concern the improvement of coastal control and aid mechanisms, and the improvement of refugees' status from illegal migrants to highly vulnerable individuals.

Major Parties Involved and Their Views

United Nations High Commissioner for Refugees (UNHCR)

The UNHCR's primary concern is refugees, and their treatment within recipient countries. According to their own mission statement their objectives are as follows: *"The agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country."*

United States Border Patrol

The United States southern border patrol, controlling the Mexico/USA border, has frequently been the target of severe criticism. Their official mandate states: *"The priority mission of the Border Patrol is preventing terrorists and terrorists weapons, including weapons of mass destruction, from entering the United States."*, however many claim that this mandate has been abstracted, and used as a premise for torture and abuse of illegal migrants in their pursuit of happiness. Amnesty International's report, *"In Hostile Terrain: Human rights violations in immigration enforcement in the US Southwest"* outlines the key issues, and human rights violations undergone in the border:

- *"Recent immigration policy in certain border areas has pushed undocumented immigrants into using dangerous routes through the US desert; hundreds of people die each year as a result."*



- *Immigration enforcement in the USA is a federal responsibility. Federal immigration officials are increasingly working in collaboration with state and local law enforcement agencies but improper oversight of state and local law enforcement has led to increased racial profiling.*
- *Increasingly, state laws and local policies are creating barriers to immigrants accessing their basic human rights, including rights to education and essential health care services. While these laws are targeting non-citizens, these policies are also impacting US citizen children.*
- *Recent legislation enacted or proposed in several states targets immigrant communities and places them, Indigenous communities and other minority communities at risk of discrimination.*
- *Immigrant communities also face a range of barriers to justice when they are victims of crime such as human trafficking, domestic violence or bias crimes.”*

Frontex

Frontex is the European Union's multilateral border control coordination agency, responsible for the enforcement of the European Unions (EU) borders as of 2005, when it was first called to action to address the issue of increasing numbers of illegal migrants into Europe. They state their mission as the following: *“Frontex promotes, coordinates and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management.”*, making them a key player in the Middle East/West Africa to Europe migration. While in recent years Frontex has been receiving ever more criticism for their inhumane treatment of refugees on high seas, through denial of aid to refugee vessels in peril on the Mediterranean ocean. Moreover, Frontex has been following a policy of diversion, in which refugee boats are driven back to the African shores through aggressive force. Estimates suggest that in 2008 alone, over 6000 refugees became subject to diversion strategies, being forced back into the country they originally aimed to flee, directly opposing both the mandate of the UNHCR, and the UDHR.

Italy

In the European migration issue, Italy has been the country hit with the largest waves of refugees. The small island of Lampedusa hereby stands in the middle of the spotlight, being the main initial shore for the majority of the inwards refugee migration into Europe. Troubled with the unaccountable entourage of refugees, Italy struggles to receive aid from other EU countries within the distribution of the refugees. Germany is one of the few



European countries holding an open refugee policy, at a large disgruntlement of the population. Regardless, Germany remains the second highest absolute acceptor of refugees after Italy in Europe, proving how unsustainable the distribution is. Due to the high overload in refugees in a small number of locations, facilities, resources, and personnel, are in dire short supply, resulting in many refugees being treated below Human Rights standards.

African Union

In the light of many challenges that have arisen by migration, the OAU Council of Ministers has adopted Decision CM/Dec 614 (LXXIV) in Lusaka, Zambia in July 2001. The decision includes a Strategic Framework for a Policy on Migration in Africa. The policy framework focuses on 9 thematic issues; one of these issues is the human rights of migrants. In the migration policy framework for Africa the AU states the following: *“Ensuring the effective protection of the human rights of migrants is a fundamental component of comprehensive and balanced migration management systems. Historically, migrants have often been deprived of their rights and subjected to discriminatory and racist actions and policies including exploitation, mass expulsion, persecution and other abuses. Safeguarding the human rights of migrants implies the effective application of norms enshrined in human rights instruments of general applicability as well as the ratification and enforcement of instruments specifically relevant to the treatment of migrants.”*

UN involvement, relevant resolutions, treaties and events

When the UN was formed the world was still fearful of all that had happened during the nuclear war as well as the widespread of discrimination and genocide during the Second World War. In response to this the United Nations General Assembly had adopted the Universal Declaration of Human Rights (UDHR).

Listed below are further resolutions passed by the General Assembly concerning the human rights of migrants:

- Universal Declaration of Human Rights (UDHR), 10th of December 1948,
- Protection of migrants, 18th of December 2007, A/RES/62/156
- Violence against women migrant workers, 18th of December 2007, A/RES/62/132
- Protection of migrants, 19th of December 2011, A/RES/172
- National institutions for the promotion and protection of human rights, 19th of December 2011, A/RES/66/169
- International migration and development, 3th of August 2012, A/RES/67/254



Evaluation of Previous Attempts to Resolve the Issue

European Union - Refugee Quota

While many organizations, including the UNHCR, Amnesty international, and the UN itself, are attempting to place pressure on those countries violating the rights of refugees, most of these efforts are not conducted by governments, and therefore remain the workings of NGOs and intergovernmental bodies. The EU however has very recently suggested legislation that would adopt so called “refugee quotas”. These would force all EU member states to take a proportional share of the refugees washed ashore on Mediterranean countries, ensuring an equal responsibility and commitment to resolving the issue within Europe. The quote will consider economic performance, total population, and relative income in order to distribute the refugees according to the ability of the respective recipient countries. Such a system could be implemented on a global level; in order to ensure an equal distribution of refugees and asylum seekers across all UN developed nations.

Possible Solutions

Documentation

As a primary issue within the addressing of the illegal migrants’ rights being their lacking documentation even within the destination country, an obvious solution would be the documentation of all illegal migrants. While this initially seems both impossible, and overly naive, the fact must be considered that with proper documentation, the work of the UNHCR and other NGOs relating to the rights of migrants would become increasingly easier. Moreover, proper documentation would allow governments to mediate their migration policies accordingly to the true demand. While documentation does not directly solve the issue of Human Right abuses of illegal migrants, it does give both governments and transnational bodies the ability to monitor the situation.

Integration

The integration of refugees into the destination societies is the primary method to reducing human rights abuses on a local and social level. The aggression and animosity felt by locals against illegal migrants can be best overcome if these migrants are securely integrated within the community, making them seem as less of a threat to the locals, and



more of an integral part of the local community. Thereby locality education, vocational training, and integration into the local economy, are all key aspects of this integration process. A premise for this to occur however is the collaboration of the government in giving these illegal migrants proper documentation and respective workers visas.

Regional Relocation

Regardless of goodwill and effort, a maximum carrying capacity for illegal migrants is eventually reached by any recipient country. Once this carrying capacity is reached, any further increase in migrant numbers will result in a drastic reduction of the human rights of the remaining individuals. Hence a system for multilateral migrant relocation must be achieved, with an agency responsible for the coordination and relocation of said migrant flows. Hereby cultural implications are of the highest importance to ensure the final communities that the migrants are placed within are compatible with the migrants themselves, in terms of religious, ethical, and ideological factors. A system as given by the EU (see previous section), implementing quotas calculated through economic performance, total population, and available land, in the recipient countries should be implemented.

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