

# SWIMMING AGAINST THE TIDES

Examining the EU response to Irregular Migration through the Mediterranean Sea



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## INTRODUCTION

While continued shipwrecks in the Mediterranean Sea, such as the 19 April, 2015 incident that claimed an estimated 800 lives<sup>1</sup>, have drawn attention to irregular migration in Europe, it is important to observe that the history of Global South to Europe migration is long and complex. The current crisis in the Mediterranean, which the United Nations has called, “a tragedy of epic proportions”<sup>2</sup> is the culmination of decades of unequal power relationships between the Global South and Europe.

European nations and the United States, though the latter is lucky not to be as easily accessible to migrants, hold significant responsibility for the continued irregular migration influx due to decades of corrupt regimes they helped foster and then dismantle as well as trade policies which impoverished the continent.<sup>3,4</sup> Conflict stemming from ethnic, religious and political strife continues to threaten daily life in many parts of the continent. Africa has the fastest growing population in the world, but despite its economic gains in recent years, it still does not have enough jobs for youths.<sup>5</sup>

Unfortunately, the crisis is only now gaining attention because of the alarming increase in migrant deaths during the trip across the Mediterranean Sea. According to the International Organization for Migration (IOM), there have been 18 times as many deaths in the Mediterranean Sea from January to April of 2015, when compared to the same period last year.<sup>6</sup>

The number of irregular migrants making the journey to Europe is also growing. Tens of thousands of migrants are expected to take the sea route to Europe in 2015, despite the smugglers, deserts, sea crossing, risk of death and other dangers. The Italian Interior Minister, Angelino Alfano, recently indicated that Italian authorities believe there to be between

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<sup>1</sup>"Mediterranean Migrants Crisis: What Happened on the Sinking Boat?" BBC News, April 23, 2015, Accessed May 25, 2015, <http://www.bbc.com/news/world-europe-32411381>.

<sup>2</sup>"Joint Statement on Mediterranean Crossings," UNHCR News, April 23, 2015, Accessed May 25, 2015, <http://www.unhcr.org/5538d9079.html>; A joint statement was put out by the UN High Commissioner for Refugees, the UN High Commissioner for Human Rights, The Special Representative of the UN SG for International Migration and Development and the Director General for the IOM who all urged European leaders to put human life first in their response to the humanitarian crisis occurring in the Mediterranean

<sup>3</sup> Dirk Kohnert, "African Migration to Europe: Obscured Responsibilities and Common Misconceptions," SSRN Journal SSRN Electronic Journal, 2007, Accessed May 25, 2015, [www.giga-hamburg.de/workingpapers](http://www.giga-hamburg.de/workingpapers).

<sup>4</sup>Jaideep Prabhu, "Refugees Not Migrants: How Europe Is Misleading the World on the Humanitarian Crisis in the Mediterranean," DNA India, April 28, 2015, Accessed May 25, 2015, <http://www.dnaindia.com/analysis/standpoint-refugees-not-migrants-how-europeans-are-misleading-the-world-on-the-humanitarian-crisis-in-the-mediterranean-2081490>.

<sup>5</sup> Tuesday Reitano, Laura Adal, and Mark Shaw, "Smuggled Futures The Dangerous Path of the Migrant from Africa to Europe," May 2014, Accessed May 26, 2015, <http://www.globalinitiative.net/download/global-initiative/Global-Initiative-Migration-from-Africa-to-Europe-May-2014.pdf>.

<sup>6</sup> "What's Behind the Surge in Refugees Crossing the Mediterranean Sea," The New York Times, May 21, 2015, Accessed May 27, 2015, [http://www.nytimes.com/interactive/2015/04/20/world/europe/surge-in-refugees-crossing-the-mediterranean-sea-maps.html?\\_r=0](http://www.nytimes.com/interactive/2015/04/20/world/europe/surge-in-refugees-crossing-the-mediterranean-sea-maps.html?_r=0).

300,000 and 600,000 migrants in North Africa waiting to cross the Mediterranean to Europe.<sup>7</sup> These factors are putting increased pressure on European countries to reform their immigration and asylum laws. European countries are faced with a continuing humanitarian crisis, which many of its leaders prefer to avoid, but can no longer do so.

In this report, GICJ wishes to highlight the complexities of irregular migration to Europe. Destination countries in Europe have benefitted from the work of irregular migrants for decades. In fact, the countries who now wish to close their doors once encouraged migrants to come in an effort to bolster their labour force. Migration has also had positive impacts on African countries most especially seen through the volume of remittances received across the continent. Yet, GICJ believes that the relationship has not been equally beneficial for both sides.

The historical injustices suffered by the African continent from the transatlantic slave trade, colonialism and neo-colonial practices continue to play a role in its hindered development. The Mediterranean migration crisis cannot be isolated from its underlying causes, which are found in these acts. In this report, GICJ explores the impact of terminology on policies towards the crisis, the historical background of migration from Africa to Europe and situates these discussions in the ongoing process of creating new European policies that effectively address irregular migration. GICJ's paramount concern in this report is to emphasize the root causes of the issue we see today and highlight the importance of addressing these causes in any proposed migration plan.

## **CLARIFICATION OF TERMINOLOGY**

In the ongoing debate and discussions over migration, it is important to clarify the meaning of various terms. Oftentimes, the word used in the debate is “illegal migrant”. The term is however misleading, because it places into one group a diverse range of people who arrive at Europe's shores. Furthermore, the use of the word “illegal” is in itself a determinant of how these people are seen and subsequently treated.

Instead of “illegal migrant”, the term that has been deemed most suitable is “irregular migrant.” As such, irregular migration is the “movement of persons taking place outside the regulatory norms of the sending, transit and receiving countries. From the perspective of destination countries, it is entry, stay or work in a country without necessary authorization or documents under immigration regulations.”<sup>8</sup>

The UN Special Rapporteur on the Human Rights of Migrants, François Crépeau, has stated that while irregular migration may constitute an “administrative offence, [it] is not a crime.”<sup>9</sup> In situations where irregular migrants are smuggled, it is important to separate the actions of

<sup>7</sup>“Up to 600,000 Migrants Ready to Cross Med’, Italian Minister,” April 3, 2015, Accessed May 25, 2015, [http://www.ansamed.info/ansamed/en/news/nations/italy/2014/04/03/up-to-600000-migrants-ready-to-cross-meditalian-minister\\_3cd8c203-fc66-492a-84c9-6b8b164aca0d.html](http://www.ansamed.info/ansamed/en/news/nations/italy/2014/04/03/up-to-600000-migrants-ready-to-cross-meditalian-minister_3cd8c203-fc66-492a-84c9-6b8b164aca0d.html).

<sup>8</sup> Alexandre Lusenti and Lisa Watanabe, "The Challenge and Tragedy of Irregular Migration to Europe," Edited by Matthias Bieri, October 2014, Accessed May 27, 2015, <http://www.css.ethz.ch/publications/pdfs/CSSAnalyse162-EN.pdf>.

<sup>9</sup>François, Crépeau, "Mainstreaming a human rights based approach to migration within the High Level Dialogue," Speech, PGA Plenary Session - Criminalization of Migrants, New York, October 2, 2013,

the smugglers from that of the migrants. According to Crépeau, while smuggling migrants is a crime, those migrants who are smuggled should not themselves be criminalized.<sup>10</sup>

Within the broad group of people referred to as irregular migrants, there are “asylum seekers”, “refugees”, and “economic migrants”. Asylum seekers are people who wish to be admitted into a country as refugees but are stilling waiting for a decision as to whether or not they have been granted refugee status. If the asylum seeker is not granted refugee status, they are required to leave their destination country unless they are allowed to stay on other humanitarian grounds.<sup>11</sup> Conversely, a refugee is a person who “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”<sup>12</sup>

Economic migrants are the group that receives the most scrutiny in the current migration crisis. This is despite the fact that data regarding the origin of migrants show that most are probably more suitably classified as asylum seekers. Nevertheless, economic migrants are those people who choose to move to a different country to improve the future economic opportunities of themselves and their families.<sup>13</sup> In many cases, they are searching for employment opportunities and are willing to work low paying jobs, because even that is better than their prospects in their home country. In Europe, the aftermath of the 2008 financial crisis left high unemployment rates in many Mediterranean countries that are on the frontlines of receiving migrants from Africa. This has hardened the attitude against so-called economic migrants. As such, media references to those crossing the Mediterranean Sea as economic migrants limit the policy options for political leaders.

## **THE HISTORICAL BACKGROUND OF GLOBAL SOUTH-EUROPE MIGRATION**

For many centuries, Europe was the main contributor to intercontinental migration. Limited funds prevented migrants from other continents from choosing Europe as a destination. On the other hand, from the 16<sup>th</sup> century, more than 65 million Europeans left their continent for other places.<sup>14</sup> Of these migrants, 90% migrated after 1800.<sup>15</sup>

The few non-Europeans who came to Europe before the 20<sup>th</sup> century did so as slaves (or in other forms of servitude) and once the slave trade ended, very few migrated to Europe at all.<sup>16</sup> The 20<sup>th</sup> century however proved to be a time of unprecedented migration from Global South countries, especially many African ones, to Europe. Migration to Europe from the South grew for reasons related to war, decolonization, labour demand, asylum and education.

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<sup>10</sup>Crépeau

<sup>11</sup>Tuesday Reitano, Laura Adal, and Mark Shaw.

<sup>12</sup>Tuesday Reitano, Laura Adal, and Mark Shaw.

<sup>13</sup>Lubbers, Ruud. "Refugees and Migrants: Defining the Difference." BBC News. April 5, 2004. Accessed May 25, 2015. [http://news.bbc.co.uk/2/hi/in\\_depth/3516112.stm](http://news.bbc.co.uk/2/hi/in_depth/3516112.stm).

<sup>14</sup>Pieter Emmer and Leo Lucassen, "Migration from the Colonies to Western Europe since 1800," European History Online, November 13, 2012, Accessed May 6, 2015, <http://ieg-ego.eu/en/threads/europe-on-the-road/economic-migration/pieter-emmer-leo-lucassen-migration-from-the-colonies-to-western-europe-since-1800>.

<sup>15</sup>Pieter Emmer and Leo Lucassen.

<sup>16</sup>Pieter Emmer and Leo Lucassen.

During WW1 and WWII, large numbers of non-European soldiers and labourers were recruited to work for the Allies. Recruited soldiers and labourers came from French West Africa, British India, China, Indochina, and North Africa. After the wars, many were repatriated while some were allowed to stay.

During the post WWII era, Europe did not have enough labour to rebuild the continent. The Marshall Plan allowed Europe to build with the help of labourers from Africa and the Middle East.<sup>17</sup> The demand for labour caused Britain, France and other countries to allow citizens of former colonies to work in their country.<sup>18</sup> Between 1954 and 1964, France received 1.8 million immigrants from its former colonies in North Africa and Indochina. About 1 million of these migrants originated from Algeria.<sup>19</sup>

The migration flow began to be stemmed after the oil crisis of 1973, which caused many European nations to tighten their visa requirements.<sup>20</sup> Even with greater visa restrictions, the demand for unskilled labour in Europe kept migration going. Most of the irregular migrants were actually well educated, middle class people in their country of origin, but found that their qualifications were not recognized in Europe, pushing them to unskilled labour.<sup>21</sup>

The decolonization era of the 50s and 60s also brought many migrants to Europe. Millions of Europeans, and their local allies moved from French North Africa, British colonies in Southern Africa and South Asia, the Dutch East Indies, and Portuguese Africa to Europe right before, during or after decolonization.<sup>22</sup>

Furthermore, political asylum seekers from Africa, Asia and Latin America were also coming to Europe in the Cold War era (1947-1991). There was warm western reception for refugees who left the communist bloc during this period, which spurred many more people to seek asylum in Europe.<sup>23</sup>

Historically, illegal migrants from the Global South have entered Europe through the Spanish Canary Islands; the Spanish territories of Ceuta and Melilla in North Africa; Malta and the Italian islands of Sicily and Lampedusa; and Greece.<sup>24</sup> Smuggling flows to Italy, through what is termed the Central Mediterranean route, evolved from the 1990s when North Africans came to Italy in droves as temporary seasonal workers in the fishing and agricultural sectors of Sicily.<sup>25</sup> These routes later became used for smuggling networks as smugglers realized the potential.

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<sup>17</sup>Jaideep Prabhu.

<sup>18</sup>Pieter Emmer and Leo Lucassen.

<sup>19</sup> Pieter Emmer and Leo Lucassen.

<sup>20</sup>Jaideep Prabhu.

<sup>21</sup>Jaideep Prabhu.

<sup>22</sup> Pieter Emmer and Leo Lucassen.

<sup>23</sup>Pieter Emmer and Leo Lucassen.

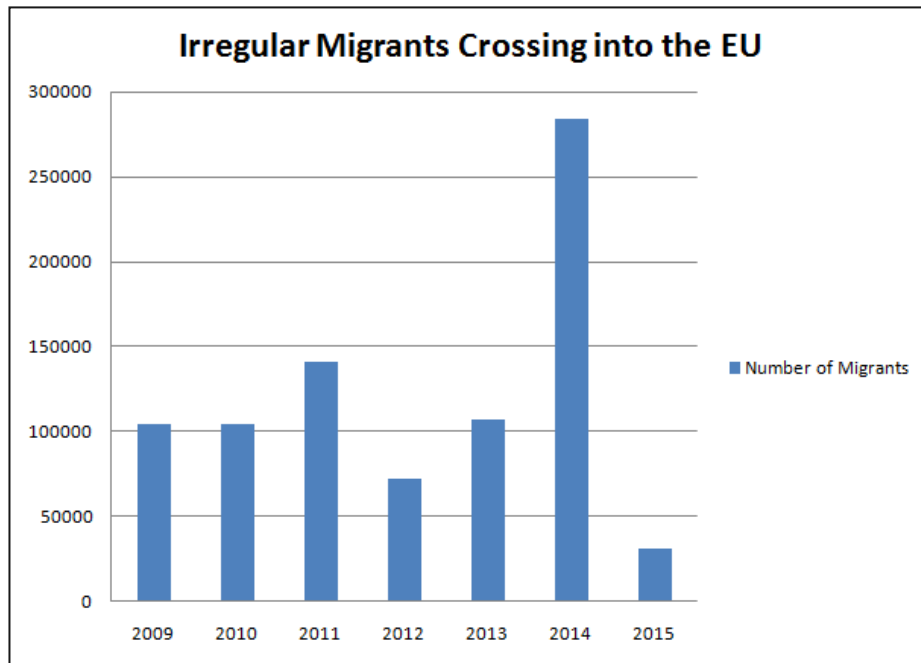
<sup>24</sup>Jaideep Prabhu.

<sup>25</sup>Tuesday Reitano, Laura Adal, and Mark Shaw.



## HOW AND WHY DOES IRREGULAR MIGRATION OCCUR?

Irregular migration to Europe is a phenomenon that has grown in recent years as legal migration methods have diminished. In 2014, over 200,000 migrants crossed the Mediterranean Sea for Europe and about 3,500 lives were lost according to UNHCR. As of the 19<sup>th</sup> of April 2015, UNHCR reported that about 31,500 migrants had reached Europe by sea.<sup>26</sup> The UN agency put the number of dead and missing at 1,750 and 1,776 respectively.<sup>27</sup>



Data Source: Frontex

The majority of legal African migrants overseas are found in Europe with about 4.6 million compared to the 890,000 of the United States according to the IOM.<sup>28</sup> The Migration Policy Institute however estimates that there are between 7 and 8 million irregular African migrants in the E.U.<sup>29</sup> About two-thirds of these African migrants in Europe come from North Africa. The others who come from sub-Saharan Africa tend to be West African<sup>30</sup> and are mainly nationals of Ghana, Nigeria and Senegal.<sup>31</sup>

The Arab Spring, its aftermath and many ongoing regional conflicts have also significantly increased the flow of migrants to Europe.<sup>32,33</sup> Since the fall of the Ghaddafi regime, Libya has been the main exit point off the African continent for most migrants.<sup>34,35</sup> The end of his

<sup>26</sup>"Latest Deaths on Mediterranean Highlight Urgent Need for Increased Rescue Capacity," UNHCR News, April 15, 2015, Accessed May 23, 2015, <http://www.unhcr.org/552e603f9.html>.

<sup>27</sup> Laurence Peter, "Why Is EU Struggling with Migrants and Asylum?" BBC News, May 28, 2015, Accessed May 28, 2015, <http://www.bbc.com/news/world-europe-24583286>.

<sup>28</sup>"Key Facts: Africa to Europe Migration," BBC News, July 2, 2007, Accessed May 27, 2015, <http://news.bbc.co.uk/2/hi/europe/6228236.stm>.

<sup>29</sup>"Key Facts: Africa to Europe Migration"

<sup>30</sup>Dirk Kohnert.

<sup>31</sup>"Key Facts: Africa to Europe Migration"

<sup>32</sup>Tuesday Reitano, Laura Adal, and Mark Shaw.

<sup>33</sup>JaideepPrabhu.

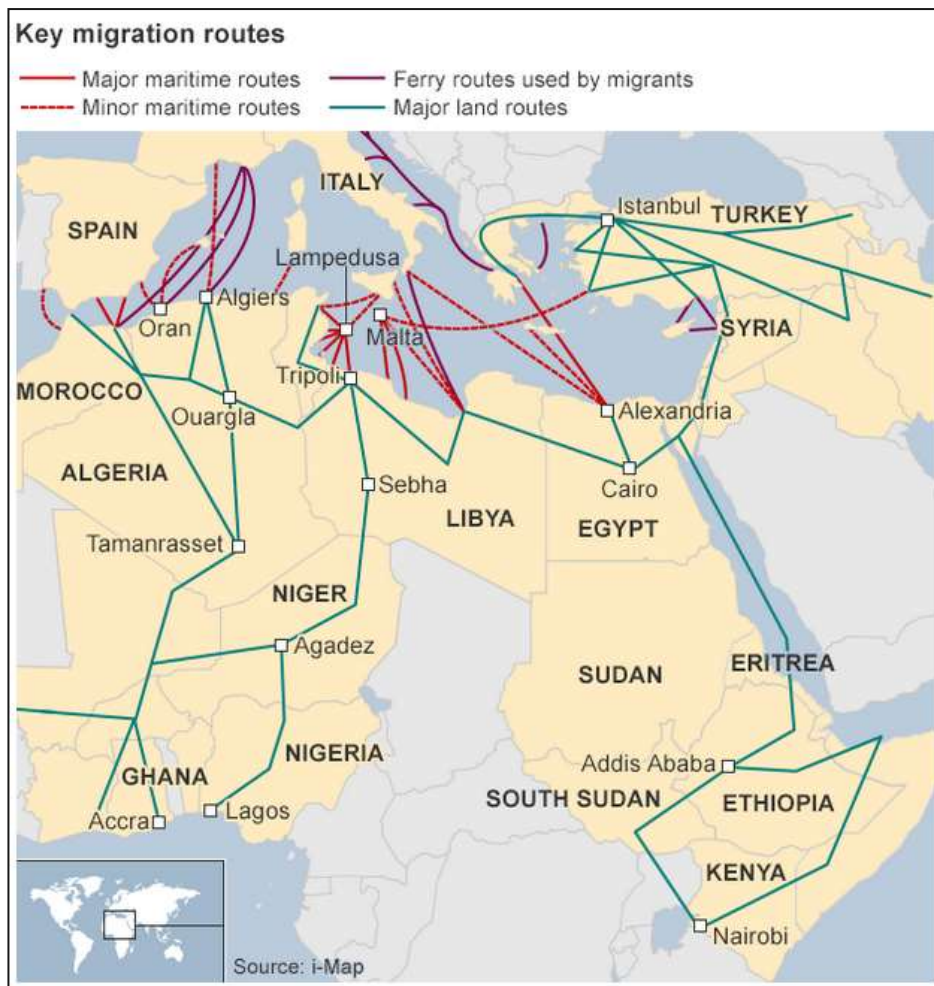
<sup>34</sup>Tuesday Reitano, Laura Adal, and Mark Shaw.

<sup>35</sup>Laurence Peter.

regime created a security vacuum that allowed migration at unprecedented levels. Currently, two rival governments are battling for control of the country. The chaos born out of a lack of a central government and secure borders has given smugglers the chance to thrive since there is inadequate intervention from authorities.

Migrants travel from all parts of Africa as well as Syria and Afghanistan to Libya so they can make the dangerous journey to Europe by sea. As it is, there are few other options for many of these migrants; all international flights from Libya are currently grounded.<sup>36</sup> Syrians are increasingly being denied entry into neighbouring countries, so many fly to Sudan and travel across the Sahara to Libya, then board a boat from there.<sup>37</sup>

The three main smuggler routes taken to get to Europe are: the Western Mediterranean from North Africa to Spain; the Central Mediterranean from North Africa, especially Tunisia and Libya to the Italian islands of Sicily and Lampedusa, as well as Malta; and the Eastern Mediterranean route from Turkey to Cyprus and Greece.<sup>38</sup>



Source: BBC News

<sup>36</sup>Sarah Almkhatar, K.K Rebecca Lai, Sergio Pecanha, Derek Watkins, and Jeremy White.

<sup>37</sup>Sarah Almkhatar, K.K Rebecca Lai, Sergio Pecanha, Derek Watkins, and Jeremy White.

<sup>38</sup>Alexandre Lusenti and Lisa Watanabe.

Smugglers' prices range from 1,000 to 3,400 Euros per person depending on the route taken.<sup>39</sup> Factors such as distance and difficulty of the route and the level of controls along the route affect the prices.<sup>40</sup> For example, the route of Senegal to the Canary Islands, Spain costs between 800 and 1,200 Euros per person.<sup>41</sup> This hefty sum for the average African acts to deter the poorest of the poor from leaving the continent.

Those who are able to pay and make the journey across the Mediterranean face violence and abuse by their smugglers<sup>42</sup> as well as other unsafe conditions. The vessels the migrants are loaded onto are often overcrowded, under fuelled and not fit for travel.<sup>43</sup> Many migrants find themselves stuck at stops along the way for weeks or possibly years as they work to make the money required for the next leg of their journey.<sup>44</sup>

There are three main methods of payment open to migrants: upfront prior to departure, en route or by credit.<sup>45</sup> By credit means that the fees are covered by a third party to whom the migrant is indebted. It is expected that the migrant will pay back the third party upon arrival at their destination. In many cases however, this method of payment leads to human trafficking.

Even migrants who have paid their own way are frequently subjected to trafficking as their vulnerability is taken advantage of. According to the IOM, many migrants leave without telling their families but with the intention to get in contact once they arrive at their destination country.<sup>46</sup> This leaves many migrants extremely vulnerable to traffickers.

Despite these risks, migrants still flock to Europe, because for many the dangers they face in crossing the Mediterranean are minimal when compared to the dangers at home.

The largest irregular migrant group coming to Europe are Syrians, followed by Eritreans, Somalis and Afghans. Syrians are fleeing the bloody civil war that has taken hold over their country while Eritreans, Somalis, Afghans and other nationalities are trying to escape abject poverty and grievous human rights violations.

For Eritreans, the most commonly cited reason for leaving the country is military conscription.<sup>47</sup> Eritrea is a country plagued with widespread poverty and an authoritarian government. Under the current regime, Eritreans are expected to serve compulsory military conscription for indefinite periods of time which is contrary to international law. Furthermore, citizens are often subjected to arbitrary arrest and torture. When leaving the country, those who do not obtain an exit permit are seen as defectors. There is a military shoot to kill policy against defectors.

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<sup>39</sup>“Key Facts: Africa to Europe Migration”

<sup>40</sup>Tuesday Reitano, Laura Adal, and Mark Shaw.

<sup>41</sup>Dirk Kohnert.

<sup>42</sup>Laurence Peter.

<sup>43</sup>Sarah Almkhatar, K.K Rebecca Lai, Sergio Pecanha, Derek Watkins, and Jeremy White.

<sup>44</sup>Tuesday Reitano, Laura Adal, and Mark Shaw,

<sup>45</sup>Tuesday Reitano, Laura Adal, and Mark Shaw.

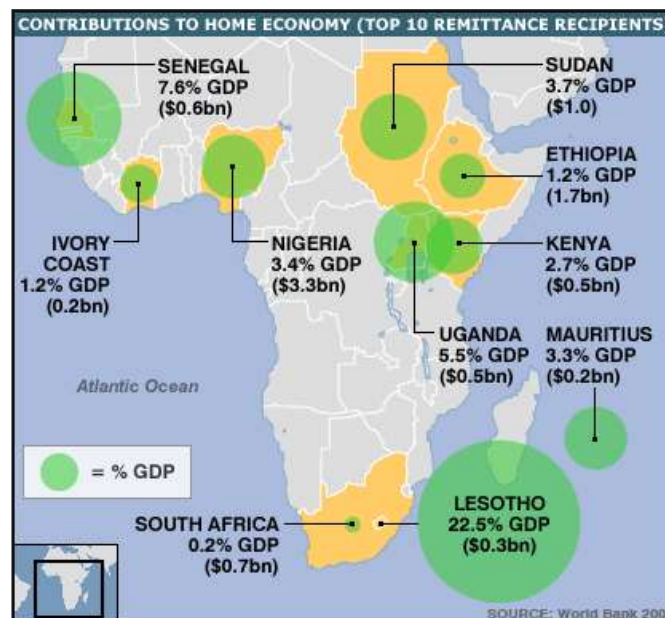
<sup>46</sup>Tuesday Reitano, Laura Adal, and Mark Shaw.

<sup>47</sup>“What’s Behind the Surge in Refugees Crossing the Mediterranean Sea”

Economics also plays a key role in why migrants are keen to flee for Europe. For Africans especially, their economic history has very often featured large population movements driven by the slave trade, colonialism, violent conflict, and poverty.<sup>48</sup> Furthermore, to many young Africans, Europe is seen as the land of opportunity that cannot be attained in Africa if only they can just get there.

Today, most of Africa’s 680 million live under extreme poverty and insecurity. One only needs to look at the GDPs, approximately 9,984.1 billion dollars for the Euro zone and 621.9 billion dollars for Africa, to see why.<sup>49</sup>

Once they arrive in Europe, these migrants become contributors to their families back home through remittances. In terms of benefits, remittances are extremely important. They constitute the second largest source of external private finance to African countries after Foreign Direct Investment.<sup>50</sup>



Source: BBC News

Social reasons also drive migration from Africa to Europe. Various indicators of social welfare show the severe disparity in social provisions between Europe and Africa. Shown in the table below<sup>51</sup>, the difference in life expectancy of 33 years, effectively robs Africans of approximately one-third of their life.

	Euro zone	Sub-Saharan Africa
<b>Life expectancy</b>	80 years	47 years
<b>Population growth</b>	0.6 percent	2.3 percent
<b>School enrolment (primary)</b>	98.9 percent	65.7 percent
<b>HIV prevalence (ages 15 to 49)</b>	0.3 percent	5.8 per cent
<b>Internet users per 1000 people</b>	439.4	29

Source: BBC News

<sup>48</sup>Laurence Peter.

<sup>49</sup>“Key Facts: Africa to Europe Migration”

<sup>50</sup>Dirk Kohnert.

<sup>51</sup>“Key Facts: Africa to Europe Migration”

There are also drawbacks to this migration stream such as the inevitable brain drain. Those who make it abroad tend to be the more educated individuals in the country, which is perhaps attributable to the high cost of paying for passage to Europe. Between 33 and 55 percent of Africans with higher education in Angola, Burundi, Ghana, Kenya, Mauritius, Mozambique, Nigeria, Sierra Leone, Uganda, and Tanzania have left their country for OECD countries.<sup>52</sup>

## **OUTGOING EUROPEAN MIGRATION POLICY**

Public awareness of the ongoing irregular migration crisis in Europe began in 2007 with the highly publicized case of migrants off the coast of Malta being left clinging to a tuna net for days.<sup>53</sup> The incident, in which the captain of the fishing vessel refused to let the migrants aboard his boat, drew widespread criticism and turned public attention to the Mediterranean crisis. The 27 migrant men were ultimately saved, but the situation highlights the ongoing climate towards migrants in Europe.

The drowning of 366 migrants on 3 October 2013, less than a mile off the shore of the Italian island Lampedusa, was also highly publicized. The increasingly frequent occurrence of such tragedies forced European leaders to begin examining their migration policies.

Due to the growing number of bilateral agreements between the most affected European countries and countries of origin, the principle of non-refoulement, a tenant of international refugee law, is routinely broken. The famous “Hirsi” case provides insight into the principle of non-refoulement and how the EU should deal with refugees in accordance with international human rights laws.

The “Hirsi” case of 2012 was a situation in which Eritrean and Somali migrants were intercepted by the Italian coast guard and returned to Libya, their point of origin, due to a bilateral agreement between Italy and Libya. When taken to the European Court of Human Rights (ECHR), the court found that Italy had breached several obligations of the ECHR. These include the right not to be subject to inhumane or degrading treatment (Article 3) due to the ongoing poor treatment of migrants in Libya and the country’s policy towards returning migrants to their country of origin even when this poses a risk to the migrants’ lives; the prohibition on collective expulsions (Article 4 of the Protocol) since their cases were not individually assessed; and the right to an effective remedy (Article 13) since the migrants did not have the possibility of appealing the decision to return them to Libya.<sup>54</sup>

The ECHR ruling effectively implied that migrants who arrive at the EU’s shores or are rescued at sea must be disembarked in a safe place and have their asylum case heard. The European Commission later decided that migrants should be disembarked at the closest port.<sup>55</sup> This of course drew opposition from Mediterranean countries that end up carrying the weight,

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<sup>52</sup>Dirk Kohnert.

<sup>53</sup>Julia Choe, "African Migration to Europe," Council for Foreign Policy, July 10, 2007, Accessed May 23, 2015, <http://www.cfr.org/world/african-migration-europe/p13726>.

<sup>54</sup>"Migrants Smuggled by Sea to the EU: Facts, Law and Policy Options," Migration Policy Center, 2013, Accessed June 2, 2015, <http://www.migrationpolicycentre.eu/docs/MPC-RR-2013-009.pdf>.

<sup>55</sup>"Migrants Smuggled by Sea to the EU: Facts, Law and Policy Options."



but does not differ from the Dublin II Regulation which has been in effect for over a decade across Europe.

Under the 2003 Dublin II Regulation of Europe, the first country in which an asylum seeker lands is solely responsible for that person's asylum application.<sup>56,57</sup> This has predictably placed the greatest burden on Mediterranean countries (Spain, Italy, Greece and Malta) who are closest to Africa. For example, in 2006, Spain received about 636,000 migrants, nearly half of the EU total.<sup>58</sup> The small island of Malta has seen up to 200 migrants per week at certain times.<sup>59</sup> Other non-European countries along the travel route, such as Morocco, have also been strained.<sup>60</sup>

As the crisis intensified, it became increasingly obvious that the Dublin II Regulation could not continue indefinitely due to the strain it put on Mediterranean. Despite this, there was and continues to be significant disagreement amongst European countries on how to deal with the problem, with many countries hesitating to accept more migrants. In the meantime, countries have been taking individual steps to address the crisis.

On 18 October 2013, Italy began a search and rescue operation, Mare Nostrum, whose aim was to save the lives of migrants at sea. Mare Nostrum used military vessels, helicopters, planes, drones and manpower to rescue migrants at sea, in line with international maritime law that calls for all persons at sea to be saved regardless of their nationality, status or circumstance.<sup>61</sup> The operation which ended the week of 27 October 2014,<sup>62</sup> picked up 163,000 irregular migrants in 2014, according to UNHCR.<sup>63</sup> In November 2014, Mare Nostrum, whose costs could no longer be covered by Italian authorities, was replaced by the EU operation Triton.

Triton is operated by the EU border agency Frontex. The Schengen Agreement, which allows for free movement of peoples within its area, included measures to defend the external European border. One such measure is Frontex. The agency detects among other things, illegal crossing into the Schengen area. Triton is different from Mare Nostrum in that its primary purpose is border security, not search and rescue. The operation is cheaper than Mare Nostrum and patrols only 30 nautical miles off the Italian coast.<sup>64</sup>

The replacement of Mare Nostrum with Triton indicates a prevailing opinion that search and rescue operations like Nostrum were encouraging more people to cross the Mediterranean. The view is that Mare Nostrum acted as a taxi service for irregular migrants.<sup>65</sup> While there is

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<sup>56</sup>Julia Choe.

<sup>57</sup>Jaideep Prabhu.

<sup>58</sup>Julia Choe.

<sup>59</sup>Julia Choe.

<sup>60</sup>Julia Choe.

<sup>61</sup>"Migrants Smuggled by Sea to the EU: Facts, Law and Policy Options."

<sup>62</sup> Alan Travis, "UK Axes Support for Mediterranean Migrant Rescue Operation," *The Guardian*, October 27, 2014, Accessed June 2, 2015, <http://www.theguardian.com/politics/2014/oct/27/uk-mediterranean-migrant-rescue-plan>.

<sup>63</sup>"Europe's Deadly Immigration Policy," *Bloomberg View*, April 20, 2015, Accessed June 2, 2015, <http://www.bloombergview.com/articles/2015-04-20/europe-s-deadly-immigration-policy>.

<sup>64</sup>"Europe's Deadly Immigration Policy"

<sup>65</sup>"Europe's Deadly Immigration Policy"

some truth to this since some smugglers load migrants onto boats with insufficient fuel then call for help<sup>66</sup>, migrants continue to make the journey with or without a search and rescue operation.<sup>67</sup> Cutting off the operation increases the number of at sea deaths; it does not decrease the number of irregular migrants.

Spain on the other hand has gone a different route in dealing with its migrant influx. For a long time, the country granted special treatment to citizens of former colonies allowing many to migrate.<sup>68</sup> In recent years, however they have been forging bilateral agreements with African countries regarding repatriation. The agreements exchange repatriation for funding to help the returned migrants. These agreements are however incredibly unpopular within African countries and are facing strong public opposition.

Comparatively, France has a much stricter approach to dealing with irregular migrants. Due to France's harsh policies, even Africans from former French colonies are increasingly choosing France over Spain.<sup>69</sup>

In 2011, Italy granted nearly 30,000 migrants from Tunisia temporary protection and travel through the Schengen area.<sup>70</sup> This caused France to introduce temporary border checks at the French-Italian border. It also led to a modification of the Schengen Border Code allowing the reintroduction of interior border controls when a Schengen state fails to protect the external border or a significant number of migrants cross the external border.

### **THE NEWLY PROPOSED EUROPEAN COMMISSION AGENDA ON MIGRATION**

In response to the crisis, European Union leaders held an emergency summit on 23 April 2015. At the summit, the leaders agreed to increase patrols in the Mediterranean in order to disrupt trafficking networks and capture boats before migrants board them.

Following the summit, the European Commission, the executive body of the European Union, was tasked with drawing up a plan to tackle and reform European migration policies. The European Agenda on Migration, drafted by the European Commission, was subsequently released on 13 May 2015.

In the plan, the Commission discussed the ten-point plan on immediate action it had proposed on 20 April 2015. The ten points include reinforcing the operations Triton and Poseidon in the Mediterranean by increasing their financial resources and number of assets available and increasing their operational area; putting in place systematic efforts to capture and destroy vessels used by smugglers; facilitating regular meetings between EUROPOL, FRONTEX, EASO, and EUROJUST to gather information on smugglers and trace their funds; deploying EASO teams to Italy and Greece to help in processing asylum applications; ensuring that member states fingerprint all migrants; considering options for an emergency relocation;

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<sup>66</sup>"Europe's Deadly Immigration Policy"

<sup>67</sup>Alan Travis.

<sup>68</sup>Julia Choe.

<sup>69</sup>Julia Choe.

<sup>70</sup>Alexandre Lusenti and Lisa Watanabe.

offering an EU wide voluntary project on resettlement with a specific number of places for those in need; establishing a return programme that ensures the rapid return of irregular migrants; engaging with countries surrounding Libya to curb the migrant flow; and deploying Immigration Liaison Officers (ILOs) to key third countries to investigate migratory flows.<sup>71</sup>

This ten point plan is further expanded on in the European Agenda on Migration. To bolster the Frontex operations Triton and Poseidon, the programs' budgets are to be tripled allowing greater capabilities and geographical scope for the operations.<sup>72</sup> The Commission also proposed a partnership between Frontex and Europol to develop profiles of smuggler vessels and to identify and remove internet content being used by smugglers to attract migrants.

Other key parts of the Commissions ten point plan which are highlighted in the Agenda on Migration, are the relocation and resettlement proposals. The relocation plan deals on a short-term basis with the distribution of refugees arriving in Europe. The plan calls for the triggering of the emergency response system detailed under Article 78(3) of the Treaty on the Functioning of the European Union (TFEU). Under this, 40,000 places will be available for the next two years.<sup>73</sup> With this system, there would be a temporary distribution system for those migrants who qualify as refugees. The method of determining how many refugees are relocated to a country will be based on a criterion of: GDP (40%), population size (40%), unemployment rate (10%), and past numbers of asylum seekers/resettled refugees (10%). These refugees would be sent to other EU countries from their point of arrival and will be required to file their asylum claims there. EU countries will be given 6000 Euros per refugee.<sup>74</sup>

The resettlement plan is meant to allow asylum seekers an alternative method to reaching the EU. The plan sets out a target of 20,000 places per year by 2020 for the entire European Union. The Commission plans to distribute the 20,000 places between European countries based on GDP, population size, unemployment rate and the past number of asylum seekers/resettled refugees.

To complement the relocation and resettlement plans, there are also provisions to provide support to countries who are dealing with large numbers of displaced refugees. The Commission plans to set up Regional Development and Protection Programmes in North Africa and the Horn of Africa to help deal with the pressure from refugees. 30 million Euros will be given in 2015/2016 to facilitate these programs. In Niger, there will be a center set up with cooperation from the IOM, UNHCR and Nigerien authorities. The center is meant to provide information protection and resettlement opportunities to migrants before they enter the web of smugglers. Asylum seekers will also be able to lodge applications at the center.

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<sup>71</sup>"A European Agenda on Migration," Europa, May 13, 2015, Accessed June 2, 2015, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf).

<sup>72</sup>"A European Agenda on Migration"

<sup>73</sup> Ian Traynor, "EU Countries to Take in 40,000 Asylum Seekers in Migration Quota Proposal," The Guardian, May 27, 2015, Accessed June 2, 2015, <http://www.theguardian.com/world/2015/may/27/eu-countries-take-40000-asylum-seekers-migration-quota-syria-uk>.

<sup>74</sup>Ian Traynor.



Other efforts will include a Common Security and Defence Policy (CSDP) in certain African countries, a summit on irregular migration and addressing the crises in Syria and Libya. The Common Security and Defence Policy will be deployed to Niger and Mali in an effort to improve border management. The summit in Malta will include the African Union in an effort to develop a common strategy to address irregular migration and the protection of those migrants. In dealing with the crises in Libya and Syria, which continue to exacerbate the scale of the irregular migration problem, the Commission proposed continued humanitarian aid and assistance to help refugees get to nearby countries such as Lebanon, Jordan, Turkey and Iraq.

For its part, the Commission seems to recognize that the EU must address the root causes of irregular migration for any plan to be effective. The strategies proposed include: modernizing the visa policy, better management of the regular migration and visa policies, and helping countries of origin with development.<sup>75</sup>

### **THE EUROPEAN RESPONSE TO THE AGENDA ON MIGRATION**

Thus far, the response to the European Commission's plan has been overwhelmingly negative with respect to the so-called quota system to distribute asylum seekers. France, Spain, Czech Republic, Hungary, Poland, Slovakia and other EU member countries have already come out against the plan.<sup>76,77</sup> For its part, the U.K. is not regulated by the European Commission's plan due to its EU membership agreement, but is also opposed to the proposed quota system.

The opposition of the Czech Republic, Hungary, Poland and Slovakia, also known as the visegrad bloc, is especially interesting as they are typically the staunch defenders of the free movement of peoples within the EU.<sup>78</sup> They are strongly opposed to the quotas system which would prevent free riding with regard to inward migration while they benefit from the free movement of persons within the EU.<sup>79</sup>

France and Spain have also been incredibly critical and Spain has asked for the unemployment rate to play a larger role in determining how many refugee spots are allocated. Germany, Sweden, Austria, Italy and Greece, who already take a large portion of the refugees arriving in Europe, are in favour of the quota system. The U.K. has said that it will not be opting in to taking refugees based on the quotas, as has Denmark who also has an opt-out.

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<sup>75</sup>"A European Agenda on Migration"

<sup>76</sup>Ian Traynor.

<sup>77</sup> Benjamin Tallis, and Michal Simeka, "Europe's Migration Crisis: Central Europe's Dangerous Game." Open Democracy. May 18, 2015. Accessed June 2, 2015. <https://www.opendemocracy.net/can-europe-make-it/benjamin-tallis-michal-simecka/europe-s-migration-crisis-central-europe-s-dangero>.

<sup>78</sup>Benjamin Tallis, and Michal Simeka.

<sup>79</sup>Benjamin Tallis, and Michal Simeka.

## **THE INTERNATIONAL COMMUNITY’S RESPONSE TO THE MIGRATION CRISIS**

The increasing deaths of migrants crossing the Mediterranean Sea have also drawn wide attention from all parts of the world. On 15 June 2015, the UN Special Rapporteur on the human rights of migrants, Francois Crépeau, presented his report to the UN Human Rights Council. His report was critical of the European Union’s lack of cohesion in its policy towards migrants and the respect of their human rights.

Mr. Crépeau emphasizes in his report that, “given the European Union’s share of global resources and wealth of substantive normative standards, recent deaths at sea and other human rights issues have to be seen as the result of collective political will and policy choices.” This statement rings true in a world where wealth is overwhelmingly accumulated in Western hands. Mr. Crépeau suggests that European Union migration policies are repurposed to ensure a human right based approach.

The findings in the report are especially important, because they reveal many underlying causes of the crisis that are often pushed to the side. One such finding is the decline in migration involving non-EU citizens. According to the estimates of the Organization for Economic Cooperation and Development (OECD), there was a 12 percent decrease in the non-European migration to the EU zone in 2012. This is a direct result of policies that have restricted regular migration avenues. As such, as regular migration decreases, irregular migration is increasing.

The report also draws attention to and deplores the increasing use of detention as a form of border control. Long periods of immigration detention serve to disempower migrants who are eager to start working.

The labour of migrants is incredibly important to Europe and the report stresses that. Contrary to widely held beliefs that migrants are stealing jobs from locals, migrants are increasingly contributing at significant levels to European economies by working in less desired positions. Population trends show an aging Europe and fertility rates below replacement levels. These changes in demographics mean that the European labour force will need migrant workers. A skills gap is also growing across the continent. Again, it can be filled with migrant labour. Formulating a human rights based and comprehensive migration policy will allow Europe to maintain its economic growth and lead the world in its humanitarian involvements.

The report by the Special Rapporteur, Francois Crépeau, was overwhelmingly well received by the member and observer states of the Human Rights Council. The European Union acknowledged that the creation of a common policy throughout its member states remains the best way to tackle migration. They expressed a desire to implement a long term plan that would enhance legal opportunities to migrate to Europe.

A recurring theme in the statements by many developing countries was the need to improve the socio-economic conditions of the Global South as a way to stem migration flows. Algeria, speaking on behalf of the African Group, stated that priority had to go to saving living, not policing borders. Ecuador, speaking on behalf of the Community of Latin American and Caribbean States, stressed the importance of a human rights based approach in dealing with irregular migrants. They also called for the integration of migration into the post-2015 sustainable development agenda. Several other states asked for root causes of migration to be addressed by strengthening the right to development and especially drew attention to selective migration policies which strip developing countries of their most skilled workers.

## **RECOMMENDATIONS AND STEPS FORWARD**

European leaders must take into account the factors that drive irregular migration when drafting policies. The European Agenda on Migration is a first step in effectively tackling the wave of migrants, but must not be the last step. EU states are aging and facing low birth rates meaning that they can expect a labour shortage in the near future.<sup>80</sup> Migrants will soon be the necessary for Europe's economic survival and as such, policies must reflect that.

The UN High Commissioner for Human Rights spoke out on 28 May 2015 in response to the European Agenda on Migration, calling out the "disproportionate focus on enforcement, and the militarization of that enforcement".<sup>81</sup> This is a point of serious concern as the EU seeks a UN Security Council resolution to authorise military action towards capturing and destroying the boats of smugglers off the Libyan coast. We must be wary of the use of force in such a fragile situation, because its use in toppling Ghaddafi is what heightened the crisis. Furthermore, we must question the approach of targeting smugglers without tackling the root cause of migrant smuggling. Smuggling like other businesses works on a supply and demand model; if there was no demand for smugglers, then there would likely not be smugglers.

The High Commissioner also commented on the proposal for the resettlement of 20,000 refugees per year within the EU. That number is wholly inadequate when one looks at the scale of the crisis today. With an estimated 219,000 migrants who crossed the Mediterranean for Europe last year, 20,000 places per year barely scratches the surface of the problem and will likely have little impact on the scores of people willing to travel by boat for Europe.

The proposal to target the smuggling networks while well-intentioned must be refined to eliminate the use of force. As we have seen in various instances, most notably the recent case of Libya, force tends to exacerbate the crisis. It is also likely that migrants will be caught in the crosshairs of such aggressive techniques.

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<sup>80</sup>Julia Choe.

<sup>81</sup>"High Commissioner Zeid Briefs Council on Burundi, Tunisia, Migration Crises in Europe and South-East Asia and South Sudan," UNOG - The United Nations Office at Geneva, May 26, 2015, Accessed June 2, 2015. [http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/FAE7CEA97F17F470C1257E5100541AC8?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/FAE7CEA97F17F470C1257E5100541AC8?OpenDocument).

Furthermore, it is important for the EU to recognize the inherent ways in which its foreign policies have contributed to the migration crisis. The European Commission makes mention of tackling the root cause of irregular migration in its Agenda, but provides little more than the usual propositions. Increasing development aid means nothing if Europe continues to profit from unfair trade and economic partnerships that impoverish countries. Furthermore, the case of Libya shows the way in which foreign interference in a country's affairs can have long lasting negative impacts. The removal of Ghaddafi, which may have seemed strategic at the time has caused a long-term problem and tossed Libya into chaos that feeds into the migration crisis, affecting Europe.

Migrants choose Europe as their destination, because of its economic prosperity and social opportunities. As we have examined in this report, the gap between various indicators of economic and social success for Europe and developing countries, especially those in Africa and the Middle East who are producing the largest number of irregular migrants, is large. Europe has the opportunities that migrants cannot get at home and most importantly for many migrants, it is a safe place to live.

The European Union and more broadly the West, have a responsibility to irregular migrants. Here it is important to differentiate between the categories of migrants to provide clarity.

Asylum seekers, those who may be granted refugee status after their case is heard, have rights which stem from Article 14 of the UDHR, which indicates that everyone has the right to seek asylum from persecution. The 1951 Refugee Convention and its Protocol outline the specific rights of asylum seekers once they are granted refugee status, but prior to attaining refugee status, asylum seekers like all other person have rights that must be adhered to.

Under the ICESCR, Articles 11 and 12 are especially worthy of being highlighted. Article 11 recognizes the right to an adequate standard of living for all persons, a right which is undeniably denied to asylum seekers in their country of origin. Similarly, Article 12 recognizes the right to the highest level of mental and physical health. Those irregular migrants seeking asylum in Europe are coming from an environment where their mental health is most certainly threatened as well as their physical health. Under the ICCPR, Articles 6 through 9 are noteworthy. These articles recognize rights regarding life, torture, liberty, and security. As parties to the ICESCR and ICCPR, European nations have a responsibility and obligation to uphold this right where they apply to asylum seekers.

The more "controversial" group of economic migrants also have rights ascertained in various human rights instruments. The rights that we have discussed above as applying to asylum seekers above also apply to economic migrants. In addition, Declaration on the Right to Development should be highlighted of particular importance to economic migrants. Economic migrants from Africa and other affected developing countries come to Europe because of the limited opportunities they have in their home country, a direct result of colonial practices in

many cases. European practices which have impeded on the right to development of developing nations now bring a responsibility for remedying the situation. The remedies must ensure the realization of the right to development through migration policies that are fair and adequate as well as support to countries in elevating their current development troubles.

GICJ therefore recommends:

- A European migration policy that shows awareness of the interconnected nature of development, poverty and migration. The comprehensive migration policy must have provisions for tackling the root causes of migration such as underdevelopment, poverty and war. In dealing with underdevelopment, aid efforts are not undercut by economic policies and partnerships that impoverish the African continent, as well as other developing nations
- Ensuring that justice to African nations who have suffered disproportionately under the effects of slavery, colonialism and neo-colonialism is a key part of migrant intake programs and quotas
- An increase in the number of yearly refugee spots from 20 000
- A new policy towards immigration that allows more migrants to allow in Europe through legal channels. This new policy should not exclude low skilled workers, in fact, it should pay special attention to this category of migrants as they are the ones who find it most difficult to immigrate legally
- A different policy towards tackling the smuggling networks that endanger migrants' lives. While it is important to target the smuggling networks, the use of force as proposed thus far threatens to exacerbate the problem

GICJ continues to follow this issue closely and hopes to see positive action taken by the European Union states to address the irregular migration. GICJ especially wishes to see efforts to review and implement the recommendations that have been put forth by our NGO, other civil society organizations and the Special Rapporteur on the Human Rights of Migrants. GICJ will continue to engage with the UN Human Rights Council and other relevant UN bodies, to ensure that migrant rights remain a priority. GICJ believes in fighting human rights abuses or injustice wherever it may occur and restoring human dignity to victims. GICJ will continue to advocate for migrant rights to ensure their full realization.

# Geneva international Centre *for* Justice

## GICJ

*GICJ is an independent, non-profit, non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes.*

*Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.*

### **Mission**

*GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.*

### **Objective**

*Within the scope of its mission, GICJ hopes, among other objects to:*

- *Strengthen respect for, and commitment to, human rights under all circumstances and at all times,*
- *Consolidate the principles of equity and non-discrimination in effort to contribute to the elimination of all forms of discrimination,*
- *Work towards the strengthening of the rule of law and the independence of lawyers and judiciaries,*
- *Expose and document human rights violations and prepare all possible and necessary reports, studies, appeals, notifications, and data for the use and consideration with the relevant and competent bodies, particularly within the United Nations.*
- *Contribute to societies and individuals' awareness of human rights through the dissemination of a human rights culture, and by conducting human rights training.*
- *Combat all forms of violence, degrading or inhumane treatment, and abuses of human dignity in prisons and detention centres*





Image Credit: Meron Sedar



Image Credit: Loukas Mastis



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