

Migration: Friend or Foe?

The migration of individuals is paramount to the economic and social growth of the world at large. It is often categorized as an enabler of global development as it facilitates access to education and integration to global job markets while promoting diversity and inclusion. However, the rapid increase in number of migrants, reaching up to 258 million recorded people in 2017,¹ caused widespread concern. Consequently, the benefits of migration have been overlooked as, particularly involuntary migration, yields sensitive political issues including state sovereignty. In a day of increased xenophobia and discrimination, migrants have increasingly become victims of human rights violations, whether in transit or upon arrival at the host countries.

Migrants are not recognized under international law as a distinct category of people requiring special protection. This is as they are not an inherently vulnerable group, but rather merely vulnerable to human rights violations.² Nevertheless, they do possess rights guaranteed under the Universal Declaration of Human Rights (“UDHR”) as individuals independent of their legal status, and in accordance with the principle of universality of human rights.³ In addition, the Human Rights Committee reiterated that all rights provided by the International Covenant on Civil and Political Rights (“ICCPR”), excluding Article 25, are applicable to migrants.⁴ Furthermore, Article 2(2) of the ICCPR and the International Covenant on Economic and Social Rights (“ICESCR”) as well as the provisions of the Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) provide for equality and non-discrimination which is fundamental as the deprivation of migrant’s human rights is often closely linked to prejudice against foreigners. To this end, migrants whom escape conflict and no longer acquire legal status are protected under international refugee law, namely the Geneva Conventions. Despite the existence of a legal framework protecting migrants, access to an effective legal remedy for redressing violations is difficult if not completely unattainable.

The unprecedented volume of migrants is reflective of the humanitarian crisis occurring all over the world which has forced people to flee intolerable living circumstances. It is important to note that ‘migrant’ is a broad term and these figures include economic migrants, refugees, asylum-seekers, and internally displaced people. However, States are reluctant to identify migrants as anything other than that to avoid obligations that encompass refugee or asylum-seeker status under international law which are not applicable to *mere* migrants. A few events which have contributed to this increase in volume include, the rise in gang violence poverty, malnutrition and lack of access to education and healthcare in Central American Countries causing people to migrate to the United States;⁵ The major armed conflict in Syria

¹ International Migration Report 2017, as recorded by the Department of Economic and Social Affairs of the United Nations (“UN”).

² UN Office of the High commissioner, Migration and Human Rights (2019)
<https://www.ohchr.org/en/issues/migration/pages/migrationandhumanrightsindex.aspx>.

³ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), Article 2.

⁴ UN Human Rights Committee (HRC), CCPR General Comment No 15: The Position of Aliens Under the Covenant, 11 April 1986.

⁵ <https://www.vox.com/2019/7/17/18760188/migration-crisis-central-america-foreign-policy-2020-election>

resulting in almost 3 million people migrating to Turkey which held the largest population of migrants in 2016;⁶ however, the most notable event in recent years is the ‘European migrant crisis’ consequent of the ongoing civil war in Libya. Beginning in 2015, people primarily from North Africa depart from Libya through the most dangerous route by sea across the Mediterranean to the European Union. The horrific tragedies that have transpired because of this has led to the “largest refugee and migrant crisis since the end of the second World War”.⁷

Over 13,000 migrants have died while crossing the Mediterranean Sea since 2015, with approximately 5,000 fatalities in 2016 alone.⁸ A large percentage of those transported are smuggled or trafficked. Thousands more are returned back to Libya, contrary to the non-refoulment principle of international law,⁹ where they are subjected to torture and inhumane treatment while being arbitrarily detained at the border. There are currently 26 detention centers at the border of Libya occupied by 5,695 migrants as of last June. NGO’s including the Global Detention Project have reported occurrences of death, torture, slavery and sexual violence at these facilities.¹⁰ Those whom survive the transit through the Mediterranean are often left stranded at sea for days waiting for permission to dock in the European states, primarily Italy and Malta. Tensions have increased in Italy as there is a so-called ‘lack of distribution of migrants between the EU’.. To this end, Italy has effectively halted its migrant entry as well as proposed a bill to fine migrant rescuers at the border. In support of this, the EU has initiated ‘migration management’ projects resulting in mass expulsions..¹¹ Such support has resulted in global outrage, and the UN Human Rights Commissioner has criticized that the measure taken by the EU have forgone reducing the level of abuses suffered by victims.¹²

In light of these events, it is evident that there is a lack of a human-rights based migration governance at a global, regional and national level.¹³ Migration should be addressed as an inevitable occurrence that reaps benefits rather than problem. The foundation of human rights law is that all people are equal as is enshrined in the UDHR. Therefore, the appalling violations of migrant’s civil and economic rights occurring all over the world are symptoms of global xenophobia which will lead to a divided world. The various forms of supremacy and discrimination are presented in a manner which is, prima facie, legal as shown by states migration policies which do not observe their human rights obligations. Consequently, as

⁷ NATO, ‘Assistance for the Refugee and Migrant Crisis in the Aegean Sea’ (2019) https://www.nato.int/cps/en/natohq/topics_128746.htm

⁸ International Organization of Migration - UNCHR

⁹ Convention Relating to the Status of Refugees 1951 Art 33(1)

¹⁰ Global Detention Project, ‘Country Report, Immigration Detention in Libya: A Human Rights Crisis’ (August 2018)

¹¹ European Commission, “Annex of the Commission Implementing Decision on the Annual Action Program for 2014 (Part 2) in Favor of Libya [C(2013) 9169 final]. Action Fiche for Support to Rights-Based Migration Management and Asylum System in Libya,” December 2013

¹² United Nations Office Of The High Commissioner For Human Rights, “UN Human Rights Chief: Suffering Of Migrants In Libya Outrage To Conscience Of Humanity” (14 November 2014).

a matter of pressing concern, the systematic uniformity of migration policies in compliance with international human rights law is paramount in the current world.