

**SCIENCES PO REFUGEE HELP:  
RESEARCH & AWARENESS  
TEAM JOURNAL 2021-2022**



**Sciences Po**  
**Refugee Help**

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# PREFACE

Sciences Po Refugee Help (SPRH) is a student-run association that aims to improve the living conditions of refugees and asylum seekers in Paris, as well as to contribute to the implementation of the right to asylum. Our work focuses on material as well as immaterial assistance, including legal assistance, distributions of clothes and essential products during our distributions, French lessons, and social activities.

In particular, this first-ever SPRH journal was created by the Research and Awareness Team, which is fundamental to our association as it pays particular attention to informing the Sciences Po community, and, to a larger extent, the French community, about the situation of refugees and asylum conditions in France and across the globe. The Research and Awareness volunteers organize conferences and events with high-level specialists and carry out geopolitical research on migration issues. We would like to warmly thank our two coordinators who made the publication of this first journal possible.

The true magic that lies behind SPRH is in the passion with which our volunteers and team members act to help refugees. Crises around the world continue to displace populations daily, with 1 person forced to flee every 3 seconds in 2019 according to the UNHCR. Increasing civilian solidarity is the only step forward.

All that is left now is to wish you a good reading.



*Louise MASSON*  
*President, Sciences Po Refugee Help 2021-2022*

# INTRODUCTION

A warm welcome to SPRH's first-ever journal. As coordinators of the Research & Awareness team, we are proud to see the fruition of this collective effort in researching and writing on a diverse set of themes in the realm of forced migration. At the heart of the idea for this journal lies our conviction in the power of research to inform both knowledge and better policymaking. We believe a crucial part of understanding the many issues and injustices people on the move face is to critically analyze them and ask why a given situation arises - and what can be done about it.

We hope you enjoy reading the articles in this journal. And we would like to thank all writers for their hard work and dedication, our editors for their attention to detail as well as the SPRH Communications Team for their brilliant work on formatting this journal.



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# ARTICLES



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# **SEXUAL AND REPRODUCTIVE HEALTH OF MIGRANT WOMEN IN EUROPE: THE CASE OF ITALY AND THE NETHERLANDS**

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**Keywords: Sexual and reproductive rights,  
abortion, migrant women.**

# **SEXUAL AND REPRODUCTIVE HEALTH OF MIGRANT WOMEN IN EUROPE: THE CASE OF ITALY AND THE NETHERLANDS**

## **Introduction**

Attention to women's migration flows grew in recent years, as they have become the largest group migrating, but is often wrongly perceived as a side effect of men's migration. Moreover, they are often stereotypically considered either as religious, family-oriented, illiterate, and submissive (Mohanty 352) or as involved in illegal activities including, above all, prostitution. This prejudice contributes to the stigmatization of this instead very heterogeneous group – in age, culture, and country of origin – and to the consolidation of gender roles, relegating women to specific fields of work.

Despite their resilience, many aspects and variables of their life are affected by this state of things including, above all, health determinants. Like all women around the world, migrant women take on not only the production but also the reproduction of their social group (Hartmann 386). Their bodies combine work and family to a greater extent than those of the male population, and this is why the health differentials of the female migrant population, particularly in the sphere of SRH, do not only refer to the state of well-being of women, but of the migrant population itself and its future well-being as a growing community in the Italian society. The lack of access to adequate healthcare has been widely documented and in turn, migrants suffer from poorer health outcomes compared to their native counterparts. Common barriers to accessing healthcare are not addressed and some of these barriers are the issue of the migrant's residence status and lack of legal entitlements, the ambiguous rights of the undocumented migrant's access to health services as well as language, cultural and economic barriers (van Ginneken 11-14).

On an international level, health as a human right is applied universally. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states the right of everyone to enjoy the highest attainable standard of physical and mental health (OHCHR). In 2000, the issued explanation by the UN Committee on Economic, Social and Cultural Rights of the Article 12 underlined the role governments have and their legal obligation to ensure healthcare to all without discrimination, including the most vulnerable and marginalized groups like migrants. Concerning sexual and reproductive health (SRH), the International Conference of Population and Development of 1994 in Cairo was recognized as the first comprehensive framework where SRH was established as a human right (Keygnaert et al. 215-25). The World Health Organization (WHO) in 2010 defined sexual and reproductive health (SRH) in order to reverse the understanding that it only focused on reproductive health as, “a state of physical, emotional, mental and social well-being in relation to sexuality; and is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive, respectful approach to sexuality and sexual relationships and the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence”. Governments are required to ensure SRH through a “positive approach” and the WHO further underlined that, the sexual rights of all must be respected, protected and fulfilled (WHO).

The EU has the Qualification Directive and the Directive 2013/33/EU stating access to adequate healthcare is mandated to be available for all beneficiaries of international protection under the same eligibility conditions as nationals of the EU Member State. Recognizing legal status as an obstacle to accessing healthcare, the EU established, “minimum standards for access to healthcare for applicants of international protection during the asylum procedure.” (EC), respectfully. Article 13 (4) ESC/revESC ensures healthcare for undocumented migrants. With regards to the right to health policies, these have limited enforceability with the vague language used combined with the hardship to implement international and EU policies in Member States. Each Member State has their own healthcare system, and this leads to a divergent understanding and application of the legal framework protecting health across the EU, thus resulting in different healthcare services offered to undocumented migrants (FRA).

Furthermore, the European Parliament, following the definition given by the World Health Organization, defines SRH as, “a state of physical, emotional, mental and social well-being in relation to all aspects of sexuality and reproduction, not merely the absence of dysfunction, infirmity or mortality, and whereas all individuals have a right to make decisions governing their bodies, free from discrimination, coercion and violence, and to access sexual and reproductive healthcare services that support that right and take a positive approach to sexuality and reproduction, as sexuality is an integral part of human existence” (8). It is codified as a human right based on several other rights such as the right to privacy, non-discrimination, freedom of choice (in the realm of family planning), and information. For women, it relates not only to prevention and treatment of sexually transmitted infections and diseases connected to the reproductive sphere; but also to pregnancy and birth-related care, safe and legal abortion, use of contraceptives, comprehensive sex education, freedom from forced sterilization, female genital mutilation and gender-based sexual violence, and access to safe, fair and circular menstrual products. The definition aligns with the international consensus and further underlines the importance of including SRH in available and accessible healthcare.

We investigate whether EU Member States like Italy and the Netherlands ensure available and accessible healthcare, including SRH care, through policy as well as the experience of the migrants accessing healthcare. Despite policies, the case studies demonstrate how significant improvements are required to ensure these rights are upheld.

### Case Study 1 - ITALY

#### *Problems in the current framework of sexual and reproductive healthcare*

Of the five million migrants living in Italy, more than 2.6 million are women (ISTAT, 2021), representing 8.6% of the overall female population: 47% of them are inactive and 15.20% are unemployed. Among those who work, more than half of them are employed as domestic workers, carers, and cleaners, with 43% being over-qualified and over-educated for their job (Rondi). However, these statistics could be an underestimation of the phenomenon of working migrant women, as many of them are part of the informal market.

Moreover, 28.3% of migrant families in 2020 lived below the absolute poverty line, despite their eligibility for welfare measures, which is often difficult to access due to language barriers or unfamiliarity with the unnecessarily complicated Italian bureaucratic system (ISTAT).

The literature on this subject unanimously agrees that the SRH of migrant women, especially of extra-EU migrant women, is statistically worse than that of women born in the country they live in and even foreign-born women that acquired citizenship (Keygnaert 215). Italy is no exception. Although in some cases this relates to the actual limitation of the access to certain services for undocumented migrants, more commonly, poorer health is the result of a combination of factors that make access to care more complex. As a result, migrant women are more likely to contact emergency services and less likely to visit specialist doctors and use preventive care. They are less often screened for cervical and breast cancer and have less access to contraception, which leads to a higher rate of unplanned pregnancies. They also pay fewer and later prenatal care visits: for example, in 2005, a survey conducted by the INSH found out that 36.89% of foreign women were not aware that they could undergo a prenatal diagnosis during pregnancy, compared to 11.55% of Italians (Devillanova 16). In 2016, the first visit took place after the twelfth week for 11.2% of migrant women, compared to 2.5% of Italian women. They also have higher infant and maternal mortality, and higher miscarriage (Medda et al. 364) and abortion rates. Indeed, despite representing only 8.6% of the female population, they represent the 29.2% of people who got an abortion in 2019 (in Northern Italy, they were the 37.8% according to the Italian Ministry of Health). These percentages do not consider the number of clandestine abortions performed each year due to the inefficiency of the Italian health system in guaranteeing this right. Finally, both migrant women and men are more at risk of STIs, including HIV and hepatitis B, and sexual violence (Keygnaert et al. 2).

This situation is even worse for undocumented migrants, which avoid hospitals out of fear of being denounced to the police, despite this being illegal, and are unaware of their rights, which are, however, progressively limited in this field. Indeed, they have paid the highest price in the process of regionalization and corporatization of the national healthcare system, which has given a lot of power to local authorities to decide what is definable as essential preventive care and what is not. The past years saw a gradual decrease in free services of preventive healthcare for undocumented migrants, also in the realm of SRH: for example, in several regions, like Veneto, undocumented migrant women are excluded from

the free screening to prevent cervical cancer, which is provided every three years for women aged between 25 and 64 years old (Della Puppa 78).

Moreover, the law only specifies a few very general guiding principles that would practically help migrants to enjoy their right to health. This is all left to the regional authorities, which differ greatly in terms of economic capital, organization, agenda, and political partisanship. Problems such as, “language barriers, difficulties in arranging care for migrants without healthcare coverage, social deprivation and traumatic experiences, lack of familiarity with the healthcare system, cultural differences, different understandings of illness and treatment, and lack of access to medical history” (Priebe et al. 5) have all been encountered in dealing with migrant women’s SRH. Their legal status and social position - often of isolation and economic precariousness - combined with their estrangement from the usual circuits of information, determines insufficient levels of access to social and health services. They find themselves at problematic intersections arising from their belonging to the female gender, one of which is an overly narrow and superficial approach to their SRH.

A reorganization of the healthcare apparatus, including greater control over regional autonomy in this field, is necessary to improve its effectiveness in guaranteeing everyone’s right to health. An essential element for implementing this change is the training of the operators, which is often scarce and lacking in detail (Priebe et al. 365). In the realm of SRH, this should be accompanied by the implementation of new models of intervention in the most critical areas. Taking a cue from the *SAIDA project* carried out by Médecins Sans Frontières in collaboration with ASL Roma 2, the state should partner with NGOs in creating mobile clinics and info-points for SRH in neighborhoods with a big presence of foreign communities with the highest indicators of social exclusion, economic hardship, and housing occupations. These centers should mainly aim at raising awareness and informing women about their rights, but they could also offer primary sexual and reproductive care with a staff of medical, legal, and cultural mediating backgrounds. Although they would provide assistance to all women, the presence of actors that do not appear as “structures of the State” is critical in the facilitation of the relationship of trust with undocumented migrant women.

### *Abortion, sexual health, and gender-based violence*

A specific issue in the Italian context of sexual and reproductive care is the lack of access to abortion. This procedure has been legal in Italy since 1978 thanks to the adoption of Law no. 194, but it is still difficult to access due to the high number of conscientious objectors among doctors and medical staff. In 2019, 67% of gynecologists and 43.5% of anesthetists in Italy did not want to perform abortions, with a percentage of objecting gynecologists over 70% in ten out of twenty regions, peaking at 92.3% in Molise, according to the Italian Ministry of Health. In Campania, only 26.4% of hospitals performed abortions and Lazio had less than two hospitals available for every 100,000 people of childbearing age. The lack of access to abortion is a problem for all women, but it affects more those who have less access to family planning and that are the least informed about their rights, or cannot afford to spend a lot of time going from hospital to hospital asking to be taken in and, in most cases, being turned away, even though it is illegal. Problems that were mentioned for general healthcare, like language barriers, become determining factors for the success or failure of the procedure in this field. Otherwise, individuals may resort to clandestine abortion, where it is estimated that between 3,000 and 5,000 cases per year among migrant women exists (Associazione dei Ginecologi Italiani). Migrant sex workers are the ones most at risk of undergoing this procedure, as is testified by the many cases of police dismantling of illegal clinics where MSWs are sent by their exploiters and forced to get abortions.

Moreover, the law does not even protect Family Counseling Centers (consultori familiari), as it instead should do according to Article 5. They are a crucial asset of the Italian healthcare system in providing free services concerning sex education, contraception, STIs, and sexual violence. Together with medical staff, these Centers are usually equipped with a psychologist who follows survivors of sexual violence and offers support to those who have yet to denounce their abusers. Many victims of domestic violence turn to them for emergency care as they consider them a safe space capable of handling their situation while they build the courage to go to the police.

On the contrary, since hospitals are compelled to notify the authorities of a suspected victim of domestic violence, it is rarer for their abusers to let them be treated there. For migrant women, they are also the main provider of official pregnancy certificates required for abortion procedures.

However, they are underfunded, understaffed, and steadily decreasing, especially after the pandemic, together with that of hospital wards that perform abortions. This substantial reduction must be again attributed to the regionalization of healthcare and the use of the field of sexual and reproductive care as a political battleground, which significantly reduced the access of migrant women to these services. For example, the involvement of a cultural mediator is now foreseen only in the 45.2% of the Centers in the North and 10% in the South, and multilingual information on SRH is present in only 21.7% of them (Istituto Superiore di Sanità). Moreover, lack of funding usually forces the Centers to be open just a few hours a week, with just one or two professionals working as volunteers.

Migrant women heavily rely on and will continue to rely on Family Counseling Centers for their SRH, with a particular focus on STIs prevention, gender-based violence, and assistance in the abortion process, as they prefer the more informal environment of these clinics and the presence of socio-cultural mediators and linguistic interpreters. Instead of neglecting them, the Italian State should grasp the crucial role they play in society. Funds must be allocated to be used specifically for the improvement and recruitment of paid medical and non-medical staff. Not only should new Centers be opened, but the opening hours of existing ones should be extended. In this case, the work between states and regions is necessary as local authorities will have a clearer picture of the geographical and thematic areas that need more support in this field. However, the main choices must still be taken at the national level following the regulations on the right to SRH.

Moreover, the State should also tackle the unacceptable and anachronistic problem of clandestine abortions in the country by decreasing the number of conscientious objectors in public facilities. This can be done by holding open national competitions for non-objecting gynecologists and by concretely monitoring the enforcement of Law 194/78, which prohibits the existence of entirely objecting facilities. Finally, non-objector quotas, not only among doctors but also among anesthetists, nurses, and all those categories of professionals involved in the abortion procedure, should play a role in the decision-making process regarding the allocation of funds to healthcare facilities.

## Case Study 2 – The Netherlands

### *Dutch policies set in place to ensure health as a human right*

As a Member State of the EU, the Netherlands is required to have healthcare policies respecting the requirements of the international and European legislation protecting the right to health – including the specific provisions concerning undocumented migrants (FRA). An evaluation by the European Commission showed that the implementation of the directive in Member States, including the Netherlands, encountered administrative obstacles and practical barriers were identified like language and lack of knowledge about the functioning of the healthcare system and financial obstacles (EC).

All regular residents in the Netherlands are obliged to accept health insurance covering a standard package of essential health care (Schoevers et al. 256-64). Thus, the most marginalized groups, the undocumented migrants, have no right to obtain health insurance. Unsurprisingly similar to the EU policies, their legal status is a barrier to them obtaining healthcare. Furthermore, undocumented migrants had the right to access the public insurance system up till 1998 whereby the Koppelingswet (Linkage Act) linked certain rights, such as the right to public medical insurance to the condition of having a residence permit. This was with a clear intention to discourage undocumented migrants from establishing themselves in the Netherlands and is why the Linkage Act can be seen as the centerpiece of migration control (PICUM). It referred to two exceptions related to health care: “the provision of care that is medically necessary” which is defined as responsible and appropriate medical care, and “the prevention of situations that would jeopardize public health” (Dokters van de Wereld). For healthcare professionals, it remains unclear whether the “medically necessary care” is an interpretation by the treating doctor. In actuality, the care refers to what is usually covered by basic insurance such as primary care, second-line care and long-term care (Dokters van de Wereld). Regardless, the ambiguity of the legislation makes it difficult for healthcare professionals as well as undocumented migrants to understand what rights they have. Therefore, unsurprisingly, discriminatory refusals of care that migrants are entitled to access occur frequently (van Ginneken 11-14).

Furthermore, as the undocumented migrants do not have insurance, the medical care would have to be out of pocket. To overcome the financial barrier, there is a financial payment scheme in place by the Central Administration Office (CAK), however not many undocumented migrants nor healthcare professionals are aware of this (Dokters van de Wereld).

Specifically looking at SRH, there is no mention of the care provided in the Dutch legislation, as there was none in the EU. This only heightens the ambiguity as it prevents undocumented migrants to seek this highly recommended care, as well as leaving healthcare professionals uncertain on whether they can provide SRH care. Overall, it is clear the legislation needs to be amended in order to ensure access and available healthcare for undocumented migrants, with a specific focus on SRH.

### Policy Recommendations

The policies in the Netherlands (as well as the EU) need to elaborate on how the access to SRH will be accessible and available for migrants but specifically for undocumented migrants. Below are three policy recommendations which will aid in providing the adequate healthcare undocumented migrants deserve.

#### *Clarifying the legislation*

International policies observe health as a human right including SRH. On the contrary, the EU policies as well as the Dutch policies do not specify what healthcare undocumented migrants have access to. It is essential that both the EU and Dutch laws are clarified and explicitly state these accessible services. Specifically, in the Netherlands, the “medically necessary care” needs to be outlined in detail in order to provide clarity for both practitioners and undocumented migrants.

Regarding SRH, if not already included under the terms “medically necessary care”, this must be without question included into legislation as the Netherlands must ratify the international treaties concerning health and the ECHR. Besides including SRH care explicitly, the legislation and health rights of undocumented migrants have to be communicated with the healthcare professionals and undocumented migrants alike. This will ensure healthcare is available and by informing both migrants and the healthcare professionals, thereby making it accessible.

Healthcare professionals do not always know that undocumented migrants are also entitled to care (Doktser van de Wereld) and discriminatory refusals of care that migrants are entitled to access occur frequently (van Ginneken 11-14). To avoid knowledge gaps, training sessions on providing healthcare to undocumented migrants must become mandatory for healthcare professionals. This would include an overview of what is required by law to be provided, the CAK financial scheme and what the special recommendations are (e.g. cultural sensitivity etc.).

Identifying and cooperating with NGOs that have previously alleviated barriers to access of healthcare for undocumented migrants by implementing local initiatives is one way to communicate the impartial information to undocumented migrants. NGOs provide them with a safe space to discuss and seek information (FRA). NGOs are a key outreach tool for undocumented migrants, as they are more trusted than official bodies (FRA). Thus, they will be able to share the trainings on what is crucial information for undocumented migrants to know concerning healthcare access and availability. Important topics to include are as follows: how the healthcare system works in the Netherlands, what healthcare services by law are available, what is the financing scheme in place for those with financial constraints and lastly, the fact that the duty of confidentiality in The Netherlands prohibits healthcare professionals from sharing information on undocumented migrants to immigration authorities (Schoevers et al. 256-64). NGOs can also monitor and improve the implementation of national regulations to ensure the right to health is upheld (FRA).

### *Improving health literacy*

Improving health literacy for undocumented migrants is crucial as it is an important determinant of health and will ensure healthcare is more accessible (Wangdahl et al. 1-12). Furthermore, low health literacy is possibly linked to the limited access to health care among all migrants caused by miscommunication issues and a lack of knowledge about health and the health care system of the host country (Raben et al. 468-74). Many migrants, including undocumented migrants, have little knowledge about risk factors for unwanted pregnancies and about contraception due to limited health literacy (Raben et al. 468-74). Similar to informing the undocumented migrants on their rights, informational sessions could be set up with local NGOs.

This would include sessions on contraception and family planning in the mother tongues of the undocumented migrants as well as identifying the routes they can take to have access to the healthcare provided.

It is important to ensure all information sessions are provided in the mother tongues of the undocumented migrants or to have professional translators present. In the United States, research identified English proficiency as the strongest predictor of health literacy. This explains negative health outcomes particularly those experienced by Spanish-speaking immigrants associated with low health literacy. Clearly, the research underlines the importance of primary and secondary language in the assessment of health literacy level (Jacobson et al. 43).

### *Training healthcare professionals*

Without clear guidance from the legislation, healthcare professionals are unable to understand what healthcare they can provide to undocumented migrants. Furthermore, general practitioners (GP) in the Netherlands are the main entrance to the healthcare system and an important provider of information on SRH care including the prescription of contraceptives. This indicates the important role GPs could have in informing undocumented migrants of resources (Raben et al. 468-74). Therefore, training the healthcare staff and encouraging active participation on their part will ensure available and accessible healthcare for undocumented migrants; merely understanding the legislation and what healthcare services undocumented migrants have access to is not enough.

Healthcare professionals should be aware of the particular health conditions of undocumented migrants and their health needs. For example, undocumented migrant women are at increased risk for cervical cancer, HIV and other STDs as most of them do not get screened for these illnesses. In particular, sexual and physical violence are common and because of the important health consequences, routine screening for exposure to violence in undocumented migrants is advisable (Schoevers et al. 256-64). Healthcare professionals are required to be sensitive to potential situations when treating undocumented migrants. For example, it is important to understand that often violence is not disclosed when accompanied by another person (Schoevers et al. 256-264). In addition, acknowledging the undocumented migrants' potential health illiteracy is crucial. Health professionals must also be aware that informal interpreters might hinder the discussion of personal or sensitive issues like sexual health (Raben et al. 468-74).

The use of professional interpreters, though not commonly available, should be the preferred option if there is a language barrier. A potential translating service application could overcome the barrier or working alongside a trusted NGO to provide translators during appointments is another means to ensure undocumented migrants can fully partake in their appointment and comfortably so. In Austria, to overcome language and cultural barriers during appointments, the government provided interpretation services to medical establishments via Skype. Malta had trained cultural mediators who were on call to support health workers treating refugees/asylum applicants (EC).

Additionally, undocumented migrants might have different expectations about the doctor– patient relationship or opinions about SRH topics and this may lead to a less active role for the patient in starting the discussion of contraception. In addition, women may not raise the issue because of concerns surrounding stigma, taboo on sexuality and traditional health beliefs (Raben et al. 468-74). Therefore, incorporating a cultural sensitivity training to healthcare professionals will ensure culturally competent appointments and SRH activities must consider the undocumented migrants sexual health frame of reference and pathways (Keygnaert et al. 215-25). These are all important considerations for healthcare professionals to acknowledge when treating undocumented migrants. It is essential that undocumented migrants feel respected and in a safe space so that they can engage with SRH care provided accordingly. Therefore, training healthcare professionals and encouraging their active participation will greatly benefit the undocumented migrants and ensure equitable healthcare.

## Conclusion

*More than a tick box: sexual and reproductive health of migrant women in the European Union*

The *European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health* recognizes that “marginalized persons and groups, including racial, ethnic and religious minorities, migrants [...] among others, often face additional barriers, intersecting discrimination and violence in accessing healthcare, as a result of laws and policies that allow coercive sexual and reproductive healthcare practices and failures to ensure reasonable accommodation in access to quality care and information.” However, it only mentions migrant women once and as a “marginalized group” in need of “special consideration.”

The perception is that their mention was a way to “check all the boxes” of inclusion. However, the criminalization of migration across the European Union substantially affected migrant women’s realization of their right to SRH: if pregnancy care is always described as essential (at the Italian level this is the case mainly due to certain Catholic consideration of the sacredness of unborn children, which also obstructs the access to abortion), the rest of SRH, specifically in the realm of preventive care, is often framed almost as a product of States’ generosity and charity, and not as a human right included in the right to health (Keygnaert et al. 218). However, in this field of healthcare, preventive care and knowledge on the subject are of utmost importance for individuals’ health and it would require more attention.

Establishing a clear framework of sexual and reproductive healthcare for migrants, regardless of their gender, at the European level would facilitate a shift in the perception that States have concerning this subject. A human rights-based approach to the matter is necessary to ensure that all individuals receive the care they need to achieve the highest attainable standard of health, as they are entitled to, but it is of little use if it is not coupled with practical measures that will guarantee the enforcement of this right in everyday life. Moving away from the rhetoric of the criminalization of immigration would lead to enacting actual useful policies for migrants who are already living here, instead of seeing them as a temporary appendix to our society. The excessive focus on keeping people outside the EU borders has led to neglecting those who are already living within them. Their needs derive from the intersection of their identity, background, and social position in the European community, therefore, they in some respects differ from other citizens and require their own specific and tailored legislation. Furthermore, applying the recommendations and amending the legislation will overcome the barriers many migrants face when accessing healthcare: language, cultural and economic barriers, SGBV, and fear of deportation. Engaging important stakeholders like NGOs is key to ensuring undocumented migrants understand their rights, are reassured that they will not be deported when they seek medical care and are able to seek SRH care comfortably (e.g. with a professional translator present to overcome the language barrier). Undocumented migrants deserve equitable health in their host countries and it is the responsibility of the government to not merely have it in their legislation but to ensure it is properly implemented. No one should “*come only to die*” (Keygnaert et al. 215-25) when seeking healthcare services.

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**THE BELARUS-POLAND  
MIGRANT AND REFUGEE CRISIS:  
TRAPPED BETWEEN  
INTERNATIONAL LAW AND  
POLITICAL POWER PLAY**

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**Keywords: migration policy, international law,  
humanitarian crisis, border crisis.**

# THE BELARUS-POLAND MIGRANT AND REFUGEE CRISIS: TRAPPED BETWEEN INTERNATIONAL LAW AND POLITICAL POWER PLAY

## Introduction

Humanitarian crises do not stop during a global pandemic. While the world's attention had been grabbed by different measures and the growing number of variants, migrants and refugees at the European Union's (EU) external borders have been subjected to continuous human rights abuses. Specifically, migrants and refugees have been boxed in between the Belarus-Poland border, forcing them to camp in the forest in freezing temperatures (Pérez-Peña, 2021). Poland, Lithuania and Latvia have reported an increase of migrants "trying to enter their territories via Belarus in recent months" (United Nations, 2021) and there are reports of thousands of migrants camping in the freezing forests as well as word several deaths (Higgins et al., 2021). As this is being written, according to current estimates, around 2,000 migrants and refugees (with many being women and children) are stuck at the border between Poland and Belarus (United Nations, 2021).

In December 2021, the United Nations Human Rights Office of the High Commissioner (OHCHR) released a statement in which it urged both countries to swiftly respond to this situation according to international human rights law and refugee law. Whilst Belarus rejected a United Nations (UN) Human Rights team's request to visit, the team visited Poland from November 29th, 2021 to December 3rd, 2021. Yet, the group of specialists was denied access to the exclusion zone set up along Poland's border with Belarus. Under Poland's Act on Border Protection, the area remains closed off and strictly regulated. Poland has constructed border fences and declared a state of emergency, with its military operating over the area. This lack of access for humanitarian organizations, lawyers, and media has a number of ramifications – of importance, it creates an alarming information gap and raises questions of governmental transparency and accountability.

Nevertheless, the team was able to conduct a series of interviews with individuals who had arrived in Poland through Belarus between August and November 2021 - a total of 31 people were interviewed, including nine women, nine men, and five families. The testimonies exposed the violent practices exerted identically by both sides, ranging from forced returns, lack of access to clean water and shelter, and prolonged detention. In addition to the limited testimonies, journalists, aid organizations, and EU officials have been hindered by Polish authorities, making it impossible to know exactly what is happening. Several journalists covering the escalating crisis have experienced harassment and intimidation, with it being described as “arbitrary and disproportionate”(Al Jazeera, 2021). Similarly, Médecins Sans Frontières (MSF) teams have been coerced to leave the forested border region and impeded in their medical assistance. The absence of international aid coupled with the fear of violence at the hands of border guards has led many individuals to make their way through the area. Exposed to extreme winter temperatures, at least 21 people have lost their lives in 2021 (Médecins Sans Frontières, 2021). The response by the European Union is divided, with the main focus being on the political ramifications of this Belarus-Poland migrant and refugee crisis. As such, the content of this paper is as follows: firstly, the abovementioned events will be contextualized and framed in the context of the European Union migration discourse. Secondly, international law will be examined in more detail to illustrate its current compliance to illustrate how refugees and migrants are being instrumentalized in politics. Finally, the European response will be introduced and evaluated.

### Context

Since the 2015 European Migrant Crisis, the discourse pertaining to refugees and migrants has drastically shifted. Thus, on August 30, 2021, when the United States of America officially completed its military troop withdrawal from Afghanistan (Al Jazeera, 2021). Despite the initial historical and political significance that the end of this 20-year deployment holds in itself due to its timing, it became highly instrumentalized in the German election campaign taking place in September 2021. In the context of an expected increase in the number of refugees, stemming from the recent humanitarian developments in Afghanistan, the conservative chancellor candidate, Armin Laschet, stated that 2015 cannot repeat itself (Laschet, 2021) - specifically, Laschet was referring to the handling of the Syrian civil war refugees and called

for a unified European response (ibid.). Laschet was hesitant to make commitments to take Afghan refugees, stating that Germany should not signal that it can take in everyone (Hanfeld, 2021). These comments act as an example that highlights the highly politicized discourse on migrants and refugees across Europe. Furthermore, it illustrates how migrants and refugees can be instrumentalized by politicians to obtain political power.

The border crisis between Poland and Belarus can be contextualized in the same view. Belarus' President Aleksander G. Lukashenko has been accused of "intentionally trying to create a new migrant crisis in Europe" by "allowing asylum seekers from the Middle East into his country by the thousands and then funneling them westward toward Poland and the E.U." (Troianovski et al., 2021). The flow of migrants facilitated by the Belarusian government comes as a response to the sanctions imposed by the EU on Belarus since October 2020. The restrictive measures against the country were adopted after the corrupt presidential elections held in August 2020. According to the EU, Lukashenko was sanctioned following the "repression and intimidation against peaceful demonstrators [...]" (Douglas, 2020). In condemning the elections as lacking freedom and fairness and encouraging intimidation and repression of pro-democracy protesters, the EU does not recognize the 2020 ballot. The sanctions target a total of 183 individuals, including the president Lukashenko and his son, but most significantly the country as a whole: a ban on flying in the EU airspace and on access to certain EU airports by Belarussian transporters have been imposed (European Council, 2021).

At a moment when the EU is grappling with internal tensions of its own, the influx of migrants provoked by Belarus is coined as a "hybrid attack" where migrants are used as "political weapons" (Vox, 2021) to bring the EU to the negotiating table. As Belarus is not an EU member, Lukashenko's actions appear predominantly to be of a political nature, in the hopes of having the EU remove the imposed sanctions and recognize him as the sole legitimate leader of the country. However, Lukashenko's threats to open the country's borders are not new in nature and have animated the leader's political discourses long before the 2020 political crisis. According to the New York Times's Max Fisher, Belarus "is joining a practice that the European Union has long institutionalized: cutting deals with border countries to keep refugees and migrants away from the E.U. border" (The New York Times, 2021). His threats finally came into being in 2021 after Lukashenko's political grip began to abrade.

## What makes the Poland-Belarus crisis particularly noteworthy?

There are two key contributing factors that make this crisis particularly noteworthy: firstly, after the 2015 European Migrant Crisis, the European Union has been trying to find political solutions to solve the migration question in Europe. Due to the geographic situation of Poland, with the crisis being at the border between Poland and Belarus, other member states are affected due to Poland's membership in the European Union as well as NATO. As previously mentioned, refugees and migrants still form a controversial political and social challenge that the European Union has not sufficiently addressed. Reports of pushbacks have been staggering, in particular by Frontex, the European border agency, whose practices have been deemed questionable with regard to assisting Poland in monitoring its border. Indeed, although Poland declared that it does not need Frontex's help, border management at the European level is the shared responsibility of both national authorities and Frontex. Faced with severe allegations concerning the ongoing migrant crisis between Poland and Belarus, Frontex responded by creating the role of a Fundamental Rights Officer, Jonas Grimheden, who would be in charge of limiting human rights violations carried out by border guard officers. Despite voicing cooperation, Poland never allowed Grimheden and his team to come into contact with the area. Frontex Executive Director, Fabrice Leggeri, however, made his way to the Poland-Belarus border at the beginning of October, and appeared impressed by the Polish authorities with the implementation of these measures (Politico, 2021). However, shortly after, the Polish government stated that Frontex's assistance was of no need and that 7,000 of Poland's own border officers were stationed in the area to monitor the activity.

Although Polish authorities are seemingly open to cooperation, due to the difficulty in verifying what is going on in the field, it is tricky to conclude on Poland's official positions. Yet a report published by Human Rights Watch seems to counter these declarations: three individuals informed the human rights NGO that Polish border guards separated their families when those in need of medical care were taken to the hospital. The healthy members are then pushed back to Belarus, even when this includes separating parents from their children (Human Rights Watch, 2021). Polish authorities denied that they participated in any form of pushback. Paradoxically, they openly argued that with the support of a recent amendment, border officials were allowed to return people

who crossed their border illegally. In addition to first-hand evidence contrasting Poland's statements, the country's ongoing rule of law disrupts the role of parliament. Poland's Parliamentary Ombudsman has complete access to the region, yet faces no consequences in the face of violations. The law that has introduced the state of emergency in the country even provides criminal sanctions if the Ombudsman discloses any facts pertaining to the situation at the border (ibid.).

A second reason why this conflict is geopolitically significant is that Belarus is a close ally of Russia (Higgins et al., 2021). The relationship between Russia and the European Union is already tense due to rising gas prices and Russia's troop deployment near the Ukrainian border, which raises concerns about a security crisis in Europe: a senior EU diplomat has been quoted by the BBC saying that "Europe is now closer to war than it has been since the break up of former Yugoslavia" (Adler, 2022). Previously, Poland's Prime Minister, Mateusz Morawiecki, has warned that "recent events showed the Kremlin and allies wanted to 'change the geopolitical system' and 'disunite' the EU" (Adler, 2021). Adler reports that Morawiecki believes that "the 'immediate perpetrator behind the border crisis was Belarus leader Alexander Lukashenko, but 'he has his sponsor, he has his principal' in the Kremlin - referring to Russian President Vladimir Putin" (ibid.). Poland's President, Andrzej Duda, affirmed that "These are just aggressive actions that we have to resist"(Troianovski et al., 2021):

Poland's government recently passed legislation legalizing pushbacks, which has been criticized by human rights groups and is being analyzed by the European Commission. For years, the nationalist governing party has cast migration from the Middle East as a threat to Polish culture and sovereignty (ibid.).

Escalations like the abovementioned and the rhetoric used by politicians illustrate the concrete threat the border crisis forms. Despite political challenges, states do not operate in a lawless vacuum but are obliged to abide by international laws and respect human rights. In the following part, these questions will be particularly addressed.

What are the rights? The question of international law at the border crisis

What is particularly concerning with this crisis is how international law and conventions as well as customary international law norms are being challenged and their limits pushed: both the EU and NATO alongside the United States have accused these countries of contravening international law in the process of excluding individuals from their respective territories. This section will take a close look at whether Belarus and Poland transgressed their obligations under UN and European law.

Poland and Belarus are both signatories of the 1951 Geneva Convention Relating to the Status of Refugees, which is a principle of customary international law (United Nations Treaty Collection, 2022). Article 33 of the Convention, which details the principle of non-refoulement, prohibits the forced return of asylum seekers to countries where they would be in likely danger of persecution. According to the European Court of Human Rights, Belarus is to be declared as not safe for asylum-seekers, which makes forced returns illegal (Helsinki Foundation for Human Rights, 2021). Further, at the European level, the Charter of Fundamental Rights of the European Union prohibits collective expulsions with article 19(1). In the wording of article 19(2), “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”(Official Journal of the European Union, 2012). According to the Helsinki Foundation for Human Rights (2021) it is evident that Poland conducts mass illegal pushbacks and calls the European Commission “to take action against Poland for unlawfully restricting access to the asylum procedure at its borders with Belarus.”

Indeed, article 18 of the European Charter even grants the right to asylum through a “fair and effective” procedure, as the basis of the Common European Asylum System (CEAS) (European Parliament, n.d.). As the most important CEAS piece of legislation, the Dublin Regulation assigns the country of first entry the duty to manage asylum claims and humanitarian protection” (Official Journal of the European Union, 2013). Hence, regardless of the circumstances at the border, it would be the duty of Polish authorities to investigate the individual situation of each migrant (Helsinki Foundation for Human Rights, 2021).

With this in mind, it can be concluded that both countries, Belarus and Poland, are breaking international law (European Council on Refugees and Exiles, 2022). In the case of Poland, the abovementioned UN and EU regulations are violated, especially due to illegal pushbacks and the treatment of migrants at the border. Both the pushbacks without an individual examination of whether migrants face degrading and inhuman treatment if expelled as well as the sealing off of borders which denies genuine and effective means for asylum seekers to lodge their claims also violate the European Convention on Human Rights (Majetschak & Riemer, 2021). Moreover, the country has been hindering NGOs from providing humanitarian aid and denying UN officials access to the restricted border area (France 24, 2021). The grassroots refugee activist Ruhi Loren Akhtar described the situation at the border as follows:

It seemed like a warzone, with tanks, checkpoints, and military professionals wherever we turned in Poland... The 'no go' red zone meant that it was not possible for anyone to fully understand the magnitude of this crisis, let alone be a witness or document the violations against humans happening there. (European Council on Refugees and Exiles, 2022)

In the case of Belarus, the violation of international law is both evident and multilayered: while the prohibition of non-refoulement is not broken, as EU member states are safe countries for the purpose of asylum, Belarus breaks the Geneva Refugee Convention by expelling refugees that are lawfully in their territory without pursuing a decision reached in accordance with due process of law (Sari & Hudson, 2021). Belarus is, furthermore, accused of violating international conventions on torture and the rights of children due to reports of the physical abuse of migrants (Human Rights Watch, 2021). Despite being legally bound to alleviate human suffering by the International Covenant on Civil and Political Rights (ICCPR), which requires Belarus to ensure the right to life and to take measures to address conditions posing a direct threat to it, including by ensuring access to essential goods and services - such as water, food, shelter, and healthcare - the country actively contributes to the present situation. According to an investigation by Amnesty International, migrants at the border "face hunger, exposure and shocking levels of brutality from Belarusian forces, repeatedly forcing them into Poland where they are systematically pushed back by Polish officers" (Amnesty International, 2021). Moreover, as a party to the United Nations Convention against Transnational Organized Crime, Belarus would be required to criminalize and suppress the trafficking of persons and smuggling of migrants. However, it is being accused of state-sponsored trafficking and systematically conducting prohibited activities.

Thus, besides the actions of Belarus and Poland being illegal, according to the European Council on Refugees and Exiles (2022), they “show the disregard of both countries for human dignity at the border”. This paragraph has sufficiently shown that the concerned parties are both non-compliance with international law. In the following section regarding the political perspective, the European response to the crisis will be presented.

### The European response to the crisis

The European response to this crisis has been largely disappointing so far. The EU has been criticizing Poland for its rule of law violations and is currently, as this piece is being written, withholding funds from Warsaw (Erlanger, 2021). However, the rhetoric has shifted to emphasizing the condemnation of Lukashenko’s “hybrid attack” (VOX, 2021) and the threat it poses to Europe. The EU, therefore, began to demonstrate solidarity with Poland with a prevalent narrative that highlights the importance of a decisive joint response - meaning tough border protection. The fear that screening procedures could act as a “pull factor” for more migration seems to outweigh self-imposed humanitarian principles (ibid.). Médecins Sans Frontières has criticized the EU for “deliberately creating unsafe conditions for people to seek asylum at its borders” (Médecins sans Frontières, 2021). This observation is confirmed by a recent proposal to “temporarily reduce some asylum rights” in Poland as an act of “tangible solidarity” (Deutsche Welle, 2021). However, there is also criticism for such ideas in the EU (ibid.). EU Home Affairs Commissioner, Ylva Johansson, recently harshly criticized the illegal pushbacks and highlighted the right to apply for asylum through a proper process (Sanderson, 2022). Nonetheless, such rhetoric has not yet been followed by decisive action to enforce compliance with EU principles (Human Rights Watch, 2022). Furthermore, one of the major problems also is the lack of shared responsibility for migrants (ibid.). While the member states show great solidarity in the case of border protection, this severely lacks a fair redistribution of asylum seekers across the EU (Deutsche Welle, 2020). Moreover, national approaches are becoming prevalent as opposed to joint action. Alongside legal cover for unlawful pushbacks in Croatia, Greece, Cyprus, Hungary, Slovenia, Spain, Lithuania, Latvia, and Poland, Human Rights Watch (2020) has observed questionable asylum practices adopted by Denmark, degrading treatment of migrants in France, and a hostile environment for activists in Greece, Italy, and Cyprus. Ultimately, this reflects the anti-migrant sentiment which is prevalent throughout the political landscape of many EU member states (ibid.).

To sum up, in order to become 'Fortress Europe', the EU has allowed the inviolable right to claim asylum to become no longer uncontested as a basic principle (The Guardian, 2021). Rhetoric about hybrid warfare and breaking the business of people smugglers are legitimizing this position. Unfortunately, it is the most vulnerable who inevitably pay the price for this "hardening of hearts" (ibid.).

### Conclusion

Throughout the analyses completed in this paper, it became evident that Europe failed to respond to Lukashenko's provocation by defending its moral values and treaty stipulated norms. By emphasizing the threats of migration at the border of Poland, the EU admitted the effectiveness of Lukashenko's tactics and legitimized similarly harsh behavior of its own member countries at the expense of defenseless migrants. What Europe implicitly admits is that, largely, migration is seen as harmful and threatening to them and their interests, which serves the narrative of political forces that undermine the idea of European unity.

### Outlook: Quo vadis?

Given these developments and repeated breaches of international law, Europe needs a change in perspective and needs to live up to its proclaimed soft power. The European leaders need to act according to EU standards, as any other actions will delegitimize any claims in the political arena. The question that needs to be asked moving forward is how the EU can legitimately criticize other countries for breaches if it allows their member states to breach international laws and not act swiftly in the case of a humanitarian crisis. Therefore, it is integral that the EU develops policy initiatives that not only respect international law and human rights but sustainably contribute to social change. For this, two main aspects need to be considered: firstly, migrants and refugees are individuals in need, who have fled and were forced to leave their homes. Secondly, the perils of flight are great, and no individual would take these drastic steps if there were other options. Understanding this is integral in order to generate change. Whilst any individual has rights regardless of who they are, understanding the economic and social benefits of migration might contribute to a social change. This is the case despite the fact that the economic and social burden of the global refugee crisis did not mainly fall on Europe, but to 85% on neighboring countries and developing regions (Radwan, 2022).

Despite the widely accepted argument that refugees place a burden on the economy, “studies have shown that societies with a shrinking working-age population tend to benefit from the arrival of younger migrants” (ibid.). According to an International Monetary Fundreport on the impact of international migration on inclusive growth, immigrants can create wage and displacement challenges in local labor markets in the short run. In the medium and long run, however, immigrants can boost output, create new opportunities for local firms and native workers, supply abilities and skills needed for growth, generate new ideas, stimulate international trade and contribute to long-term fiscal balance, by making the age distribution of advanced countries more balanced (ibid.).

Hence, despite contradicting perceptions of refugees in Europe, in reality, “migrants receive little assistance from the state, forcing them to work hard to improve their circumstances” (ibid.). It is therefore essential that Europe challenges the myths and misperceptions about migrants and refugees and its mutually reinforcing relationship with anti-immigrant sentiments. The real problem of migration is to be found in the countries where refugees come from, which often suffer from severe brain drain (Bhatti, 2021).

However, those rational cost-benefit considerations should not be taken too far. The crude and prevalent narrative that separates migrants into ‘worthy’ and ‘unworthy’ bears neglect that migrants are humans with individual stories. Demonization can only be fought by showing interest in those stories and in the migrant’s reasons for their escape to Europe. In this context, the media plays a major role, alongside politics. Both have been promoting misconceptions and downgraded migration to a social experiment (Radwan, 2022) whereas they should be doing the contrary. As such, it is in the interest of the European Union to shift the focus on the humanitarian perspective to reclaim moral superiority over autocrats such as Lukashenko.

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**THE ROHINGYA CRISIS:  
THE CURRENT SITUATION,  
RESPONSES FROM STAKEHOLDERS,  
AND POLICY RECOMMENDATIONS**

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# **THE ROHINGYA CRISIS: THE CURRENT SITUATION, RESPONSES FROM STAKEHOLDERS, AND POLICY RECOMMENDATIONS**

## **Introduction and Summary of the Crisis**

The Rohingya community is a Muslim minority of around 800,000 members living in the north of the Rakhine State in Myanmar, a country where 90% of the population is Buddhist. They started to live in the Bengalo-Arakanese area around the fifth century and converted to Islam around the twenty-fifth century. This long-persecuted minority is now a victim of ethnic cleansing from the Burmese army and Buddhist militias. Dozens of villages were set on fire, there were more than 1000 deaths in September 2017 according to the UN and 620,000 people fled to Bangladesh in December 2017. A report from the UN at the end of August 2018 even employed the term “genocide” to qualify these tragic events, including the massive use of torture and rape. The area, located in the Rakhine state is under the army’s control and inaccessible to any observer. The army continues to deny its actions and accused the international media of exaggerating the situation.

Before going through the current issues surrounding this crisis, it is important to have a general idea of the background of what is happening in Myanmar. Indeed, discriminations and persecution against the Rohingya community are not recent developments. The explanations for this ethnic cleansing are to be found in the country’s history, especially in the colonization era by the British Empire. In brief, during this era Rohingyas were encouraged to come to the Arakanese region by the settlers in order to work in the rice plantations. But their better living conditions and protection by the British Empire created tensions with the Burman people, heightened by the fact that these people were Muslims whereas most of the population was Buddhist. Thus, they came to be seen as strangers and, later on, undeserving to belong to the new Burmese nation after the departure of the British, composed of 2/3 of Barmars (Burmese) with 97% of them being Buddhists.

Throughout time, the hatred and violence against Rohingyas increased and reached the highest sphere of the state with discriminatory measures being implemented, such as in 1962 when their freedom of movement became restrained: they were not allowed to leave their villages, or they were locked in camps, and this is still happening today. One of the highest points in this cycle of persecutions was the approval of a “citizenship law” on October 15, 1982, made by the junta, distinguishing 3 degrees of citizenship: Full citizenship, associated citizenship for the 135 recognized ethnic groups (in Myanmar before the British colonization) and citizenship given by naturalization. This law denies citizenship to the Rohingyas since they are excluded from this list and the difficulty of proving their origins and their presence on the territory does not help either. Thus, they became stateless and so did their descendants (Bazin 7). Victims of segregation and discrimination politics, their rights to work, study, marry, and have access to healthcare are hindered. According to the UN, the Rohingyas became, “the most persecuted minority in the world” (UNHCR). The army, which held power for a long time and made a coup recently, plays a key role in these persecutions. They claim them as a way of fighting against terrorism, whereas the war strategies used by the army against the Rohingyas correspond to practices like “cleansing” or “territorial purification” (Tratnjek). But the army is not the only one to promote hatred against the Rohingya community. Indeed, the Buddhist community that benefits from a large influence in the country encourages this ethnic cleansing. The highest members of the Buddhist community managed to pass certain laws against Muslims such as the control of births (2 children per family) for Muslim families and the required authorization by local authorities to marry someone from another religion (Laviaille-Prélois 34). Due to limits on the birth rate, many children from Rohingya couples are born without any kind of birth certificate. Some influential Buddhist monks in the Rakhine State, like Wirathu and their fire-and-brimstone reputation, have called for the expulsion of all Muslims from the State.

The ambiguous position and the small margin of action of the former leader Aung San Suu Kyi, now imprisoned, did not help improve the situation. The Nobel prize recipient was stuck between the international public opinion on one hand, and the military junta that held all the important ministries, starting with the defense and the nationalist Buddhist movement on the other (Korinman 17). In conclusion, the source of discrimination against Rohingyas is the fusion of a racial approach and a religious approach to national identities. Indeed, Rohingyas are going

through two-sided discrimination as non-Burmese people and as Muslim people. They endure an obsessional rejection from the Arakanese Buddhists, but also a strong disdain from Burmese people who consider them strangers.

### Contributing Factors to the Crisis

#### *Actions by Myanmar and Bangladesh*

Following the influx of Rohingya refugees into Bangladesh, a bilateral dialogue was soon initiated between Myanmar and Bangladesh to develop a response. In November 2017, the two countries formally signed an agreement on the repatriation of Rohingya refugees and later discussed the options for Rohingya refugee resettlement. Yet the devil is in the implementation – the first repatriation took place in November 2018, however, few refugees were willing to return to Myanmar without guarantees of safety, freedom, and citizenship. The second round of repatriation was attempted in August 2019 and failed again, leading to an increased scale of Rohingya refugees stranded in Bangladesh from 2018 to 2020, as shown in the United Nations High Commissioner for Refugees' (UNHCR) monitoring data. The expanded Rohingya refugee crisis not only directly affects people in neighboring refugee camps, but also radiates to the whole of Bangladesh in the forms of land encroachment, intensified ecological damage, and squeezed job opportunities, educational resources, and social welfare.

In response to the failure of the second repatriation, mutual accusations occurred as Myanmar blamed Bangladesh for harboring extremists in the Rohingya camps (Dhaka Tribune) while Bangladesh, on the other hand, accused the Myanmar government of misleading the international community and failing to fulfill its obligation to reintegrate Rohingya refugees unconditionally (Bhuiyan). Disagreements on the nature of the crisis also occurred as an obstacle to repatriation. According to the Dhaka Tribune on September 30, 2020, Myanmar's Ministry of the State Counsellor Office, Kyaw Tint Swe told the UN General Assembly that bilateral cooperation is necessary to resolve the crisis along the shared border of the two countries; while Bangladesh opposed this view by arguing that the crisis is rather Myanmar's domestic problem which must be addressed in the Rakhine State, and rejected any notion of local integration of Rohingyas on the Bangladesh end (Bhuiyan).

In a nutshell, the continuation of the Rohingya crisis arises from the uncompromising stances of Myanmar, Bangladesh, and the Rohingya refugees on the repatriation process, which constitutes a trilemma.

As the Rohingyas' origin country, Myanmar is deemed to shoulder the most responsibility relative to this problem. However, Aung San Suu Kyi and the National League for Democracy (NLD) government remained silent despite international pressure and sanctions. Being repeatedly questioned, this government's inactivity can be explained through the domestic trilemma composed by the Tatmadaw, the civilian government represented by Aung San Suu Kyi and NLD, and ethnic minorities. As elaborated in the background introduction, the Tatmadaw has a longstanding significant political status in Myanmar and is responsible for the marginalization of ethnic minorities including the Rohingyas. Though the status of the civilian government has improved since Myanmar's democratic transition, imposing moral condemnation or punishment on the Tatmadaw was still not feasible for the civilian government considering the power contrast, though it might be beneficial to further increase the civilian government's domestic discourse. The silence of Aung San Suu Kyi is not only a result of the Rohingya problem itself, rather it is a "complex issue" as she said on international occasions, due to the incompatibility of internal and external legitimacy, the former being risked by domestic antagonistic sentiments against the Rohingyas that are intertwined with religious belief while the latter challenged by the international question on its democratic values (Zhang). In this sense, the silence of Aung San Suu Kyi seems to be negative neutrality.

Yet the silence or the acquiescence to the military government still undermined the credibility of the civilian government and its independence and autonomy in external decision-making, the worst scenario of which came in February 2021, when the Tatmadaw coup overthrew the NLD government. If the democratization represented by the rise of the civilian government was once seen as the hope of resolving the Rohingya crisis, the coup tells the world that active acceptance of the Rohingyas from the Myanmar end is not yet to be expected.

## Responses by Regional and International Organisations

Various regional and international organizations, such as the Association of Southeast Asian Nations (ASEAN) and the United Nations (UN), have responded to the Rohingya crisis in different ways. In the following section, an evaluation of their actions (or lack thereof) and their general response to the crisis will be examined.

### *ASEAN*

Despite ASEAN's geopolitical proximity to the Rohingya crisis and Myanmar's membership in the Association, the Association's response has been markedly insufficient, largely perfunctory, and reactive. In one of the latest developments at the time of publication, member state Indonesia relented and only allowed a reportedly damaged boat carrying around 120 Rohingya refugees, after persuasion from the UNHCR (Strangio). Such is only one out of the many instances where ASEAN, even in face of international criticism, chose to ignore or provide piecemeal forms of assistance, despite the severity of the Rohingya crisis.

Interestingly, some studies of ASEAN refer to ASEAN's principles, or the 'ASEAN Way', to explain its passive response to the crisis. Specifically, the 'principles of sovereignty, noninterference and consensus decision-making' ostensibly result in an Association that does not interfere with the domestic affairs of member states, including Myanmar (Barber and Teitt 474). However, such an absolutist interpretation of ASEAN fails to recognize the reality of these principles, which is that they are, and have been, subject to flexible interpretation and application. Barber and Teitt, to this end, trace historical instances of ASEAN's engagement with Myanmar, such as by calling for the latter's abdication of the ASEAN chairmanship in 2006/2007 (474). Davies thus concludes that a distinct 'diplomatic culture' exists alongside a 'formal diplomatic code' in ASEAN, where member states are willing to deviate from the latter and leverage the former to comment on others' domestic affairs (Barber and Teitt 474). Tobing extends the argument to claim that the 'ASEAN Way' was not borne out of a shared identity or desire for regional order in the first place, but a realistic concern for the spread of communism during the Cold War, suggesting that it forms only a small facet of the larger regionalism of ASEAN (152–53). Conflicts, such as the Rohingya crisis, thus should not be reduced to an implication of the 'ASEAN Way'.

Instead, other factors that contribute to ASEAN's inaction in the Rohingya crisis, may be argued for more convincingly. One key factor identified by existing literature is the role of global powers, the United States and China, being key partners of ASEAN member states, in the crisis. Barber and Teitt argue that the relative lack of action by the US government, until the launch of the 2021 Joint Response Plan for the Rohingya Humanitarian Crisis in May 2021 (Blinken), removes a 'critical pressure point' that could be used as leverage for ASEAN action in the crisis, in order to maintain US-ASEAN ties (475). China's resistance towards condemning the crisis under the United Nations Security Council (UNSC), apart from affirming a statement in March 2021 condemning 'violence against peaceful protestors', also suggests a lack of pressure from the global power (United States Mission to the United Nations; Barber and Teitt 475). Given that the March 2021 statement even commended ASEAN for its alleged 'continued efforts to engage with all relevant parties in Myanmar' (United States Mission to the United Nations), it appears that ASEAN's inaction may even be enabled by these powers.

Another key factor may be within ASEAN itself, where the lack of an accountable and suitable body for concerted efforts towards the Rohingya crisis, or human rights violations in general, results in the lack of impetus among member states. With such a body, any ambiguities relating to the 'ASEAN Way' can be clarified through clear, targeted principles, and the body can be empowered legally to intervene in human rights violations by member states. However, in the ASEAN case, the ASEAN Intergovernmental Commission on Human Rights (AICHR) proves to be the opposite. Despite being a step toward human rights protections through a shared commitment by member states, the AICHR has been criticized for being insensitive, performative, and at best symbolic (Jati 25). Realistically, the lack of investigative powers, the right to 'discuss country-specific human rights issues' (Barber and Teitt 483), as well as an independent body appointed through transparent processes, make the AICHR a largely powerless body, that is ultimately fixated on the lowest tier of the ASEAN hierarchy of inter-governmental bodies (Limsiritong 35).

## *United Nations*

As implied by the lack of concrete action and/or a firm stance by the US and China in the UNSC, the UN's response to the Rohingya crisis has also been generally weak and insufficient. An independent inquiry by Rosenthal, former UN Ambassador, surfacing the 'systemic and structural failures' within the UN that 'prevented a unified strategy' towards the Rohingya crisis, was accepted by UN chief António Guterres (UN Affairs), of which some key points will be discussed below.

First, the lack of a 'clear and unifying strategy' proved problematic for the UN, as its actions often reflect the disputes and contradictory positions it has among its members of staff and leaders. Rosenthal argues that the different positions between the Deputy Secretary-General, Jan Eliasson, and the Special Adviser on Myanmar, Vijay Nambiar, led to a consistently bifurcated approach to the Rohingya crisis with no successful attempt to reconcile them (20). Eliasson favored a 'more robust posture', while Nambiar opted for 'quiet diplomacy' (Rosenthal 20). Such a complex and almost contradictory approach created significant confusion within the UN, even with the decision to use 'Rohingya' against the Myanmar Government's will being inconsistently applied, losing its symbolic meaning (Rosenthal 20). The lack of a clear strategy may have also led the UN to comment on the Rohingya crisis in a largely rhetorical, diplomatic manner, opting for a safe and vague message that would not be embroiled in the internal dispute, or affront UNSC member states (Khan and Ahmed 126).

Moreover, the complicated, overly-intertwined, and under-supported UN country-level work in Myanmar is another key contributing factor. The Resident Coordinator, Renata Lok-Dessallien, as the 'most senior United Nations official in-country, not only did not have the mandate to hold a firm stance on the crisis but was left on precarious foundations in 2014-16, when the assumption was still that democratization was well underway in Myanmar (Rosenthal 21). While Lok-Dessallien did eventually seek support from the UN headquarters, she was still heavily understaffed, and was under increasing scrutiny for the UN's quiet diplomacy stance, in spite of its work with non-governmental organizations that demanded a stronger one (Rosenthal 22).

Support from regional-level or human rights-specific agencies within the UN also proved to be far and few between, since the UNSC's lack of consensus towards a stronger, condemnatory stance and concrete action led to a lack of safe zones, bases, and a legal scope for humanitarian intervention (Khan and Ahmed 127). Another key factor, while not discussed in Rosenthal's inquiry, is related to the UN legal documentation, notably the UN Charter, that legally empowers the UN to intervene in human rights violations like the Rohingya crisis. Khan and Ahmed examine the contradictions within the UN Charter relating to human rights violations, arguing that the current Charter is a result of a compromise, albeit a poor one, between a realist, state-centric approach and a liberal, human rights-centric one (127). For instance, Article 42 supposedly excludes 'intra-state, communal, or domestic' conflicts for UN intervention runs contrary to the UNSC decision to intervene, should they agree to do so in the case of the Rohingya crisis (Khan and Ahmed 128). The mismatch between the referent object in the UNSC (the state), and UN specialized agencies (the individual), also leads to contradictory actions that could result in inaction, if UNSC does not authorize these agencies to enter the crisis zone (Khan and Ahmed 128–29). Similarly, the Responsibility to Protect (R2P) doctrine, 'notoriously difficult' to invoke and politically controversial, has not been formally invoked by the UN General Assembly, since they claim that genocide and/or ethnic cleansing is occurring in Myanmar is inconclusive, and UN action may only be justified if the Myanmar government is proven to have failed to protect the population (Zawacki 23).

### *The Stance of Other Countries: China and India*

Though not directly involved in the Rohingya refugee crisis, China and India still play certain roles as regional major powers. To begin with, the two countries share in common the acknowledgment of the significance of the crisis, attempts in initiating multilateral dialogues with Myanmar and Bangladesh, and the provision of emergency humanitarian aid to the Rohingya camps. The very recent multilateral dialogue at a China-Myanmar-Bangladesh trilateral meeting with deputy Foreign Ministers discussed the repatriation in January 2021 (Ministry of Foreign Affairs of China). The meeting was said to be the basis for further executive discussions of joint working teams and trilateral meetings of Foreign Ministers, but no follow-up information has been released so far.

It should be noted that both China and India have avoided sanctions or other forms of external pressure on Myanmar for transition in policy towards the Rohingyas, which poses a sharp contrast against the widely adopted principle of the R2P by Western democracies. China asserted the Rohingya crisis to be Myanmar's internal affair which should not be politicized or internationalized and stressed the non-intervention principle. Also, China was one of the few countries that voted against a UN resolution on the Rohingya issue in December 2017 (Agence France-Presse at the United Nations). Though unlike China's unconcealed stance on Myanmar, India has also been prudent over putting pressure on Myanmar, as indicated by its abstaining from voting on a resolution for an independent international mechanism to probe abuses in Myanmar's Rakhine State, at the United Nations Human Rights Council (UNHRC) on March 22 (Bhuiyan). The geo-political perspective is widely adopted when explaining this tacit consensus as cooperation with Myanmar respectively complies with China's Belt and Road Initiative and India's Act East Policy and Neighborhood First Policy. Given the cooperation strategy with Myanmar, both China and India's focus is put on accelerating the development of the Rakhine State of Myanmar as the fundamental solution to the Rohingya crisis, the path of which is meant to be long-term, while covering the practical needs of the Rohingyas in Bangladesh through humanitarian aid.

### Conclusion and Policy Recommendations

Entering its fifth year, the Rohingya refugee crisis is now approached on two fronts: one is finalizing the repatriation of the Rohingyas with a reintegration plan acceptable for the three sides, namely Myanmar, Bangladesh, and the Rohingyas; the other is enabling dignified living for the Rohingyas in Bangladesh, i.e., improving the status quo before any constructive success comes up at the first level.

Relatively speaking, policy recommendations on the second front are more likely to be implemented on a timely basis, contingent on actions by international and regional organisations. As such, a key policy recommendation for both the UN and ASEAN is to have stronger legal powers for the relevant specialized agencies to advise member states on responding to the Rohingya crisis.

In the case of the UN, the relevant agencies include the UNHCR, Special Adviser on Myanmar, and Resident Coordinator, which require a clear, unambiguous stance and sufficient support from the UN headquarters. Rosenthal, in particular, commends the decision by Guterres 'to place the Resident Coordinator system under the Secretary-General', and reiterates the need for a timely appointment and review of this system, especially in response to developments in crises (24-25). In the case of ASEAN, the AICHR is a key body that is still in its infancy stage, despite having been established in 2009. Barber and Teitt argue that a fundamental change of the Terms of Reference (TOR) under the AICHR is not necessary for a much-needed push in response to the crisis, as a consensus is important, but not a prerequisite for ASEAN to assist in mediation among the parties involved (46-47). Other larger, structural changes to both organizations, such as the review of the UN and ASEAN Charters, may be possible, but they would require prolonged discussions with member states and could face strong opposition from particular states. What is crucial is instead to work within existing boundaries and exert changes that are realistic and plausible.

The Rohingya crisis remains a key humanitarian crisis in Asia that demonstrates the numerous conflicts, structural failures, and self-interested concerns of the countries involved, international and regional organizations, and other individual states. While the future of the Rohingya community remains uncertain and volatile, action can be taken to minimize the harm caused to these refugees and work towards a concerted humanitarian approach regionally and globally.

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# CLIMATE-CHANGE INDUCED DISPLACEMENT

Group research paper

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# CLIMATE-CHANGE INDUCED DISPLACEMENT

In the 48th session of the United Nations Human Rights Council, the UN High Commissioner for Human Rights, Michelle Bachelet, referred to environmental threats as being ‘the single greatest challenge to human rights in our era.’ (United Nations High Commissioner for Human Rights). The issue of climate change-induced migration has been on the international research community’s radar for decades. For instance, the Intergovernmental Panel on Climate Change (IPCC) has already identified climate change as likely to have the strongest impact on migration in its assessment from 1990 (103). One way that environmental threats lead to a deterioration of respect for human rights is by inducing migration and flight, which are contexts during which human rights abuses are highly likely to be committed (United Nations High Commissioner for Human Rights and Global Migration Group 1). Yet, while climate change and its immediate consequences are a highly debated issue, climate refugees’ predicament is often not properly accounted for, with climate refugees sometimes being coined as the ‘forgotten victims of climate change’ (Tetsuji). This research paper aims at raising awareness by analyzing the issues climate refugees face when it comes to their recognition as such under international law. It does so by dissecting the lack of a legal definition of climate refugees and climate change-induced migration, as well as the unclear legal recognition of factors contributing to said migration. In doing so, it aims at raising awareness for the legal recognition of climate refugees under international law. Finally, this paper will conclude with a discussion of relevant policy proposals through which the issues analyzed in this paper can be addressed.

## **Lack of a climate refugee definition in international law**

To this day there is no proper definition for the designation of “climate refugee” enshrined in international refugee law. Further, the concept of a climate refugee is not mentioned in the United Nations 1951 Refugee Convention and its 1967 Protocol. As outlined in Article 1A(2), refugees are defined as those who face or face or fear persecution in their country of origin due to individual characteristics, namely race, religion, nationality, membership in a particular social group, and political opinion (United Nations Office of the High Commissioner for Human Rights 14, 19)

However, climate refugees are migrants that, as the European Parliamentary Research Service puts it, 'move due to natural disasters and climate change' (Apap 2). They flee from inhospitable environments and thus *external situational factors*. One problem that stems from this lack of an existing legal definition is that climate refugees cannot refer to their status as a refugee under international law. Time and time again there have been cases where climate refugees have attempted to claim their rights – without success. Another issue pertaining to the scope of Article I is that climate refugees mostly move within their own country's sovereign borders, while the Refugee Convention establishes the criterion that refugees move across national borders in order to be counted as such (Katsoni and Graf).

Furthermore, the highly intertwined nature of the types of migration, such as climate change-induced migration, economic migration, and humanitarian migration, makes it difficult to ascertain if climate change is the primary or sole cause of a refugee's decision to migrate. Nishimura, for example, examines the unresolved debates within the academic literature on whether and how climate migrants are classified as a distinct group as well as whether this group should be discussed as part of a larger group of 'survival migrants' that includes economic migrants, or 'environmental migrants' (111). In response, Nishimura acutely identifies the correlation between climate change and many other motivational factors behind migration, such as political instability, economic problems, and social vulnerability (112). The UNHCR has considered this potential interaction and its increasing ubiquity by publishing official documents providing non-binding legal advice to states, detailing the different combinations between climate change and other currently recognized grounds for international refugee protection (e.g. fear of persecution, conflict, and violence) (Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters). However, the baseline remains unchanged, that climate change and disasters alone still do not suffice as legal grounds for the protection of climate migrants. With this tendency to prioritize other contributory factors should they exist in a refugee's case, it is unlikely that refugees who migrate solely for climate change-induced reasons will gain legal protection in the near future. One can also question whether legal recognition of refugee status is truly beneficial to the majority of climate migrants. After all, the migrants that primarily emigrate are mostly doing so within their own countries and are doing so gradually (Katsoni and

Graf). As McAdam (216) further notes, efforts to establish a broader definition of what a climate refugee is could possibly lead to a more narrow understanding of the concept of a refugee, as currently there are not many world leaders that have taken on the issue of climate change-induced migration.

### Unclear legal recognition of factors contributing to climate change-induced migration

Moreover, on top of the lack of explicit international legal recognition of climate-change-induced migration, the lack of clarity in recognizing the factors driving this migration further exacerbates the lack of international (legal) protection that climate refugees face. Based on existing literature studying the international legal considerations in determining the status of climate refugees, as well as official documents from international organizations such as the UN, several factors can be identified as salient in the definition of climate change-induced migration, of which three key ones will be discussed here. First, the degree of harm caused by climate change, as some form of threshold to conclude that migration has occurred primarily as a result of it, is commonly cited as a factor. In a decision taken by the UNHRC on a communication relating to *Teitiota v. New Zealand*, the Tribunal implies that the jeopardization of one's right to life is deemed as a justifiable reason to consider whether a refugee has migrated due to climate change, such that the effects of climate change cause conditions 'so perilous that his life would be jeopardized' (4). The ruling is considered a landmark case by academics and practitioners (Lyson). It is connected to the principle of non-refoulement, which is the core principle of the 1951 Refugee Convention and also enshrined in Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR) as well as being a component of customary international law. Non-refoulement means that refugees are not to be returned to a country where their life or freedom is seriously threatened ('The 1951 Refugee Convention'). Other recent examples include a court ruling in the city of Bordeaux in January 2021, which made headlines as the first court ruling in France to refer to the environment to which a Bangladeshi refugee would be sent back to as unsafe on the grounds of environmental reasons, namely air pollution (Tower and Plano). Yet, to this day, the United Nations have not provided a clear threshold for the degree of harm caused by climate change for a case to be considered under climate change-induced migration. In other official

sources, such as the UNHCR website, such a specific threshold is omitted, in favor of ambiguous terms, such as 'limited natural resources', 'threatening livelihoods', and 'worsen[ed] living conditions' (Climate Change and Disaster Displacement). Whether a threat to one's life is necessary for climate change-induced migration to be recognized internationally and legally, is thus open to interpretation.

Similarly, another factor that is closely related, and equally ambiguous, is the types of environmental harm deemed as a result of climate change. The Intergovernmental Panel on Climate Change (IPCC) defines climate change as 'any identifiable change in climate over time', such as rising sea levels, 'changing precipitation patterns', 'melting polar ice caps', and 'extreme weather events' (Warren 2108–09), but how these are measured, and to what extent are they therefore sufficient to define climate change-induced migration, remain unanswered. As a result, conflicting accounts of the origins of climate change-induced migration, due to the lack of authoritative information, are aplenty (Warren 2109). To further complicate matters, 'non-climate drivers', or factors that affect a state or area's capabilities in dealing with a climate change-induced event (e.g. natural disaster) (Brown 18), are also crucial and complex. In relation to *Teitiota v. New Zealand*, the UNHRC also notes that Teitiota failed to produce evidence of the Government of Kiribati 'failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it could' (4). As a corollary, should the government of a state/area demonstrate some sign of capability building in relation to climate change, climate change-induced migration may carry a stricter definition that excludes many existing cases.

Finally, the time frame during which climate change and/or events are deemed as contributing to climate change-induced migration remains largely arbitrary. Drawing from the distinction between climate processes and climate events, of which the former refers to long-term, gradual change (Brown 17), it becomes pivotal to define whether a timeframe is needed, and if so, when, to determine whether migration is climate change-induced. In the case of the UNHCR, it appears that a timeframe is indeed needed to determine the urgency of the threat to the right to life. In response to *Teitiota v. New Zealand*, the UNHCR reiterates the 10-15 year time frame that Teitiota submitted, during which harm is deemed to be inflicted on him (7). Yet, whether this timeframe is sound is not made clear, especially given the lack of a specific timeframe provided in the expert testimony (2). One should also keep in mind that climate migration

itself is often a gradual and long process, meaning environmental migrants mostly do not flee their homes all at once but rather slowly and steadily (McAdam 8). Thus, the idea that they are fleeing the country might not appropriately reflect the emigration dynamics taking place over years.

On a larger scale, a commonly cited cursory estimate of the size of the climate migrant population, '200 million by 2050', falters in face of verification (Brown 9), since the methods used to generate this number, and how the cut-off year was decided, are poorly substantiated. The Groundswell report by the World Bank, which cited a similar number (216 million), notably does not include cross-border migration and short-term climate events (Clement et al. xxi). This could lead to two non-exhaustive, but important conclusions: either the current research does not have sufficient information on a suitable time frame, or a timeframe is an inadequate definition of climate change-induced migration in the first place.

### Policy Recommendations

As internal climate migration is most common, strategies to combat climate migration should first be formulated at the national level (Blake et al. 2). Bergmann et al. provide a four-step plan to examine what a national policy to prevent climate migration could look like, using the example of Peru (8). As a first step, governments should determine the regions most susceptible to environmental degradation and start monitoring them, as there is still data lacking on the scope of climate change-induced migration. Reasonable adaptations and the people at risk for climate migration need to be determined; national statistical bureaus could be in charge of this task. The second step is the prevention of forced migration by training the local population (e.g. regarding patterns of water consumption), and by equipping them with adaptation materials (e.g. climate-resilient crops). The third step is to prepare for the arrival of within-country migrants. Protections need to be in place at their point of destination; housing, health care, and policies with regard to the labor market are central points of concern here (Blake et al. 2). Step four is to improve the process of migration itself, i.e. by training people to move quickly in case of disaster, as well as diversifying the options of potential hubs to which they can migrate. This will help streamline the process of climate migration on the part of countries of origin in case of potential climate.

Other ideas include mainstreaming the issue of climate migration into other important policy strategies and areas, such as national policies against climate change. Blake et al. bring forward the idea of integrating so-called climate mobility considerations into account only in countries where it is necessary, and to punctually enact climate policies if needed (2). The five categories they bring forward to be brought to closer attention in other areas are mobility control, social protection, environmental and physical adaptation, government reform, and planned relocation (17). Scholarly consideration of climate migration is still relatively new, thus, more research is to be needed for the development of elaborate policy proposals (Blake et al. 6-8). However, points of commonalities in current policy proposals are the continued monitoring of the issue, its thematization both in national and local governments in order to facilitate quick reactions, the maintenance of a hospitable environment, the facilitation of the migration process itself, and the construction of safe destinations for the concerned population to flee to.

Finally, and of utmost importance, the international community also needs to step up to reduce greenhouse gas emissions and avoid overstepping the 2 degrees Celsius threshold of the Paris Agreement. Only this way can the livelihood in rural areas be preserved and local adaptation is facilitated in the first place (Bergmann et al. 7). Simultaneously, even without explicit recognition of climate migrants in the 1951 Refugee Convention, existing international frameworks in the UN, for example, can be supported and enhanced, so as to maximize international action within current boundaries. The UN Task Force on Displacement, established during the 21st Conference of the Parties (COP21) in Paris, has established plans and implemented concrete action in informing and empowering member states to alleviate climate change and manage climate migration. While its achieved outcomes remain limited to mostly informational ones, the mere explicit recognition of the lack of a 'system-wide strategy' to manage both 'internal and cross-border displacement in the context of climate change and disasters' is itself a notable first step (68). The Climate Training Kit, still under active development, has a dedicated section on climate change-induced displacement that member states can refer to, with official information from the International Federation of Red Cross and Red Crescent Societies (IFRC). What could be useful, is the incorporation of other existing legal statutes, notably the 1951 Refugee Convention, into these resources to better inform member states of their legal obligations and available legal resources.

## Conclusion

In conclusion, the lack of a definition of climate change migrants, as well as the unclear legal recognition of factors contributing to climate change-induced migration, makes the international legal recognition of climate change-induced migration largely insufficient and ambiguous. Admittedly, this conclusion begs the question of whether such a distinct category of migrants can exist, to which Lonergan asserts that climate change-induced displacement is 'socially and spatially constructed' within a 'broader political and cultural context' (Brown 20). Nonetheless, given the already-present forces of climate change contributing to migration patterns, more substantive action should be taken internationally to provide timely and sufficient assistance to these refugees. These should include both relocation policies and social and migration policies. Concurrently, action on a larger scale, relating to international legal documentation and national policies, can be explored.

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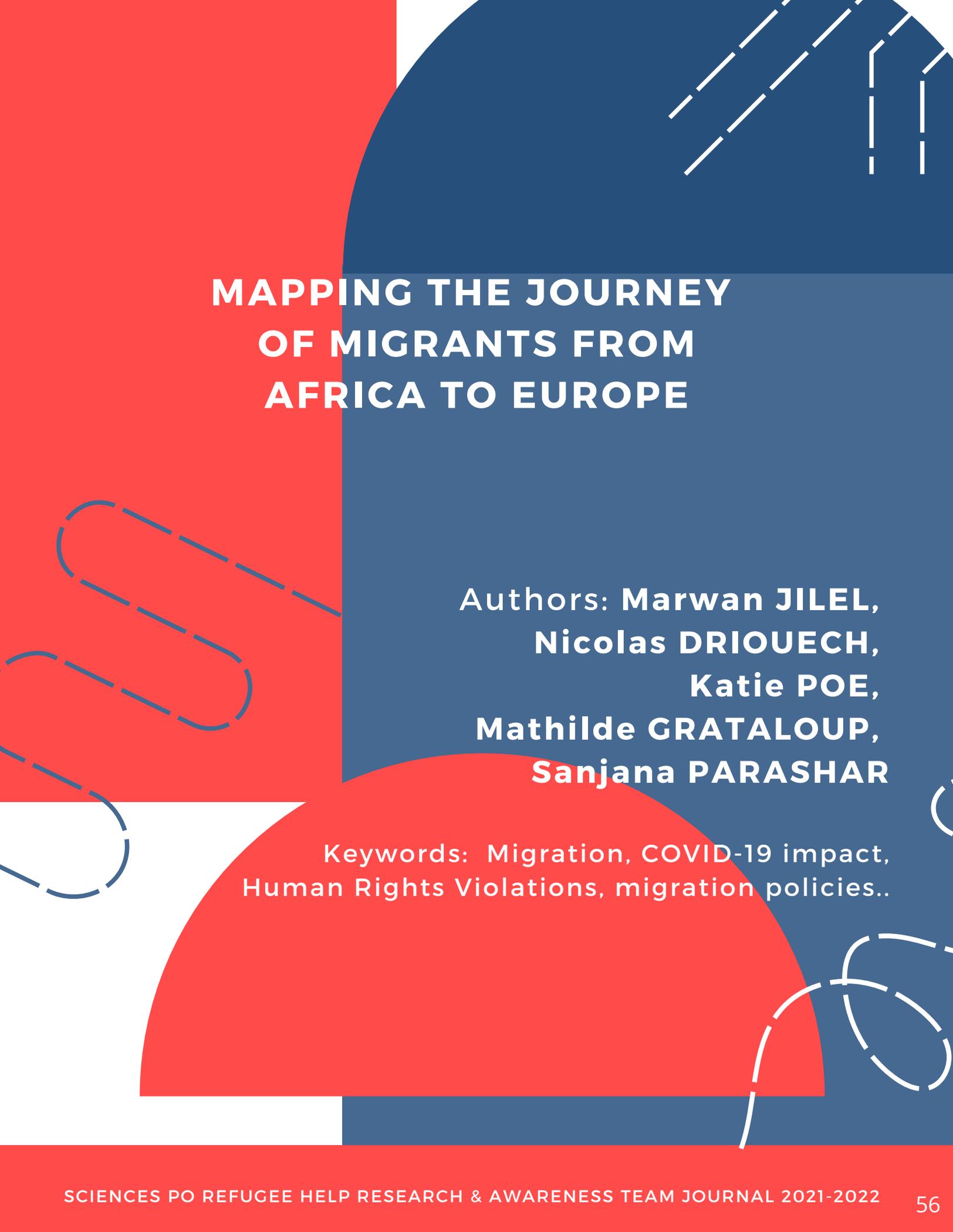
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# MAPPING THE JOURNEY OF MIGRANTS FROM AFRICA TO EUROPE

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# MAPPING THE JOURNEY OF MIGRANTS FROM AFRICA TO EUROPE

## Introduction

The North African area is home to some of the busiest migration routes in the world due to the high activity of migrations from both the Middle East and Sub-Saharan Africa. As a consequence, various routes of mobility can be mapped in this area. Morocco, Algeria, Tunisia, and Libya are all countries of transit for migrants and asylum seekers. Indeed, these countries are a stage between areas of origin and the final destination - that destination being the European continent in this particular case. Instead of focusing on only one side of the coin, it is important to understand the complexity of the migration flows in the Mediterranean as a whole. More precisely, there are three main systems of regional mobility in the Mediterranean area: The Euro-Mediterranean, the Inter-Arab migratory space, and the Inter-African dynamic. These three systems, which can be linked to each other, create a flow of migrants and a series of stops and goes. This article deals with each of these systems through their different sections. First and foremost, it would be relevant to map the migration flows in North Africa, either as they come directly from Sub-Saharan countries and the Middle East or go in the direction of the north from Morocco, Algeria, and so on. The particular case of Libya will be analyzed separately as the chaotic political situation requires particular. Further, these displacements lead the European Union (EU) to strengthen its border policy as a response to what is commonly considered an invasion. These decisions are often taken in cooperation with North African countries which work as EU partners. Another major point to mention is the impact of the COVID-19 pandemic on the migration flows and dynamics in North Africa. This paper covers the consequences of the COVID-19 spread since the onset of the pandemic both in North Africa and Europe but also the impact on the living conditions of migrants in camps and, thus, the difficulties they are facing.

## Dynamics of migration flows from/to North Africa

In order to assess the dynamics of the migration flows to North Africa, it is relevant to mention the fact that migrants - mainly refugees and asylum seekers - come from two specific areas: Sub-Saharan countries and the Middle East. Furthermore, North Africa can be an anchor point as well as a stopover before trying to reach Europe.

### *Migration from Sub-Saharan countries and the Middle-East to North Africa*

First and foremost, the majority of migrants who step on North African soil come from either Sub-Saharan countries or the Middle East. Indeed, evidence for this is provided by annual reports given by UNHCR and Amnesty International France. According to the Migration Data Portal (2022), over 6,656 new migrants arrived in Morocco in 2019, 3,676 of them came from Syria, 843 from Yemen, and 560 from the Central African Republic. Moreover, there were 3,100 asylum seekers in Morocco. 732 were from the Republic of Guinea, 687 from Cameroon, and 457 from Ivory Coast. Here, the Kingdom of Morocco is central to this analysis. In fact, this Northern-West country of Africa is one of the key routes for migrants in their hopes to reach Europe. Lying as a breach between Europe and the rest of the African continent, Morocco characterizes the instability of migration flows in this area. Previously known as a country of emigration, Morocco has slowly but surely become a regional platform hosting many Sub-Saharan migrants. This could be explained by the Moroccan policy towards Africa as the Haut-Commissariat au Plan (HCP) states in its latest report.

These migrations are the consequences of several reasons. First, social and economic crises in Sub-Saharan countries make people more fragile and give them reasons to flee such miserable living conditions. Second, political crises and civil wars lead to forced and inevitable displacements of populations from these areas. Taking Morocco as an example, the three main reasons for people's migration were fleeing from conflict and oppression, gender-based violence, and dissenting political opinions. Recently, terrorist activities in the Sahel zone combined with the intervention of the French armed forces in the area led to substantial displacements of people. Finally, the lack of economic perspectives, in addition to the attractiveness of the Western consumer society, constitutes a pull factor for those who suffer from poverty.

Vulnerability characterizes the situation of those who try to flee their countries of origin. However, only those who leave their countries because of persecutions based on their political or religious beliefs, as well as their ethnicity, can be considered for refugee status under the 1951 Refugee Convention (article 1A/2).

Western society is mentioned in this section because even though it deals with people coming from Sub-Saharan countries to North Africa, these migrants aim at reaching Europe. This is the reason why migration flows from North Africa to Europe are as important as those that have just been underlined.

### *Migration from North Africa to Europe*

North Africa - especially Morocco - has always been a source of workers for former colonial powers such as France, especially during the third wave of immigration in the seventies. But it is obvious that this part of the world is now considered a global hub for migration and people's displacement. Considered a country of emigration, Morocco is now a place where migrants stay for a long period. Sometimes, Morocco is only a part of their journey before going to Europe. Other times not. In this particular case, migrants settle in Morocco if they fail to get to the other side of the Mediterranean.

However, Morocco, Algeria, and Tunisia are crossroads and ports of exit to the European continent for African emigrants. As a matter of fact, maps show that migrants go through the Spanish enclaves of Melilla and Ceuta which border Morocco. These routes are notorious due to the yearly huge number of deaths in the Strait of Gibraltar. According to Le Monde, 304 migrants died in 2018 while boating from Morocco to Spain. These deaths come most of the time after migrants try to reach Spain by makeshift skiffs and trawlers. Points of crossing are numerous since Carto estimates that dozens of migrants died or disappeared in 2020 either between Tangiers (Morocco) and Algeciras (Spain) or Nador (Morocco) and Almeria (Spain). Lately, eight migrants died while crossing the Strait of Gibraltar in September 2021. Nonetheless, Algeria is also concerned about the deadly losses. In 2020, More than 50 migrants died while they were boating off Algiers. In addition, Tunisia is also the field of several deaths, mainly in the direction of Sicily and Lampedusa. Since 2011, migration from Libya to Europe by Tunisia has been steadily increasing throughout the years.

Therefore, it is evident that the large majority of deaths in the Mediterranean occur while migrants boat from North Africa to Europe. In total 14,000 migrants have lost their lives in the Mediterranean since 1988. By comparison, the number of dead or missing migrants in the other parts of Europe is low, even taking into account those who go to Greece from the Balkans.

Figures show that there is a sort of balance in the direction of the migration flows. In other words, there is almost the same number of migrants taking the south-south direction (61 M) as those who take the south-north (62 M) direction. To be more precise, the south-south direction refers to migration from a Sub-Saharan country to North Africa while the south-north direction is commonly used to talk about displacements from North Africa to Europe.

Migrants' transition from North Africa to Europe is subject to political tensions between the Kingdom of Morocco and the European Union. If Morocco strengthens its migration policy when the European Union gives it the order to keep migrants away from its borders, the Kingdom also uses the heavy flows as a geopolitical weapon, especially against Spain. The many cases in which Morocco backed off and let migrants go away to Spain entail political consequences in Europe.

### Political consequences in Europe

Dealing with the question of migration at the political level means that one will be overwhelmed because of a bunch of diverse information coming from both the media and political leaders. As a matter of fact, European leaders are used to making the general population believe that the Mediterranean borders are overflowing due to the high rate of sub-Saharan migrants reaching the continent. As a result, a popular belief is that migrants are coming to Europe in large numbers, as was discussed in Stephen Smith's *La Ruée vers l'Europe* (2018). Because of this, right-wing editors and politicians, especially in France, argue that migrants and refugees from these areas are going to replace natives and then erase Judeo-Christian culture.

As a direct consequence, North African countries often shut their southern borders down to prevent migrants from reaching the European shores. These shutdowns are the result of heavy pressure from European shutdown policies.

They are in fact the aftermath of fears as the general atmosphere tends to be deleterious when it comes to this subject. It led to various border policy reinforcements by the European Union. For example, the Schengen Agreement allows further immigration controls outside the EU, at the pre-clearance facilities in airports and harbors. In order to make this effective, the European Union constantly supports those foreign countries economically. According to the Overseas Development Institute, Europe would have spent 17 billion euros between 2014 and 2016. Most of this spending would have been invested in border controls by North African countries.

A common opinion is that members of the European Union are not able to work together on how they should stop the blood loss. In an article published by *Alternatives économiques*, Virginie Guiraudon says that in “2019, it was easier to notice the sharp splits among the 27 members than finding common points of view on that question.” Moreover, there is a constant division in the geographical breakdown of asylum seekers. The question of hosting these people is always controversial and brings divisions among the 27 members.

For different reasons, Italy and Hungary complain about the solidarity shown by Western European Union countries. In the case of Italy, governments and authorities feel alone facing the huge migrant arrivals on the island of Lampedusa, near the Tunisian coast.

Contrary to Italy, Hungary is unwilling to welcome such a huge number of refugees with open arms. Far-right Prime Minister Viktor Orbán set his paradigm on the protection of Magyar identity and is clearly determined to lower migration flows as French far-right media and leaders do.

In the case of Italy, the unsustainable flows of migrants come from Libya. This underlines the chaotic situation of this country which has been getting worse for years.

## The case of Libya

Understanding the situation in Libya is essential to have a better understanding of the refugee issues in the MENA region. Indeed, due to its position, at the crossroads of the Mediterranean Sea, the key access to Europe, and North Africa, Libya is one of the countries most affected by migration flows. Libya has been recently in the news due to reports showing numerous violations of human rights and especially human trafficking happening in camps and centers where migrants are detained. Thus, let us have a closer look at the situation in Libya.

### *A country at the crossroads of Africa and Europe*

The geographical position of Libya makes it almost a mandatory step in the journey to Europe. Each year, thousands of migrants take unsafe embarkations with the hope of joining the Italian coasts. However, many of them don't make it disappearing in the Mediterranean Sea or being brought back to Libya by coastguards.

With the increase of sub-Saharan flows going through North Africa, countries located in the southern part of the Mediterranean such as Libya started to receive more and more migrants. Thus, these countries that were mostly departure countries became welcoming countries but also places to pass through in order to go to Europe. These dynamics raised new challenges in a socio-political context already troubled by political uncertainty, economic difficulties, and discrimination. Moreover, the reinforcement of controls at the European borders and the readmission agreements signed with European Union countries, transformed Libya into the "guardian of European borders" and an airlock because migrants from North Africa most of the time have no choice but to stay there when they cannot go further (Wihtol de Wenden 5).

Thus, due to its position, Libya is playing a key role in migration flows from the African continent and imposed itself as the main actor to prevent migrants from entering the European coasts. The EU and mostly Italy are collaborating with Libya in order to push migrants back, creating new issues and transforming this road to Europe into a deadly one.

### *The complex relationship between Libya and migration flows*

Studying the Libyan case is interesting to understand the difficulties migrants are facing in their journey to Europe because Libya has made several agreements with EU countries. For example, in 2009, through a bilateral agreement, Italy paid for the building of a highway crossing the whole country in exchange for the control of migrant smugglers passing through Libya and intending to go to Italy. This migratory bargaining reveals both the desire of Libya to have a legitim spot in relations between Europe and the Mediterranean Sea and the lack of trust of Italy in the European measures (5). But Italy is not the only one signing agreements with Libya, accepting to take back the illegal immigrants who passed by or who are originally from Libya, in exchange for development programs, visas for qualified Libyans, or students (17).

The situation is complicated by the fact that Libya is not part of the Geneva Convention of 1951 (Report HCR 2), granting refugee status to people fitting its criteria. Thus, there is no protective legislation and neither an administrative procedure for asylum. Asylum seekers have to find, on their own, ways of reaching the HCR to have access to protection (Perrin 111). But many of them are in detention and the HCR is lamenting the difficult access to these asylum seekers. However, Libya is part of the African Unity Organization Convention of 1969 (Report HCR 2), imposing the non-refoulement principle for people fearing persecution and extradition of refugees is prohibited by article 11 of the Libyan Constitution (Perrin 107). However, the respect for these principles can be questioned.

### *Reported human rights violations*

The alarming situation of migrants in Libya is underlined by this absence of a legal framework, giving the authorities the right to decide whether they want to rescue and take care of "the boat people" or not (Rodier 27). Violations of migrants' rights such as arbitrary detention, torture, or even slavery are largely documented by NGOs and UN bodies. In a report published by Human Rights Watch in January 2019, it is written that migrants placed in detention centers are exposed to "inhumane conditions that [include] severe overcrowding, unsanitary conditions, poor quality food and water that has led to malnutrition, lack of adequate healthcare, and disturbing accounts of violence by guards, including beatings, whippings, and use of electric shocks." The conditions outside of these centers are likely the same, with a high risk of exposure to endless cycles of abuse.

Consequently, the central Mediterranean route to Europe via Libya has also become deadly and impenetrable due to human trafficking and smuggling, a lucrative “business” led by armed groups. This phenomenon is reinforced by the close links between some Libyan coastguards and militias, some patrols being closely linked to migrant trafficking, according to a report of the UN Security Council published on June 1, 2017.

### **COVID-19 impact on migration trends to and from North Africa**

COVID-19 has had a very mixed impact on migration trends in and around the North Africa region. In many cases, migration has slowed down since 2020, due to the imposition of COVID-19-related travel restrictions. Migration has also been hampered by more indirect issues, such as restrictions on financial revenues, due to the economic-related consequences of the pandemic. Meanwhile, there is an increase in some migration trends, due to political and economic conditions that have been exacerbated by the pandemic, thereby driving North African nationals to emigrate (“Rabat Process”). Migration trends in and around the region have therefore significantly fluctuated over the course of the last few years along different migration routes, depending on the different political, economic, and health contexts of the origin, transit, and destination countries.

#### ***Sub-Saharan Africa to North Africa***

Between mid-to-late 2020, there had been a significant decrease in migration flows from Sub-Saharan Africa to countries in the North Africa region. According to the International Organization for Migration, there had been a reduction in flows from Mali and Niger to Algeria by 21 and 30 percent respectively, and from Niger to Libya by 44 percent (“Migration Data Portal”). This may be attributed to the increased restrictions in mobility for these migrants and refugees, either due to restrictions on travel or socio-economic constraints.

With regards to travel restrictions, more than 80 percent of international airports were closed in the North Africa region to travel, excluding a few exemptions, such as emergency, humanitarian, diplomatic, and cargo flights (“Migration Data Portal”). Meanwhile, between 80 to 90 percent of land border crossings and seaports were closed. According to a survey by 4Mi, the increased difficulty of crossing the borders amid the pandemic-related restrictions was widely considered one of the biggest challenges to migration.

This has unfortunately resulted in several asylum seekers and migrants becoming stranded during transit. There was a cited increase in the fear of movement, due to the increased risk of arrest, detention, and deportation as migrants would be perceived as carriers of COVID-19 (“Rabat Process”).

These migrants stuck in transit are then particularly vulnerable to COVID-19. Several migrants have limited access to information on the pandemic, domestic healthcare, and sustainable income, given that COVID-19-related restrictions on business operations have particularly impacted the informal sectors, where migrants are most prevalent. Meanwhile, migrants and refugees living in detention centers become even more unsafe due to the severe overcrowding, unsanitary conditions, and lack of access to food and clean drinking water, as well as further issues of human rights violations, such as torture, resulting in extreme vulnerability to the pandemic (“Badi”).

The economic consequences of the pandemic have also impacted the mobility of refugees and migrants from Sub-Saharan Africa into North Africa in various ways. Firstly, loss of revenue streams, due to loss of work, decreased income, or reduced financial support from family has added new impediments to migration. It has prevented several migrants from either starting or continuing their journey. The number of people seeking to begin the migration process from Sub-Saharan Africa to North Africa has increased amid the deterioration in socio-economic conditions in their countries resulting from the pandemic. This deterioration in conditions can be attributed to the suspension of several formal and informal business operations, and therefore increased unemployment and decreased income, including along border crossings, wherein locals rely on informal trade routes for daily income (“Rabat Process”).

However, it is this same deterioration in conditions that have hindered their ability to begin the process of emigrating from the migrants’ countries of origin, as it reduces their access to smugglers and other means of travel. This, in turn, puts them in a position of undertaking more risky means, such as accessing risky lenders or smugglers, in order to begin their process. Those that are already in transit become that much more vulnerable to trafficking and exploitation. However, it is these same conditions and risks that motivate many migrants.

Hence, as migrants seek to pursue their journey amid the increased challenges resulting from COVID-19, they become easy prey to smugglers and traffickers. This increased vulnerability ties back to the travel restrictions, particularly the closure of land borders and seaports. As traditional routes of migration become blocked, smugglers will capitalize on the vulnerability of migrants to undertake even more dangerous routes for even higher prices (Ibid.).

Overall, while the COVID-19 pandemic has exacerbated the conditions, typically socio-economic, that drive Sub-Saharan Africans to emigrate to North Africa, it has also created conditions that significantly impede and increase the risk of this migration, thereby resulting in an overall decrease in migration trends, particularly during the initial stages of the pandemic. This thereby increases the vulnerability of the already marginalized refugees and migrants in the region.

### *Migration to Europe*

Broadly speaking, there has also been an overall decrease in migration trends to Europe from the North and West Africa region, via Mediterranean routes, since the onset of COVID-19. However, a more zoomed-in look at these trends shows some variation in patterns along different routes. According to 4Mi, there was a record high in arrivals of Tunisian nationals to Italy, as compared to the past nine years, with Tunisia overtaking Libya as one of the primary entry points into Italy. Moreover, there has been an increasing trend of migration along the West Africa route to the Canary Islands in 2020. Therefore, while migration trends from Sub-Saharan Africa into North Africa did decline, there has been a relative increase in movement from the latter into Europe, particularly via the Mediterranean sea (“Rabat Process”).

This difference in trend may be attributed to the fact that an increasing number of North Africans are seeking work opportunities abroad in Europe, amid the decline in socio-economic conditions in these countries. This is particularly the case with Tunisia and Morocco, which heavily rely on tourism for their sources of revenue, and have therefore been even more severely impacted by the pandemic. With the economies sharply shrinking in these countries, and increasing unemployment specifically impacting the younger generation, there are increasing aspirations to migrate away from North Africa. While these aspirations to emigrate also holds true for those from the Sub-Saharan Africa regions, the pandemic decreased their capabilities to do so, as discussed above, thereby resulting in the mixed trends that have been identified.

However, amid this increasing effort to migrate towards Europe, particularly via the Mediterranean route, there is an increased risk and vulnerability facing the migrants. The COVID-19 pandemic has deterred the Italian and Maltese authorities from undertaking rescue efforts, as they have declared their ports a health risk. Meanwhile, due to the hostilities between the Western- and Eastern-based Libyan authorities, which began in April 2019, migrants have struggled to return to the Libyan ports when turned away from Europe, as heavy shelling and significant hostilities have rendered the coasts of Libya dangerous for migrants at sea. There is therefore increasing concern as to the well-being and status of migrants that have left North Africa to move to Europe (“Badi”).

Moving forward, as pandemic-related restrictions on travel are lifted, there is likely to be a much larger increase in migration efforts from North Africa to Europe. The economic impact of the COVID-19 pandemic will be long-lasting, with several countries struggling to recover from the significant budget deficits they underwent due to the losses in government revenues over the last couple years. This has impeded the government’s efforts to provide social security programs to protect the low- and middle-income segments of the population, which have most significantly been impacted by the pandemic. Meanwhile, in Libya, beyond the pandemic-related issues, political turmoil, with the temporarily-elected Government of National Unity (GNU) failing to conduct elections in December 2021 as per its mandate, will impede authorities’ efforts to strengthen the socio-economic situation in the country as well as a crackdown on smugglers and traffickers seeking to capitalize on the vulnerability of migrants.

The increasing aspirations for migrants to leave North Africa to travel to Europe renders them much more vulnerable to the risks of doing so. Moreover, as the socio-economic conditions continue to deteriorate, or at the very least stagnate, these aspirations will continue to increase, thereby raising the pressures for both Europe and countries in North Africa to develop an adequate response to migration. Without careful policy planning and investment, the human rights abuses and violations faced by migrants will likely only become more severe in the years to come.

### *Domestic conditions for refugees and migrants in North Africa*

In North Africa, the living conditions of refugees and migrants have significantly deteriorated amid the COVID-19 pandemic, which has already partly been discussed above.

In Libya, as well as other countries in the North Africa region, thousands of migrants and refugees face detention. These detention centers are overcrowded and have extremely poor sanitary conditions. Hence, an outbreak of COVID-19 would constitute a death sentence for those imprisoned. By April 2021, around 4,000 individuals were being held in official migrant centers in Libya (“OHCHR”). Meanwhile, in Tunisia, migrants held at the Wardia detention center launched a hunger strike in April 2020 to protest the lack of medical care provided to detainees amid the pandemic (“Muller-Funk, Woertz and Frohlich”).

This risk of detention also deters migrants outside detention centers from seeking the support needed from the authorities, such as access to COVID-19 vaccines and tests. They lack access to basic social security, and therefore medical care, which not only renders them more vulnerable but also puts at risk the domestic societies. While the international community has indicated that States need to stop new detentions of migrants to mitigate this vulnerability and the release of detainees at higher risk, such as women, children, elderly individuals, and those with disabilities or chronic diseases, detention centers directors in Libya stated that they do not believe in COVID-19 (“OHCHR”).

Migrants are also disproportionately represented in the informal sectors of most economies in the North Africa region. While these sectors were impacted by COVID-19-related restrictions, unlike those in the formal sectors, they have no access to social security packages, such as incomes, resources, or rent reductions, provided by local governments. This, in turn, has also aggravated the food insecurity for migrants, at a higher level than that facing local communities. This, in turn, further exacerbates the health crises facing migrant and refugee communities in the North Africa region. Many migrants in the North Africa region also lived in cramped and unsanitary conditions, as they have little access to adequate housing due to constraints on income as well as the xenophobia that these communities face. As such, they are unable to exercise basic health measures to protect themselves from COVID-19, such as social distancing (“Badi”).

The refugee and migrant communities residing in the North Africa region are either in transit to Europe or residing in these countries as their final destination. Regardless of their status, they face significant challenges amid the COVID-19 pandemic, which renders them more susceptible to COVID-19-related health and economic risks as compared to local residents. This in turn may impact migration trends further, as those individuals that settled in North Africa may seek to begin a journey towards Europe if their capabilities allow them to do so. If they lack the capabilities, as discussed previously, they may resort to more dangerous migration routes and seek to access predatory smugglers. It is therefore vital that the authorities of North African countries seek to address some of the core challenges facing migrants and refugees, such as alleviating the risk of detention for those seeking to access better care and working conditions. Moreover, detention policies also need to be modified, including both the release of vulnerable detainees and the prevention of new detention of migrants, particularly given that the authorities are unable to ensure the protection of basic human rights at migrant centers.

### Conclusion

It is necessary to evaluate general migration patterns and policies in order to gain a full understanding of refugee issues, as it is recognized that the two topics are intricately intertwined (“Asylum and Migration”). Examining North Africa’s service as a dynamic hub for global migration is an important contribution to the conversation about refugee flows, with the UNHCR reporting that at the end of 2019, North Africa hosted 1.4 million refugees and was the region of origin for nearly 790,000 refugees (“Migration Data in Northern Africa”). As we look to the future, it’s difficult to predict how refugee and migration flows in this region will evolve as ever-changing political turmoil and COVID-19 continue to exacerbate the risk of already quite perilous journeys. While it is clear that policy adjustments need to be made at the domestic level in North African states to preserve the life and health of detained migrants, the path toward overall improving the experience of refugees in North Africa is incredibly complex, especially given the extensive geopolitical influence of the EU in the region’s migration policies. While it may be difficult to predict change in migration flows and incite change in North African policies, as they both continue to evolve, it is important to continually evaluate the impact on forcibly displaced people in this region and beyond.

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