

# Migration flows and challenges for human rights

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A woman inside a bus watches as other migrants disembark from the Bilwark ship, from the English military navy, in the port of Catania, Italy, 8th June 2015. On board there were about 1150 migrants mostly from Pakistan, Syria and Sub-Saharan country | Photo: [Alessio Mamo](#)

Policies to control people's mobility or migration control policies are designed and implemented by nation states, making use of their sovereignty, for the purpose of controlling all aspects of the departure, entry and settlement of foreigners in their territory. Although states have the right to exercise their sovereignty in this area, such policies should never involve practices or actions that violate their international obligations to protect human rights. Yet we are unfortunately witnessing a progressive strengthening of migration policies, starting after the Cold War and now more acute, especially after the terrorist attacks on 11 September 2001. This trend is characterised by an increasingly intense security-centred logic, which approaches the management of human mobility in terms of conflict, threat and social alarm. It has even reached the unheard-of extreme whereby rescuing migrants in the Mediterranean is criminalised, based on accusations of people trafficking and promoting irregular migration, as reported by various bodies, including the United Nations Human Rights Council.

It is still surprising to find that whereas emigration, or the right to leave, is a basic human right, proclaimed in article 13 of the 1948 Universal Declaration of Human Rights (UDHR), [1] immigration, the right to enter, is not recognised, except in cases of persecution. [2] In

this respect, it is worth asking how such an asymmetric and hierarchical configuration of the right to migrate can be sustained in regulatory terms, legitimised solely with regard to preserving state sovereignty and monopoly over the exclusionary logic of citizenship through borders.

Despite this bleak outlook, mention should be made of the Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), adopted by the UN at the Intergovernmental Conference on the Global Compact for Migration in Marrakesh (Morocco) on 10 December 2018 when discussing the link between international migration and human rights. Although this is not an international treaty nor is it formally binding through international law for the 152 signatory countries, its importance lies in the fact that it is based on international human rights treaties that oblige states to guarantee people's rights.

Through its 23 objectives for action, the Global Compact sets out the basis and possible actions for better migration governance. It is the first UN accord on a common approach to managing international migration negotiated at intergovernmental level. It reaffirms states' commitments to respecting, protecting and implementing the protection of human rights for all migrants, regardless of their status, motives and situations, through all stages of the migration cycle (origin, transit and destination). [3]

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It is quite clear that migration patterns and cycles are becoming increasingly complex and mixed in nature. Hence, this article [4] presents a reflection on so-called *involuntary* or *forced mobility* as a defining pattern for a considerable part of current migration movements from the so-called Global South to the Global North. This is the very mobility that concentrates most violations of human rights and manifestations of violence, be it physical, symbolic, institutional or structural, as a direct consequence of the excessively security-focused drift in migration policies. Using this more conceptual diagnosis, we are able to demonstrate, firstly, the need to critically review the taxonomies and scientific categories used to classify people as economic migrants or refugees in the context of mobility and to overcome the reductionist and dual definitions that focus on the (in)voluntary nature of displacement; and, secondly, the necessary implications of this taxonomic review for migration governance in its ethical dimension and from the perspective of human rights, adopting the principles of the Global Compact as a reference framework.

## Forced migration and the challenges of governance

The term “forced migration” refers to global inequality patterns and its associated mechanisms as causes of mass displacement of marginalised and excluded populations. These are people who, having been expelled from their territories, seek access to means of subsistence and opportunities for social mobility, or people who cannot find employment prospects to match their abilities and level of education. Thus, forced migration is not the result of a series of unconnected emergencies, but, in line with Stephen Castles’ thesis, [5] a constituent part of relations between North and South, which lead the steady blurring of the distinction between the categories migrant and refugee, both during the journey or transit and on arrival in the destination country, through processes of reception, settlement and acquisition of rights. Thus, forced migration and economic migration are closely related and are expressions of world inequalities and social crises. Hence the author’s introduction of the notion of “nexus between migration and asylum” to demonstrate that many migrants and asylum seekers have multiple reasons for mobility. Mixing these motives defies the rigid categories and labels that bureaucracy tries to enforce, be it states or international organizations.

Recent years have seen an increase in the visibility of so-called *involuntary* or *forced mobility*. Within the debates placing the link between globalisation and the rise in the expulsion of humans in a context of progressive restriction to mobility, the sociologist Saskia Sassen retrieves the concept of “survival migration” and refers to massive loss of habitat in places of origin as a cause of emigration, driving people to risk their lives in hazardous journeys, sometimes even lacking a home to return to. [6] Sassen maintains that the mix of adverse conditions—such as “new” low-intensity wars, dead land, loss of natural resources, economic, social and biospheric expulsions, and the systematic exclusion of population groups caused by failed states, among other conditions—produces widespread loss of habitat for a growing number of people. Sadly, there are many scenarios that exemplify these foci of human rights violations, among them the horror of Central American migration (from Honduras, El Salvador and Guatemala in particular), which crosses Mexico to reach the United States, and the deaths in the Mediterranean as a result of flows trying to reach Europe from Africa and countries such as Syria, Iraq and Afghanistan.

Forced migration is more vulnerable in terms of guaranteeing and respecting human rights, including the fundamental values of human dignity, physical survival, well-being and respect for identity. The problem is not the mobility of these people in itself, but the conditions of inequality, marginalisation and exploitation in which most of this migration takes place. And lack of human safety is not only the main cause of forced migration flows, but also involves multiple forms of violence with different effects on people’s lives in all stages of the migration process. In these differences, being a woman or belonging to a sexual minority has a major impact in terms of vulnerability and specific forms of violence.

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## exchange

Practices such as female genital mutilation, forced marriage, honour crimes, rape, coercive prostitution, domestic violence and femicide are specific forms of gender-based violence that can occur throughout the migration cycle, disproportionately affecting women and, to a lesser extent, the LGBTQI+ community. [7]

### What is the response from current migration policies?

Given this diagnosis, what response should border and migration studies provide? Some situations of systematic human rights violations do not always match the categorical definitions and interpretations of the international refugee protection system. The acritical protection of classic “asylum” channels feeds discourses that criminalise and stigmatise migrants reaching countries by irregular means, including asylum seekers with little chance of obtaining such recognition. Motives may include both direct and immediate threat to the right to life and more or less planned flight from intolerable living conditions due to the loss of (or expectations of not acquiring) the means of survival, or all of this at once. It is here that we find a permanent combination of political, economic and social motives that do not fit the “refugee” label anymore, anchored as it is to a sole motive, in the sense used in the 1951 Convention Relating to the Status of Refugees, with no regard to the mix of factors determining mobility.

According to Naranjo, [8] the fuzzy limits between refugee, economic migration and labour migration make it necessary to go beyond legal categories which can themselves be put to use as instruments of exclusion. Sociological concepts that provide tools to broaden and revise the regulatory implications of migration governance must be included. The aim is to overcome reductionist definitions that legitimise the violation of human rights and generate growing mismatches between regulations, on the one hand, and social processes that produce human action, on the other.

Unfortunately, current debate on political governance of migration does not appear to be moving in this direction, as illustrated by the United States and the European Union, to look no further.

In the United States, there is the risk of the new border control measures recently announced by the Biden administration violating the basic foundations of international human rights and refugee law, as warned by the Office of the United Nations High Commissioner for Human Rights. The announced changes include more frequent use of rapid expulsion measures and the extension of title 42 of the public health order that permits fast-track deportation, to Mexico, of Venezuelans, Haitians, Cubans and Nicaraguans, without individual assessment of their protection requirements accompanied by guarantees of due process. At the same time, the so-called Temporary Humanitarian Parole Program (previously only available to Venezuelans) will be extended to include Cuban, Haitian and Nicaraguan nationals, yet many of the people most in need of

humanitarian protection and in the most vulnerable situations are not members of these national groups (and are therefore excluded) or have little chance of meeting the requirements, which are highly restrictive (including having a “financial sponsor” in the United States).

Similarly, in recent years, especially under the Trump administration, migration control has been gradually externalised by exerting various pressures on the governments of Mexico, Guatemala, Honduras and El Salvador, transforming these countries into veritable buffer zones, [9] where all directly rejected migrants are sent. Similarly, for those who manage to reach the United States, a waiting period lasting months or years is established, often in detention centres (many of them run by private companies), or through extraterritorialisation in the north of Mexico. [10]

With regard to the European Union, although the New Pact on Migration and Asylum presented by the European Commission on 23 September 2020 is defined as a “new start” for EU migration and asylum policy by the Commission President, Ursula von der Leyen, it is far from being such if assessed from a human rights perspective. Indeed, it is a continuation of the 2015 Agenda and fails to clarify how the safe and legal routes to Europe are to be improved, as the only way to prevent tragedies occurring in the Mediterranean Sea, where over 20,000 deaths have been registered since 2014 according to the International Organization for Migration.

The proposals in the New Pact not only fail to remove the obstructions to access routes, but also reinforce technological and security border control systems, with the introduction of a new pre-entry control (screening) and a fast-track procedure at the border, aimed at preventing the entry of people with little chance of obtaining a positive resolution of their application for asylum or for international protection.

We cannot lose sight of the fact that migration is an essential part of human history. Cross-border mobility cannot be based on systematic contention of a large part of the migration through restrictive and punitive measures but instead

These migration control extraterritorialisation measures coexist with others for externalising border controls, which require fostering closer cooperation with the countries of origin and transit with regard to return and readmission. The only possible result is diverting transit migration routes to increasingly inhospitable places, so that longer and more dangerous routes are taken to reach Europe. These are multilateral or bilateral agreements that redirect migrants to “third countries”, with whom exchange agreements have been reached, based on immediate expulsion and in exchange for cooperation, trade and other beneficial policies. Border externalisation practices can hardly guarantee that the states receiving displaced people do not engage in cruel, inhuman or degrading treatment of migrants. They have been defined as “buffer zones”, but what they do is convert

migrants into objects of geopolitical exchange. [11]

## Conclusions

In short, we are witness of a migration governance that has been intentionally designed ignoring the realities that configure the motives and patterns of current human mobility. It is absolutely no coincidence that the text of the European Commission's New Pact on Migration and Asylum does not contain explicit mention of the objectives of the UN Global Compact for Migration. More than ever, we need global visions that transcend the unilaterally conceived interests of nation states and which, above all, are governed by international cooperation rather than understood in terms of the asymmetry in power differences that defines the current world geopolitical order. States need to accept, through responsibility, that the underlying "problem" to be tackled is not the movement of people in itself—conceived as problems, threats and rejection—but the causes and circumstances that produce them and which place the north and south, and certain world regions, in a relation of unequal interdependence.

Assuming that every human being should have the right to not have to leave their country against their will, we cannot lose sight of the fact that migration is an essential part of human history and a "normalised" expression of social relations. This is why managing cross-border mobility cannot be based on systematic contention of a large part of the migration through restrictive and punitive measures but instead on the design and execution of actions and policies that guarantee that human mobility processes are carried out in conditions that respect human rights. Ensuring such conditions is only possible through international, and supranational, frameworks of cooperation, aimed at establishing "open borders" (which, as Juan Carlos Velasco stresses, should under no circumstances be confused with a "borderless world"), [12] that guarantee safe and legal entry routes, as well as the principle of non-refoulement as the pillar for protecting people's fundamental rights, over and above controversies regarding the scope of state sovereignty.

## REFERENCES AND FOOTNOTES

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